

EUROPEAN COMMUNITIES – TRADE DESCRIPTION OF SARDINES

Notification of an Appeal by the European Communities
under paragraph 4 of Article 16 of the Understanding on Rules
and Procedures Governing the Settlement of Disputes ("DSU")

The following notification, dated 28 June 2002, sent by the Permanent Delegation of the European Commission to the Dispute Settlement Body ("DSB"), is circulated to Members. This notification also constitutes the Notice of Appeal, filed on the same day with the Appellate Body, pursuant to the *Working Procedures for Appellate Review*.

Pursuant to paragraph 4 of Article 16 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (the "DSU") and Rule 20 of the Working Procedures for Appellate Review, the European Communities hereby notifies its decision to appeal to the Appellate Body certain issues of law and legal interpretations covered in the panel report on *European Communities – Trade Description of Sardines* (WT/DS231/R, 29 May 2002).

The Appeal relates to the following issues of law and legal interpretation developed by the Panel in its report:

- (a) The Panel erred in law in finding that Council Regulation (EEC) 2136/89, ("the Regulation") and in particular Article 2 thereof, is a technical regulation relating to preserved *Sardinops Sagax*.
- (b) The Panel erred in law in considering that Article 2.4 of the *TBT Agreement* was applicable to technical regulations prepared and adopted before the WTO Agreement entered into force and in considering that Article 2.4 of the *TBT Agreement* applies to the maintenance of a technical regulation and not just to its adoption.
- (c) The Panel erred in law in its interpretation of the term "relevant international standard" and its application to Codex Stan 94 and the Regulation.
- (d) The Panel erred in law in its interpretation of the Codex Stan-94, in particular by considering that it is unambiguous, that the names envisaged for sardine-type products in Section 6.1.1(ii) should always contain the word "sardine" and that the reference to "in accordance with the law and custom of the country in which the product is sold" relates only to the common name as well as by neglecting to give any real meaning to the requirement that the name used should not mislead the consumer. The Panel also erred in law by not properly considering the negotiating history and the validity of Codex Stan-94.
- (e) The Panel erred in law in its interpretation and application of the term "as a basis for" in Article 2.4 of the *TBT Agreement*.

- (f) The Panel erred in law in its interpretation and application of Article 2.4 of the *TBT Agreement* in respect of the burden and standard of proof thereunder, in particular as regards the question of whether Codex Stan-94 was a relevant international standard and whether it, or the relevant part of it, is ineffective or inappropriate to fulfil the legitimate objectives pursued.
- (g) The Panel committed several legal errors in the interpretation of the terms “ineffective or inappropriate” in Article 2.4 of the *TBT Agreement* and in coming to the conclusion that Codex Stan 94 is not ineffective or inappropriate to fulfil the legitimate objectives pursued and whether the alternatives proposed by Peru could achieve them as appropriately and effectively. The Panel also erred in law in refusing to consider domestic law as relevant to the question of consumer expectations.
- (h) The Panel failed its obligation to make an objective assessment of the matter before it under Article 11 DSU, inter alia with regard to points (c), (d), and (g) above. More specifically, the Panel made arbitrary and improper use of, and distorted the meaning of, definitions in dictionaries, ignored the evidence concerning the actual names given to sardine-type products in the European Communities and improperly relied on the opinion of a consumers association as evidence when this was obviously based on a misapprehension of the law. It also failed in its duty to establish the facts by refusing to request information about Codex Stan 94 from the Codex Alimentarius Commission.

The Panel erred in law in concluding that the EC Regulation is more trade restrictive than the Codex Stan 94.
