

**EUROPEAN COMMUNITIES – TRADE DESCRIPTION OF SARDINES**

Notification of Mutually Agreed Solution

The following communication, dated 25 July 2003, from the Permanent Delegation of the European Commission and the Permanent Mission of Peru to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 3.6 of the DSU.

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In accordance with Article 3.6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes, Peru and the European Communities hereby notify the Dispute Settlement Body that they have reached a mutually agreed solution to the dispute WT/DS231, *EC – Trade Description of Sardines*, as set out in the enclosed Understanding and its annex.

(signed)  
For the European Communities  
*C. Trojan*

(signed)  
For Peru  
*J. Voto Bernales*

### **Understanding**

In the light of the recommendations and rulings of the Dispute Settlement Body of the World Trade Organisation (the "WTO") in dispute WT/DS231, *EC – Trade Description of Sardines*, Peru and the European Communities have reached the following understanding:

1. 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).
2. Nothing shall be undertaken that has the direct or indirect purpose or effect of undermining or offsetting the object and purpose of this understanding.
3. This understanding is without prejudice to the rights and obligations of Peru and the European Communities under the Marrakesh Agreement Establishing the World Trade Organization.

**COMMISSION REGULATION (EC) No 1181/2003  
of 2 July 2003  
amending Council Regulation (EEC)No 2136/89 laying down  
common marketing standards for preserved sardines**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC)No 104/2000 of 17 December 1999 on the common organisation of the markets in fishery and aquaculture products<sup>1</sup>, and in particular Article 2(3)thereof,

Whereas:

- (1) Regulation (EC)No 104/2000 provides for the possibility of adopting common marketing standards for fishery products in the Community, particularly in order to facilitate commerce based on fair competition. These standards may, in particular, cover labelling.
- (2) Council Regulation (EEC)No 2136/89<sup>2</sup> lays down common marketing standards for preserved sardines in the Community.
- (3) The widening variety of supply of preserved products marketed and presented in the same way as preserved sardines in the Community makes it necessary to provide consumers with sufficient information on the identity and the main characteristics of the product. It is therefore necessary to lay down common rules on trade descriptions for preserved products marketed and presented in the same way as preserved sardines in the Community.
- (4) 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.
- (5) In the interest of market transparency, fair competition and variety of choice, it is necessary to specify that preserved sardine-type products should be prepared exclusively from well defined species.
- (6) It is necessary to take account of changes in the Combined Nomenclature codes for preserved sardines.
- (7) The term 'sardine' can only be part of the trade description of sardine-type products if it is adequately qualified. Trade descriptions based on geographic names alone are not sufficiently distinctive. In order to enable a proper identification of each sardine-type product, thus avoiding confusion between different fish species, the scientific name of the species should be used as a qualifier term.
- (8) The combination of the word 'sardines' with the common name of a sardine-type fish species can only generate confusion as to the true nature of the product. On the other hand, common names not including the word 'sardines' may continue to be used for the marketing of sardine-type products, in accordance with the law of the Member State on marketing and in a manner not to mislead the consumers.

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<sup>1</sup> OJ L 17, 21.1.2000, p. 22.

<sup>2</sup> OJ L 212, 22.7.1989 p. 79.

- (9) The requirements laid down in this Regulation should be applied without prejudice to Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs<sup>3</sup>.
- (10) Regulation (EEC) No 2136/89 should therefore be amended accordingly.
- (11) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Fishery Products,

HAS ADOPTED THIS REGULATION:

*Article 1*

Regulation (EEC) No 2136/89 is amended as follows:

- 1. In the title the words 'laying down common marketing standards for preserved sardines' are replaced by the following: 'laying down common marketing standards for preserved sardines and trade descriptions for preserved sardines and sardine-type products'.
- 2. Article 1 is replaced by the following:

*'Article 1*

This Regulation defines the standards governing the marketing of preserved sardines and the trade descriptions for preserved sardines and preserved sardine-type products marketed in the Community.'

- 3. The following Article 1a is inserted:

*'Article 1a*

For the purposes of this Regulation:

- 1. "preserved sardines" means products prepared from fish of the species *Sardina pilchardus*;
- 2. "preserved sardine-type products" means products marketed and presented in the same way as preserved sardines and prepared from fish of the following species:
  - (a) *Sardinops melanosticus*, *S. neopilchardus*, *S. ocellatus*, *S. sagax*, *S. caeryleus*;
  - (b) *Sardinella aurita*, *S. brasiliensis*, *S. maderensis*, *S. longiceps*, *S. gibbosa*;
  - (c) *Clupea harengus*;
  - (d) *Sprattus sprattus*;

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<sup>3</sup> OJ L 109, 6.5.2000, p. 29.

- (e) *Hyperlophus vittatus*;
- (f) *Nematalosa vlaminghi*;
- (g) *Etrumeus teres*;
- (h) *Ethmidium maculatum*;
- (i) *Engraulis anchoita*, *E. mordax*, *E. ringens*;
- (j) *Opisthonema oglinum*.'

4. The first indent of Article 2 is replaced by the following:

'— they must be covered by CN codes 1604 13 11, 1604 13 19 and ex 1604 20 50;'

5. The following Article 7a is inserted:

*'Article 7a*

1. Without prejudice to Directive 2000/13/EC of the European Parliament and of the Council (\*), preserved sardine-type products may be marketed in the Community under a trade description consisting of the word 'sardines' joined together with the scientific name of the species.

2. Wherever the trade description provided for in paragraph 1 is marked on the container of a preserved sardine-type product, it shall be displayed in a clear and distinct manner.

3. The scientific name shall include in all cases the generic and the specific Latin names.

4. Only one species shall be marketed under a single trade description.

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(\*)OJ L 109,6.5.2000,p.29.'

*Article 2*

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Union*.

It shall apply from 1 July 2003.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 2 July 2003.

*For the Commission*  
Franz FISCHLER  
*Member of the Commission*

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