

EUROPEAN COMMUNITIES – TRADE DESCRIPTION OF SARDINES

Request for the Establishment of a Panel by Peru

The following communication, dated 7 June 2001, from the Permanent Mission of Peru to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

I have the honour to request herewith, in accordance with Article XXIII of the GATT 1994, Articles 4 and 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) and Article 14 of the Agreement on Technical Barriers to Trade, the establishment of a panel to examine the marketing standards for preserved sardines in Council Regulation (EEC) No. 2136/89.

On 20 March 2001, Peru formally requested consultations with the European Communities with a view to reaching a mutually satisfactory solution to this dispute. This request was distributed to WTO Members in document WT/DS231/1. The consultations were held in Geneva, Switzerland, on 31 May 2001, but unfortunately, they failed to settle the dispute.

Peru considers that Council Regulation (EEC) No. 2136/89 of 21 June 1989 laying down common marketing standards for preserved sardines creates an unnecessary obstacle to international trade. At the same time, these marketing standards cause discriminatory treatment of preserved sardines from Peru. Indeed, Article 2 of the Community Regulation stipulates that only preserved sardines that are "prepared exclusively from fish of the species *Sardina pilchardus* Walbaum" may be marketed as preserved sardines.

It should be stressed that Peruvian preserved sardines prepared from *Sardinops sagax sagax* entered the German market without any problem under the description "Pacific Sardines" until June 1999, when their entry was prohibited through the application of Council Regulation (EEC) No. 2136/89. Consequently, the application of the said Community Regulation is causing injury to Peruvian exporters and affecting their legitimate expectations under the Agreements of the World Trade Organization (WTO).

Peru therefore considers the said Community Regulation to be an unnecessary obstacle to international trade which infringes Articles 2 and 12 of the Agreement on Technical Barriers to Trade and Article XI.1 of the GATT 1994. Moreover, it appears to violate the principle of non-discrimination, causing injury to our export product, contrary to Articles I and III of the GATT 1994.

Accordingly, the Government of Peru requests the establishment of a panel with the standard terms of reference set out in Article 7 of the DSU. To that end, I would be grateful if this request could be included in the agenda for the meeting of the Dispute Settlement Body scheduled to take place on 20 June 2001.
