

EC – SARDINES¹

(DS231)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	Peru	TBT Annex 1.1 and Art. 2.4	Establishment of Panel	24 July 2001
			Circulation of Panel Report	29 May 2002
Respondent	European Communities		Circulation of AB Report	26 September 2002
			Adoption	23 October 2002

1. MEASURE AND PRODUCT AT ISSUE

- Measure at issue: EC Regulation establishing common marketing standards for preserved sardines, including a specification that only products prepared from *Sardina pilchardus* could be marketed/labelled as preserved sardines.
- Product at issue: Two species of sardines found in different waters – *Sardina pilchardus Walbaum* (mainly in Eastern North Atlantic, in the Mediterranean Sea and the Black Sea) and *Sardinops sagax sagax* (mainly in the Eastern Pacific along coasts of Peru and Chile).

2. SUMMARY OF KEY PANEL/AB FINDINGS

- TBT Agreement Annex 1.1 (technical regulation): The Appellate Body upheld the Panel's finding that the EC Regulation was a "technical regulation" within the meaning of Annex 1.1 as it fulfilled the three criteria laid down in the Appellate Body report in *EC - Asbestos*: (i) the document applied to an identifiable product or group of products; (ii) it lays down one or more product characteristics; and (iii) compliance with the product characteristics was mandatory.
- TBT Agreement Art. 2.4 (relevant international standard): The Appellate Body upheld the Panel's finding that the definition of "standard" does not require that a standard adopted by a "recognized body" be approved by consensus. Therefore, the standard in question, Codex Stan 94, fell within the scope of Art. 2.4 as well.
- TBT Agreement Art. 2.4 (burden of proof): The Appellate Body reversed the Panel's finding that the European Communities had the burden of proving that the relevant international standard was ineffective and inappropriate under Art. 2.4 and found, instead, that the burden rested on Peru to prove that the standard was effective and appropriate to fulfil the legitimate objectives pursued by the European Communities through the EC Regulation. The Appellate Body upheld the Panel's alternative finding that Peru had adduced sufficient evidence and legal arguments to demonstrate that the international standard was not ineffective or inappropriate to fulfil the legitimate objectives pursued by the European Communities (of market transparency, consumer protection and fair competition), since it had not been established that most consumers in most member states of the European Communities have always associated the common name "sardines" only with *Sardina pilchardus Walbaum*.

3. OTHER ISSUES²

- The Appellate Body found that it could accept and consider an *amicus curiae* brief submitted by Morocco, a WTO Member that was not a third party to the dispute, although ultimately it did not take the brief into account.

¹ *European Communities – Trade Description of Sardines*

² Other issues addressed in this case: working procedures for Appellate Review (Rule 30(1) – request for passive observer status), temporal scope of TBT Article 2.4, DSU Article 11.