

WORLD TRADE
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RESTRICTED

WT/DS12/12

WT/DS14/11

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G/TBT/D/9

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EUROPEAN COMMUNITIES - TRADE DESCRIPTIONS OF SCALLOPS

Notification of Mutually Agreed Solution

The following communication, dated 5 July 1996, from the Permanent Missions of Peru and Chile and the Permanent Delegation of the European Commission, is circulated at the request of those delegations.

In accordance with Article 3.6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes, Peru, Chile and the European Communities hereby notify the Dispute Settlement Body (the "DSB") that, with respect to the dispute "EC - Trade Description of Scallops - Request by Peru and Chile (WT/DS12 and WT/DS14)", they have reached a mutually agreed settlement, as set forth in the attached Exchange of Letters and Annex thereto.

1. Letter from Ambassador Jean-Pierre Leng, Permanent Representative of the European Commission to Ambassador Carmen Luz Guarda, Permanent Representative of Chile to the WTO, dated 25 June 1996.

I would be grateful if you would confirm that your Government agrees with the following:

In the light of the interim findings and conclusions of the World Trade Organization (the "WTO") Panel in "EC - Trade Description of Scallops (WT/DS12, 14) - Request by Peru and Chile" and desiring to reach a mutually satisfactory settlement of their differences regarding the trade description of scallops in France in a manner that is consistent with the parties' WTO rights and obligations particularly in respect of scallops imported into the French market,

Peru, Chile and the European Communities (the "EC") have agreed as follows:

1. The WTO dispute "EC - Trade Description of Scallops (WT/DS12, 14) - Request by Peru and Chile" will be resolved on a mutually satisfactory basis by the adoption and implementation of a new French "Arrêté relatif aux dénominations de vente admises des Pectinidés" (hereinafter referred to as the "Order") in accordance with this agreement and its annex.
2. The Order shall be published in the *Journal Officiel de la République Française* and shall take effect no later than 1 July 1996.
3. Peru, Chile and the EC note that the Order was notified on 26 April 1996 to the World Trade Organization in accordance with Article 2.9 of the Agreement on Technical Barriers to Trade.
4. Nothing shall be undertaken that has the direct or indirect purpose or effect of undermining or offsetting the object and purpose of this agreement and its annex and the obligations undertaken in this agreement and its annex.
5. In accordance with Article 12(12) of the WTO Understanding on the Settlement of Disputes (the "DSU"), Peru and Chile shall request that the Panel suspend its proceedings in "EC - Trade Description of Scallops (WT/DS/12, 14) - Request by Peru and Chile" until the date of entry into force of the Order. Immediately following this exchange of letters, Peru and Chile shall notify the relevant WTO bodies that Peru and Chile have requested the Panel to suspend its proceedings.
6. Upon entry into force of the Order, Peru and Chile shall notify the Panel that the Parties have settled the matter in dispute, and shall request the Panel to issue a report that is confined to a brief description of the case and to reporting that a solution has been reached in "EC - Trade Description of Scallops (WT/DS12, 14) - Request by Peru and Chile", in accordance with Article 12(7) of the DSU. Peru and Chile shall then notify the Dispute Settlement Body and the committee on Technical Barriers to Trade that a mutually agreed solution has been reached, in accordance with Article 3(6) and shall include in the notification this exchange of letters and its annex.
7. If prior to the date of entry into force of the Order, the terms of this agreement were not respected, Peru or Chile may advise the Panel to reinstate the suspended proceedings and to issue its Final Report to the Parties. Where Peru or Chile exercises this right, it shall notify the EC without delay, and shall notify the relevant bodies of the WTO as soon as practicable.

8. This agreement is without prejudice to the rights and obligations of Peru, Chile and the EC under the Marrakesh Agreement Establishing the World Trade Organization.
9. The annex is an integral part of this agreement.

The present Agreement is authentic in English, French and Spanish and will enter into force upon receipt of your reply accepting its terms as set out above. I am also supplying herewith the annex referred to above (consisting of a letter dated 9 May 1996 from the French Permanent Delegate to the WTO to the Permanent Representative of the European Commission in Geneva accompanied by the draft French Order with the title "Avant-projet d'arrêté relatif aux dénominations de vente admises des Pectinidés").

ANNEX

Letter from the French Permanent Delegate to the WTO to the Permanent Representative of the European Commission in Geneva, dated 9 May 1996.

With reference to the proposed exchange of letters between the parties to the dispute concerning the trade description of scallops, I have the honour, on the instructions of my Government, to confirm the following:

- Article 1 of the Order, the draft text of which is enclosed, means that:
 - (a) Scallops must be marketed in France under the name "Saint Jacques" or "noix de coquilles Saint Jacques" or "noix de Saint Jacques" or any other combination of the term Saint Jacques consistent with the nature of the product, followed by the scientific name of the species.
 - (b) The country of origin must be indicated in clearly visible lettering on the same side of the label as the name, but not necessarily immediately adjacent thereto.
- Article 5 means that the Order of 22 March 1993 relating to the official French names and permitted trade descriptions of scallops (NOR: MER P9 3000 51 A), as amended by the Order of 29 December 1993 (NOR: ECO C9 3001 90 A) and by the Order of 3 October 1994 (NOR: ECO C9 4000 66 A), will be rescinded as soon as the new Order is published.
- The Order will be published in the Journal officiel de la République française and will take effect no later than 1 July 1996.

Preliminary Draft Order Relating to the Official Names and Permitted
Trade Descriptions of Scallops

The Ministry of the Economy and the Ministry of Agriculture, Fisheries and Food,

Considering the Consumer Code;

Considering Law No. 75-1439 of 31 December 1975 concerning the use of the French language;

Considering Decree 55-241 of 10 February 1955 implementing the Law of 1 August 1905 with respect to trade in preserved and semi-preserved goods, and in particular its Article 8;

Considering Decree No. 64-949 of 9 September 1964 implementing the Law of 1 August 1905 with respect to deep-frozen products, and in particular its Article 7;

Considering Decree No. 84-1147 of 7 December 1984 implementing the Law of 1 August 1905 on fraud and falsification relating to products and services with respect to the labelling and presentation of foodstuffs;

Order

Article 1

Shellfish of the family Pectinidae, when presented in the preserved, semi-preserved or deep-frozen state, must be marketed under the description "Saint-Jacques" followed by the scientific name of the species and the country of origin, or under the description "Saint-Jacques" followed only by the scientific name of the species when the country of origin is already indicated in clearly visible lettering on the same side of the label as the description.

Article 2

The terms mentioned in Article 1 may be replaced by the description "pétoncle" in the case of Pectinidae belonging to the species *Chlamys varia* or *Chlamys opercularis* or by the term "vanneau" in the case of the species *Chlamys opercularis*.

Article 3

This Order shall enter into effect from its date of publication.

Article 4

However, packaging and labels that comply with the provisions of the previous regulations may continue to be used during a period of three months from the date of publication of this Order.

Article 5

The amended Order of 22 March 1993 relating to the official names and permitted trade descriptions of scallops is rescinded.

Article 6

The Director-General for Competition, Consumption and the Repression of Fraud, the Director-General for Food and the Director of Fisheries and Sea Food Resources shall be responsible, each within his own sphere of competence, for the implementation of this Order, which shall be published in the Journal officiel de la République française.

Done at Paris, on ...

2. Letter from Ambassador Carmen Luz Guarda, Permanent Representative of Chile to the WTO, to Ambassador Jean-Pierre Leng, Permanent Representative of the European Commission, dated 25 June 1996.

I have the honour to acknowledge receipt of your letter of today's date with attached Annex consisting of a letter dated 9 May 1996 from the French Permanent Delegate to the WTO to the Permanent Representative of the European Commission in Geneva and the draft French Order with the title "Avant-projet d'arrêté relatif aux dénominations de vente admises des Pectinidés". Your letter reads as follows:

[Text of the letter from Ambassador Leng above except for the last unnumbered paragraph]

I have the honour to inform you that the Government of Chile is in agreement with the contents of your letter and the Annex (attached thereto), and to confirm that your letter and this reply, which are authentic in English, French and Spanish, shall constitute an agreement between the Government of Chile and the European Communities to enter into force on the date of this letter.

3. Letter from Ambassador Jean-Pierre Leng, Permanent Representative of the European Commission to the WTO, to Ambassador José Urrutia, Permanent Representative of Peru to the WTO, dated 25 June 1996.

[The text of the letter is identical to that of the letter sent to Ambassador Guarda.]

4. Letter from Ambassador José Urrutia, Permanent Representative of Peru, to the WTO, to Ambassador Jean-Pierre Leng, Permanent Representative of the European Commission to the WTO, dated 25 June 1996.

I have the honour to acknowledge receipt of your letter of today's date with attached Annex consisting of a letter dated 9 May 1996 from the French Permanent Delegate to the WTO to the Permanent Representative of the European Commission in Geneva and the draft French Order with the title "Avant-projet d'arrêté relatif aux dénominations de vente admises des Pectinidés". Your letter reads as follows:

[Text of the letter from Ambassador Leng above except for the last unnumbered paragraph]

I have the honour to inform you that the Government of Peru is in agreement with the contents of your letter and the Annex (attached thereto), and to confirm that your letter and this reply, which are authentic in English, French and Spanish, shall constitute an agreement between the Government of Peru and the European Communities to enter into force on the date of this letter.