

*European Communities - Customs Classification
of Frozen Boneless Chicken Cuts
(WT/DS269 and WT/DS286)*

**Answers from the United States to Questions from the Panel
in connection with the
First Substantive Meeting of the Panel
October 14, 2004**

1. The United States appreciates this opportunity to respond to the Panel's questions about certain statements concerning the United States that the parties to this dispute made in their submissions. With respect to its answers to all these questions, the United States would like to recall its observation that this dispute concerns not *customs classification* as such, but rather *tariff treatment* -- and in particular whether the European Communities ("EC") is providing tariff treatment to certain products that is less favorable than that provided for in its schedule of tariff concessions for the Uruguay Round, Schedule LXXX.¹ Consequently, the United States has not taken a view on the correct customs classification of the frozen boneless chicken cuts in dispute.² Turning now to the specific questions of the Panel:

Q3. With respect to the 1991 US tariff classification ruling on the classification of mechanically de-boned chicken meat from Canada referred to by Brazil in paragraph 79 of its first written submission, does the US agree with Brazil's assertion that it is possible to imply from that ruling that meat that has been frozen and cured should not be classified under heading 0207?

2. With respect to the 1991 U.S. tariff classification ruling referred to by Brazil in paragraph 79 of its first written submission, the United States agrees that the product that was the subject of that ruling was classified under heading 0210. We also note, however, that the ruling does not pertain to the product that is at issue in this dispute.

Q4. The US is requested to comment on Brazil's argument in paragraph 95 of its first written submission that the two 1999 US classification rulings to which it refers show that frozen smoked salmon is to be classified under heading 0305 concerning, *inter alia*, fish that has been salted, in brine, dried or smoked rather than heading 0303 concerning frozen fish. In particular, is Brazil's interpretation of these rulings correct? If so, is this interpretation consistent with long-standing classification practice in the United States? Please provide all relevant support.

3. The two rulings to which Brazil refers in paragraph 95 of its first submission both classify frozen smoked salmon under heading 0305. The United States observes that neither of the rulings specifically discusses heading 0303 or heading 0304 (the heading referred to Brazil in paragraph 94 of its first submission), or analyzes why the fish is classified under heading 0305

¹ Third-Party Oral Statement of the United States, para. 2.

² *Id.* at para. 7.

rather than heading 0303 or heading 0304. Moreover, neither of the rulings specifically discusses whether the classification decision was based on the preparation or the preservation process to which the product was subject. Thus, the United States is not in a position to confirm Brazil's interpretation of the rulings reflected in paragraphs 94 and 95 of its first written submission.

Q5. The US is requested to comment on Brazil's argument in paragraph 96 of its first written submission that, in the US, bacon that has been salted/smoked but also frozen will be treated as salted/smoked bacon rather than frozen bacon. In particular, is Brazil's assertion correct as a general principle in the United States?

4. In support of its statements in paragraph 96 of its first submission, Brazil refers to a bill of lading, in which the importer claims tariff treatment for its frozen sliced bacon product under heading 0210. The United States notes that an importer's claim for tariff treatment under a particular subheading does not represent an official statement by U.S. customs authorities on the correct classification of the product. In a 1996 ruling, however, U.S. customs authorities ruled that frozen bacon from Denmark was properly classified under heading 0210.³

Q6. During the first substantive meeting, the EC referred to a US customs ruling of November 1993 (exhibited in EC-21) and noted that the ruling found that the product at issue fell under heading 0201 or 0202 (depending on whether it was fresh or frozen) rather than under heading 0210. Could the US indicate whether it agrees with the view expressed by the EC that this ruling stands for the proposition that frozen meat that has been deeply and homogeneously impregnated with salt should be classified under heading 0207 rather than under heading 0210 of the EC Schedule.

5. With respect to the 1993 ruling referred to by the EC, the United States notes that U.S. customs authorities described the product at issue there as "similar to fresh beef sprinkled and packed in salt," whereas the product in this case is described as "deeply and evenly impregnated" with salt.⁴ It is not clear how similar the two products are, and thus the United States is not in a position to confirm the proposition stated in the final sentence of this Question.

³ New York Ruling Letter NY A80393 (March 7, 1996), as modified by Customs Ruling Letter HQ 960585 (July 20, 1998). See Exhibit US-1.

⁴ See, e.g., First Written Submission by Brazil, para. 2.