



**WT/DS231/R 29 May 2002 EUROPEAN COMMUNITIES –  
TRADE DESCRIPTION OF SARDINES**

**Report of the Panel**

[Presentation of evidence demonstrating the existence of a technical regulation; a relevant international standard; and the failure of the European Communities to base the Regulation at issue on the international standard, Codex Stan 94.](#)

***The Case***

- (a) Peru requests the Panel to find that the measure at issue, the EC Regulation, prohibiting the use of the term "sardines" combined with the name of the country of origin ("Peruvian Sardines"); the geographical area in which the species is found ("Pacific Sardines"); the species ("Sardines — *Sardinops sagax*"); or the common name of the species *Sardinops sagax* customarily used in the language of the member State of the European Communities in which the product is sold ("Peruvian Sardines" in English or "Südamerikanische Sardinen" in German), is inconsistent with Article 2.4 of the TBT Agreement because the European Communities did not use the naming standard set out in paragraph 6.1.1(ii) of Codex Stan 94 as a basis for its Regulation even though that standard would be an effective and appropriate means to fulfil the legitimate objectives pursued by the Regulation.
- (b) If the Panel were to find that the EC Regulation is consistent with Article 2.4 of the TBT Agreement, Peru requests the Panel to find that the EC Regulation is inconsistent with Article 2.2 of the TBT Agreement because it is more trade-restrictive than necessary to fulfil the legitimate objective of market transparency that the European Communities claims to pursue.
- (c) If the Panel were to find that the EC Regulation is consistent with Articles 2.2 and 2.4 of the TBT Agreement, Peru requests the Panel to find that the measure is inconsistent with Article 2.1 of the TBT Agreement because it is a technical regulation that accords Peruvian products prepared from fish of the species *Sardinops sagax* treatment less favourable than that accorded to like European products made from fish of the species *Sardina pilchardus*.
- (d) If the Panel were to find that the measure at issue is consistent with the TBT Agreement, Peru requests the Panel to find that it is inconsistent with Article III:4 of the GATT 1994 because it is a requirement affecting the offering for sale of imported sardines that

accords Peruvian products prepared from fish of the species *Sardinops sagax* treatment less favourable than that accorded to like European products made from fish of the species *Sardina pilchardus*.

## ***The Findings***

In light of our findings that Codex Stan 94 is a relevant international standard, that it was not used as a basis for the EC Regulation and that it is not ineffective or inappropriate to fulfil the legitimate objectives pursued by the EC Regulation, we find that the EC Regulation is inconsistent with Article 2.4 of the TBT Agreement.

In light of the findings above, we conclude that the EC Regulation is inconsistent with Article 2.4 of the TBT Agreement.

Pursuant to Article 3.8 of the DSU which provides that "[i]n cases where there is an infringement of the obligations assumed under a covered agreement, the action is considered *prima facie* to constitute a case of nullification and impairment", we conclude that the EC Regulation nullified and impaired the benefits of Peru under the WTO Agreement, in particular under the TBT Agreement

## ***Finding that European non use of a relevant International Standard is inconsistent with the TBT Agreement***

Updated July 29, 2003

Summary: On July 29, 2003 Peru and the European Commission reached a satisfactory conclusion in the dispute WT/DS231, *EC – Trade Description of Sardines*. This is a precedential case concerning the obligations of parties to the agreement on technical barriers to trade to use International Standards. The dispute settlement panel found: *In light of our findings that Codex Stan 94 is a relevant international standard, that it was not used as a basis for the EC Regulation and that it is not ineffective or inappropriate to fulfil the legitimate objectives pursued by the EC Regulation, we find that the EC Regulation is inconsistent with Article 2.4 of the TBT Agreement.*

The conclusion of the matter included the following action on the part of the European Commission:

*The Codex Alimentarius standard Codex STAN94 as well as the particular conditions prevailing on the Community market should be taken into account to that purpose.*

[WT/DS231/18](#)

29 July 2003

dispute WT/DS231, *EC – Trade Description of Sardines*, Peru and the European Communities have reached the following understanding

The WTO dispute WT/DS231, *EC – Trade Description of Sardines*, is resolved on a mutually satisfactory basis following correspondence between DG Trade of the European Commission and the Permanent Mission of Peru to the European Communities by the adoption and implementation of the Commission Regulation amending Council Regulation (EEC) 2136/89 that is annexed to this understanding (Commission Regulation (EC) 1181/2003 of 2 July 2003).

Excerpt from the Commission Regulation: *The Codex Alimentarius standard Codex STAN94 as well as the particular conditions prevailing on the Community market should be taken into account to that purpose.*

#### **WT/DS231/17**

22 April 2003

Modification of the Agreement under Article 21.3(b) of the DSU\_The following communication, dated 14 April 2003, from the Permanent Mission of Peru and the Permanent Delegation of the European Commission to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 21.3(b) of the DSU.

On 19 December 2002, Peru and the European Communities concluded the above referenced agreement. The agreement provides that the reasonable period of time for the implementation of the recommendations and rulings of the Dispute Settlement Body (DSB) in the above-noted matter was to be completed no later than 23 April 2003.

This is to confirm that, in the interests of facilitating a mutually agreed settlement of the dispute, Peru and the European Communities hereby agree to extend the reasonable period of time for implementation of the DSB's recommendations and rulings until 1 July 2003, pursuant to Article 21.3(b) of the Dispute Settlement Understanding.

#### **WT/DS231/16**

24 December 2002

The following communication, dated 19 December 2002, from the Permanent Mission of Peru and the Permanent Delegation of the European Commission to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 21.3(b) of the DSU.

Pursuant to Article 21.3(b) of the *Understanding on Rules and Procedures Governing the Settlement of Disputes*, the European Communities and Peru would like to inform the Dispute Settlement Body (DSB) that they have agreed that the reasonable period of time for the European Communities to implement the recommendations and rulings of the DSB in the dispute *EC – Trade Description of Sardines* (DS231), adopted on 23 October 2002 will

expire on 23 April 2003

## **WT/DS231/15**

29 October 2002

### *Action by the Dispute Settlement Body*

At its meeting on 23 October 2002, the Dispute Settlement Body adopted the [Appellate Body Report on \*European Communities – Trade Description of Sardines\* \(WT/DS231/AB/R\)](#) and the [Panel Report \(WT/DS231/R and Corr.1\)](#), as modified by the [Appellate Body Report](#).

### [Excerpts from WT/DS231/R 29 May 2002 EUROPEAN COMMUNITIES – TRADE DESCRIPTION OF SARDINES Report of the Panel](#)

*In light of our findings that Codex Stan 94 is a relevant international standard, that it was not used as a basis for the EC Regulation and that it is not ineffective or inappropriate to fulfil the legitimate objectives pursued by the EC Regulation, we find that the EC Regulation is inconsistent with Article 2.4 of the TBT Agreement.*

*In light of the findings above, we conclude that the EC Regulation is inconsistent with Article 2.4 of the TBT Agreement.*

*Pursuant to Article 3.8 of the DSU which provides that "[i]n cases where there is an infringement of the obligations assumed under a covered agreement, the action is considered prima facie to constitute a case of nullification and impairment", we conclude that the EC Regulation nullified and impaired the benefits of Peru under the WTO Agreement, in particular under the TBT Agreement*

## **WT/DS231 – European Communities – Trade Description of Sardines**

Complaint by Peru. On 20 March 2001, Peru requested consultations with the EC concerning Regulation (EEC) 2136/89 which, according to Peru, prevents Peruvian exporters to continue to use the trade description "sardines" for their products.

Peru submitted that, according to the relevant Codex Alimentarius standards (STAN 94-181 rev. 1995), the species "*sardinops sagax sagax*" are listed among those species which can be traded as "sardines". Peru, therefore, considered that the above Regulation constitutes an unjustifiable barrier to trade, and, hence, in breach of Articles 2 and 12 of the TBT Agreement and Article XI:1 of GATT 1994. In addition, Peru argues that the Regulation is inconsistent with the principle of non-discrimination, and, hence, in breach of Articles I and III of GATT 1994.

Further to Peru's request, the DSB established a Panel at its meeting on 24 July 2001. Canada, Chile, Colombia, Ecuador, Venezuela and the US reserved their third-party rights. On 31 August 2001, Peru requested the Director-General to determine the composition of the Panel. On 11 September 2001, the Panel was composed. On 11 March 2002, the Panel informed the DSB that it would not be able to issue its report within 6 months, due to the complexity of the matter and scheduling constraints. The

Panel expects to complete its work by end of April 2002. On 3 May 2002, the parties to the dispute requested the Panel to suspend its proceedings, pursuant to Article 12.12 of the DSU, until 21 May 2002. On 6 May 2002, the Panel agreed to this request.

The Panel Report was circulated to Members on 29 May 2002. The Panel concluded that the EC Regulation was inconsistent with Article 2.4 of the TBT Agreement.

On 28 June 2002, the EC notified its decision to appeal to the Appellate Body certain issues of law covered in the in the Panel report and certain legal interpretations developed by the Panel.

On 26 September 2002 the report of the Appellate Body was circulated. The Appellate Body:

- (a) found that the condition attached to the withdrawal of the Notice of Appeal of 25 June 2002 was permissible, and that the appeal of the EC, commenced by the Notice of Appeal of 28 June 2002, was admissible;
- (b) found that the *amicus curiae* briefs submitted were admissible but their contents did not assist in deciding the appeal;
- (c) upheld the Panel's finding, in paragraph 7.35 of the Panel Report, that the EC Regulation is a "technical regulation" under the TBT Agreement;
- (d) upheld the Panel's findings, in paragraph 7.60 of the Panel Report, that Article 2.4 of the TBT Agreement applies to measures that were adopted before 1 January 1995 but which have not "ceased to exist", and, in paragraph 7.83 of the Panel Report, that Article 2.4 of the TBT Agreement applies to existing technical regulations, including the EC Regulation;
- (e) upheld the Panel's finding, in paragraph 7.70 of the Panel Report, that Codex Stan 94 is a "relevant international standard" under Article 2.4 of the TBT Agreement;
- (f) upheld the Panel's finding, in paragraph 7.112 of the Panel Report, that Codex Stan 94 was not used "as a basis for" the EC Regulation within the meaning of Article 2.4 of the TBT Agreement;
- (g) reversed the Panel's finding, in paragraph 7.52 of the Panel Report, that, under the second part of Article 2.4 of the TBT Agreement, the burden of proof rested with the EC to demonstrate that Codex Stan 94 is an "ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued" by the EC through the EC Regulation, and found, instead, that the burden of proof rested with Peru to demonstrate that Codex Stan 94 is an effective and appropriate means to fulfil those "legitimate objectives", and, upheld the Panel's finding, in paragraph 7.138 of the Panel Report, that Peru has adduced sufficient evidence and legal arguments to demonstrate that

Codex Stan 94 is not "ineffective or inappropriate" to fulfil the "legitimate objectives" of the EC Regulation;

- (h) rejected the claim of the EC that the Panel did not conduct "an objective assessment of the facts of the case", as required by Article 11 of the DSU;
- (i) rejected the claim of the EC that the Panel made a determination, in paragraph 7.127 of the Panel Report, that the EC Regulation is trade-restrictive, and, declared moot and without legal effect the two statements, in paragraph 6.11 and in footnote 35 of the Panel Report, on the trade-restrictive character of the EC Regulation; and
- (j) found it unnecessary to complete the analysis under Article 2.2 of the TBT Agreement, Article 2.1 of the TBT Agreement, or Article III:4 of the GATT 1994.

Therefore, the Appellate Body upheld the Panel's finding, in paragraph 8.1 of the Panel Report, that the EC Regulation is inconsistent with Article 2.4 of the TBT Agreement.

The Appellate Body recommended that the DSB request the EC to bring the EC Regulation, as found in its and in the Panel Report, as modified by its Report, to be inconsistent with Article 2.4 of the TBT Agreement, into conformity with EC's obligations under that Agreement. On 23 October 2002, the DSB adopted the Appellate Body Report and the Panel Report, as modified by the Appellate Body Report.