

European Communities – Trade Description of Sardines

(WT/DS231)

First Written Submission of the European Communities

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1. INTRODUCTION AND SUMMARY

1. At the outset of this proceeding, the European Communities wishes to thank the members of the Panel for agreeing to serve in this dispute. The European Communities wishes also to acknowledge the significant work that will be required of the Secretariat in assisting the Panellists to perform their task.
2. The case at issue is, in fact, not as simple and straightforward as Peru tries to depict it.
3. First of all, it is not only about two species of fishes (let alone "two species of sardines"). The family to which *Sardina pilchardus* and *Sardinops sagax* belong, *Clupeidae*, is composed of 216 species, among which sardinella, herring and sprat. If Peru's claims were to be considered founded, all these 216 species could be marketed throughout the territories of the 142 WTO Members under the name "sardines".
4. Second, it is not only about fishes of the family *Clupeidae*. A *Sardina pilchardus* and a *Sardinops sagax* are as different from a biological point of view as a cat and a lion, or as humans and chimpanzees. If Peru's claims were to be considered founded, any producer would be entitled to market its product under the name of a different species that may be in a different genus or even in a different family. Peacocks could be sold under the name "quails", and apples under the name "peaches".
5. The WTO has never been confronted before with the issue of products' names. Nowhere has ever been held that vodka has not only to be taxed in the same way as shochu but also that it is entitled to be called shochu.
6. Peru does not seem to have realised that these issues are at stake and the impact that they can have on international trade well beyond the boundaries of Peru and the European Communities. In particular, Peru has not correctly understood the objectives of the European Communities' measure and therefore has not even attempted to demonstrate the case.
7. Although the European Communities does not accept Peru's attempt to impose the burden of proof on the European Communities, it will nonetheless set out the factual background in some detail so as to allow the Panel to understand the real issues in this case. In particular, the European Communities will highlight how the facts presented by Peru are not only inaccurate, they are also very partial and incomplete. The European Communities will notably describe the biological differences existing between the fishes at issue in this case; their scientific and non-scientific names; their commercial interest; the trade description of foodstuffs in the European Communities, and the work of Codex.
8. The European Communities will also review the legal claims made by Peru under Article 2, paragraphs 4, 2 and 1, of the *Agreement on Technical Barriers to Trade* (hereinafter the "*TBT Agreement*") and of Article III, paragraph 4, of GATT 1994 in order to show that they are nothing more than unsubstantiated allegations.

9. The European Communities is not going to answer the allegations contained in § 44 of Peru's submission because, for Peru's own admission, clearly outside the scope of the Terms of Reference of this Panel. However, the EC will present in the part on factual background facts that demonstrate their misleading nature.

2. FACTUAL BACKGROUND

2.1. Biological classification of animals

10. All living things are divided into categories using Latin terms that can be understood worldwide. Classification of living things is used to help identify different animals and to group them together with their relatives.
11. The first and largest category is the *Kingdom*. To date there are five kingdoms: *Animalia*, which is made up of animals; *Plantae*, which is made up of plants; *Protista*, which is made up of protists (single-celled creatures invisible to the human eye); *Fungi*, which is made up of mushrooms, mould, yeast, lichen, etc; and *Monera*, which is made up of three types of bacteria.
12. The next category is the *Phylum*. There are several *phyla* within each kingdom. The *phyla* start to break the animals (or plants, fungi, etc) into smaller and more recognisable groups. The best known phylum is *Chordata*, which contains all animals with backbones (fish, birds, mammals, reptiles, amphibians). There are also *Arthropoda* (insects, spiders, crustaceans); *Mollusca* (snails, squid, clam); *Annelida* (segmented worms); *Echinodermata* (starfish, sea urchins) and many more.
13. The next category that makes up the *phyla* is the Class. The class breaks up animals into even more familiar groups. For example, the *phylum Chordata* is broken down into several classes, including *Mammalia* (mammals), *Aves* (birds), *Reptilia* (reptiles), *Amphibia* (amphibians), *Osteichthyes* (fish) and several others.
14. The next category is the Order. Each class is made up of one or more orders. *Mammalia* can be broken down into many orders, for instance, *Carnivora* (dogs, cats, weasels). *Osteichthyes* is made up of several orders, among others *Clupeiformes* (sardines, sardinops, herrings, anchovies ...).
15. Orders can then be broken down into Families. The order *Carnivora* can be broken down into several families, for instance, *Felidae* (cats). The order *Clupeiformes* is also broken down in several families, among others, *Clupeidae* and *Engraulidae*.
16. The next category is the *Genus*. The family *Felidae*, for example, can be broken down into several genera, for instance, *Panthera* (lion, tiger) and *Felis* (domestic cats). The family *Clupeidae* is made up of 66 genera, among others, *Sardina* and *Sardinops*.
17. Finally, the genus is broken down into the *Species*. The genus *Panthera* can be broken down to include *Panthera leo* (lion) and *Panthera tigris* (tiger). The genus *Sardina* includes only one species, *Sardina pilchardus*, and the genus *Sardinops* is

made up of 5 species: *Sardinops sagax*, *S. caeruleus*, *S. melanostictus*, *S. neopilchardus* and *S. ocellatus*. The basic unit of biological classification is the species. A species is a group of organisms which have numerous physical features in common and which are normally capable of interbreeding and producing viable offspring.

18. It is customary to name an organism by its genus and species. The generic name is written first and begins with a capital letter, followed by the specific name, which begins with a small letter. Closely related organisms, lion and tiger for example, have the same generic name (in this case *Panthera*) but different species names. The lion is *Panthera leo* and the tiger is *Panthera tigris*.
19. The scientific names are essential whenever precise identification is required and they enable scientists to communicate accurately with each other. They are used throughout the world and have the merit that they allow to know exactly which organism is being referred to.
20. Scientific names are more than labels in that they also reflect our current understanding of the evolution of species. Thus, all species in a given genus are thought to have a common ancestor, and no offspring of that ancestor must occur in another genus (i.e., the genus must be monophyletic). The same is true for the higher taxa of family, order and class, only that the common ancestor dates further back in time with each higher level.
21. It can be seen that, from a biological point of view, the sardine and the sardinops are as much different as the domestic cat and the lion are.¹

2.2. Non-scientific names

2.2.1. Common names

22. It should be noted that most animals are given common names used outside of the scientific community and that these names may be different in each country.
23. The trouble with common names is that a particular organism may be known by several different common names in different countries and even within the same country, and some times the same common name is used for two quite different organisms. For example, in Canada a certain type of spider is known as the daddy long-legs and, in the US, is known as the harvester spider. Likewise a type of fly in the US is called the daddy long-legs and is known as the crane fly in Canada. However, the Latin term remains the same. The British robin, *Erithacus rubecula* belongs to a totally different family from the American robin, *Turdus migratorius*. The latter's scientific name tell us that it is more closely related to the British blackbird whose scientific name is *Turdus merula*. Another problem with common names is that some languages that are very widespread, such as English, French,

¹ See diagram in Exhibit EC-1.

Spanish or Portuguese, have names for many fishes not occurring in the countries where the language is spoken. On the contrary, other languages, which are spoken only in a single country or locality, usually have names for only those fish species that occur in the area. This fact is very clearly explained by the database "FishBase": "*Users of FishBase should be aware of this distinction when evaluating our coverage of common names*". Another useful clarification given by "FishBase" is that "*The most obvious use of the COMMON NAMES table is to identify the scientific name of a fish. Note however, that non-standardised common names may point to more than one species*"².

24. This underlines the pre-eminence of scientific names over common names. The European Communities will anyhow provide below an excursus among a number of common names used world-wide to help the Panel appreciating how misleading it can be to refer to common names.

2.2.2. *FAO Names*

25. In its "Species Identification Sheets", the United Nations Food and Agriculture Organization ("FAO") presents the following common names for the two species of fish at issue in this case:³

Sardine: *Sardina pilchardus* (Walbaum, 1792)

EN: European pilchard (=Sardine).

FR: Sardine commune.

SP: Sardina.

Sardinops: *Sardinops sagax* (Jenyns, 1842)

EN: South American pilchard.

FR: Pilchard sudaméricain.

SP: Sardina.

26. It resorts from the above, that FAO reserves the name "sardine" in English and French only for *Sardina pilchardus*, whilst in Spanish the name "sardine" is reserved for both species. Does it mean that the common name of sardinops for Spanish speaking people in Europe should be "sardine"? The answer is certainly "no". The sardinops is a species totally unknown to the European consumer and certainly to the Spanish speaking Europeans. What the Spanish-speaking European consumer

² www.fishbase.org/manual/fishbasethe_common_names_table.htm

³ See FAO/SIDP Species Identification Sheets for *Sardina pilchardus* (Exhibit EC-2) and for *Sardinops sagax* (Exhibit EC-3).

knows by "sardine" is the *Sardina pilchardus*. As mentioned above, Spanish is a very widespread language and it has names for many fishes not necessarily occurring in each of the countries where the language is spoken.

2.2.3. FishBase names of *Sardinops sagax*⁴

27. In paragraph 33 of its submission, Peru affirms that, according to FishBase, the common name for the species *Sardinops sagax* is in Finland "Peruunsardiini" and in France "Sardine du Pacifique". In reality, according to FishBase, common names for *Sardinops sagax* in France are also:

- Pilchard de Californie
- Pilchard de l’Afrique australe
- Pilchard du Japon
- Pilchard sudaméricain
- Sardinops d’Afrique du Sud
- Sardinops d’Australie
- Sardinops du Chili
- Sardinops du Japon

28. Also according to FishBase, the common name for *Sardinops sagax* in the following countries are:

Spain

- Pilchard californiana
- Pilchard chilena
- Sardina
- Sardina de Africa austral
- Sardina de California
- Sardina japonesa
- Sardina Monterrey
- Sardina sudafricana

UK

- Australian pilchard
- Californian pilchard
- Chilean pilchard
- Japanese pilchard
- Pacific sardine
- Picton herring
- South American pilchard
- Southern African pilchard

⁴ See Common Names of *Sardinops sagax* in FishBase (Exhibit EC-4)

Portugal

- *Sardina australiana*
 - *Sardinopa*
 - *Sardinopa da Australia*
 - *Sardinopa da California*
 - *Sardinopa chilena*
 - *Sardinopa da-áfrica-do-sul*
 - *Sardinopa-da-California*
 - *Sardinopa-japonesa*
29. This shows the high diversity of common names recorded by FishBase, but, as it has been explained, this is the reflection of the fact that these languages are very widespread and have names for many species not occurring in France, Spain, UK or Portugal. These species are traditionally unknown by the European consumer and, in order not to mislead the consumer, the common name of the imported product should not interfere with the common names of species traditionally traded in the local markets.
30. Moreover, the information contained in FishBase also shows that there are around 130 different species in the world whose reported common name includes the word "sardine".⁵
31. Peru is recorded as using "sardine" for 9 different species. Countries like the UK and Spain (around 30 species), Mexico (around 20) or the US (16 species), among many others, also have a large number of species whose reported common names include "sardine". Therefore an unrestricted use of the term sardine even within a country will certainly create confusion as to the exact nature of the product being sold.
32. Furthermore, it is nowhere indicated in FishBase that common names should be the name under which a product must or could be marketed in a country. As indicated above, the objective of compiling common names is to help finding the scientific name of the species.

2.2.4. The Multilingual illustrated dictionary of aquatic animals and plants

33. The Multilingual dictionary published by the EC is primarily a translation tool based on existing names in all 11 languages of the Community in all the world. As it is said in its Preliminary remarks, *"it has been impossible to find existing names for all species. These species are not caught and traded universally and thus, for example, it is not unusual to find no Danish name for a species which is only caught and traded in the Southeast Pacific Ocean. However, where no names were readily*

⁵ See FishBase list of Common Names with "sardin" (Exhibit EC-5). For the Panel's information, the European Communities has "cleaned up" this list by taking out the common names not referring to sardines (e.g. sardinella) and has organised the remaining names on the basis of the 130 species (Exhibit EC-6).

available, the expert working group attempted to complete this list by making literal translations of the names in one of the other languages. Even this has not been possible in all cases".⁶ The example given regarding the Danish name for a Southeast Pacific fish could not be more appropriate for the case of sardinops. It is true that at least one common name for *Sardinops sagax* in the Multilingual dictionary in all European Communities languages contains the word "sardine". The explanation is here, as it was the case for many FishBase denominations, that the experts made "literal translations" of the names used where the fish occurs, South America.

34. It must be stressed that the names listed in the Multilingual dictionary are possible translations in the 11 official languages of the European Communities, not the commercial names in the 15 European Communities Member States. Thus it is wrong to say, as paragraph 31 of Peru's submission does, that "*At least one of common names for fish of the species Sardinops sagax in all European countries consist of the word "sardines"*". Translations are one thing, trade denominations used in European countries are another thing. The assertion made by Peru at the end of the same paragraph is very misleading: one of the translations for *Sardinops sagax* listed in the Multilingual dictionary in English is "Peruvian sardine" (together with "Chilean pilchard" and "South American pilchard"), but the trade description for this species in the UK is "Pacific pilchard"; similarly, the translations in German listed for this species is "Südamerikanische Sardine", but the trade description for this species in Germany is either "Sardinops" or "Pilchard".

2.3. The fish species involved

2.3.1. Introduction

35. Paragraph 3 of Peru's submission intentionally tries to distort this reality by speaking about "two species of sardines" in dispute.
36. From a scientific and biological point of view it is clear that there is currently only one species of the genus *Sardina*, which is *Sardina pilchardus*. The so-called "Peruvian sardine", *Sardinops sagax* belongs to another genus, the genus *Sardinops*.
37. As we have seen, both genera belong to the same family *Clupeidae* as do other genera such as *Sardinella*, *Clupea*, *sprattus* and others. Therefore, sardines (*Sardina pilchardus*), sardinops (*Sardinops sagax*), round sardinella (*Sardinella aurita*), herring (*Clupea harengus*) and sprat (*Sprattus sprattus*) belong to the same family but to different genera. Even inside a genus, there are substantial differences between the species included in it. These differences are bigger between species of different genera. It results that the difference between a sardine (*Sardina pilchardus*) and a sardinops (*Sardinops sagax*) is at least as big as the difference between a sardine and a herring.

⁶ See Exhibit EC-7.

38. The family *Clupeidae* is composed of 216 species distributed in 66 genera. If we admitted the extension of the use of the denomination "sardine" to sardinops, any of the other 216 species of the same family could be given the same name for the same reason: its inclusion in the same family than the sardine.⁷
39. In the European Communities' submissions and presentations, the term "sardine" will be used to refer to *Sardina pilchardus* only and the term "sardinops" to refer to the different species of the genus *Sardinops*. The European Communities will use the term "sardine type product" for prepared fish of species, other than *Sardina pilchardus*, listed in the Codex standard for canned sardines and sardine-type products (CODEX STAN 94-1981 REV. 1-1995).

2.3.2. Morphology of sardine and sardinops

40. The difference between sardine and sardinops become evident if their morphological characteristics are observed.
41. Among the various differences which can be observed between sardines and sardinops, such as the ones concerning the head length as a percentage of the standard length of the fish, and the type and number of gillrakes or bony striae on the operculum⁸, the most apparent ones are their size and weight. Sardinops are about 50% bigger than sardines. The maximum length of sardines is, in fact, 25 cm, while that of sardinops is 39.5 cm. The average length and weight of sardines are 21.6 cm and 67.1 gr. while those of sardinops are 30.0 cm and 219 gr. The maturity length of sardines is 13.2 cm and that of sardinops is 17.7 cm.⁹
42. Exhibit EC-11 includes an extract from a study being prepared by IFREMER (Institut Français de Recherche pour l'Exploitation de la MER) laboratories in Nantes and Sètes (France) in co-operation with the Biochemical and Molecular Biology Departments of Madrid and Montpellier Universities concerning the identification of small pelagic fishes by techniques of molecular genetics. The study shows that the DNA "divergence nucléotidique" between the two species is of 22%. This difference means that the separation of the two genus took place around 11 million years ago.
43. From a commercial point of view, this differences in their morphological characteristics entail that preserved sardinops can only be sold in "filets" while sardines are mostly sold in a single piece (head and tale off), with bones and skin.

⁷ Key information about most of these species is provided as Exhibit EC-8.

⁸ Exhibit Peru-2 includes extracts of the Species Catalogue of FAO where these differences can be seen.

⁹ See FishBase's Key Facts on *Sardina pilchardus* (Exhibit EC-9) and on *Sardinops sagax* (Exhibit EC-10).

2.3.3. Distribution of sardines and sardinops

44. The European Communities has provided the attached maps¹⁰ in order to prove the distribution of sardines and sardinops. The Panel will see that sardines can be found around the coasts of eastern North Atlantic, in Mediterranean Sea and in the Black Sea. Sardinops can instead be found in the waters of Peru, Chile and the Galapagos Islands.

2.3.4. Landings of sardines and sardinops

45. Catches for *Sardinops sagax* started to be reported to FAO in 1961 (2 700 t by Peru) but up to 1973 they did not exceeded 100 000 t. Starting that year, there was a fast increase of the catches, which reached a peak of 6 509 301 t in 1985, in correspondence of the dramatic decrease of catches of the Peruvian anchovy due to El Niño phenomenon. Since 1985, the total catch has strongly decreased totalling 1 503 131 t in 1995, mostly from Peru. Caught with purse seines, the total catch reported for this species to FAO for 1999 was 442 690 t. The countries with the largest catches were Chile (246 045 t) and Peru (187 824 t).
46. The European Communities does not land, nor import fresh, chilled or frozen sardinops.
47. *Sardina pilchardus* is an important fishery species in the FAO areas 34 (783 564 t in 1995), 37 (236 928 t) and 27 (186 636 t).¹¹ The fishery of sardine in Europe is known since the antiquity and the sardine processing started in France already in the 18th century. Since 1950 the catches have been steadily increasing, reaching two peaks in 1976 (1 315 685 t) and 1990 (1 525 184 t). Caught with purse seines and lamparas (light fishing), also gillnets, beach seines, trap nets and occasionally high opening bottom trawls (French Mediterranean Coast). The total catch reported for this species to FAO for 1999 was 901 427 t. The country with the largest catches is Morocco (429 732 t). European Communities landings of *Sardina pilchardus* were 200.694 tonnes.¹²

¹⁰ See Exhibits EC-2 and EC-3.

¹¹ See FAO Map of Fishing Areas (Exhibit EC-12).

¹² See Exhibit EC-13.

2.4. Imports in the European Communities of prepared or preserved sardines, sardinops and round sardinella

2.4.1. Sardines¹³

48. In 2000 the European Communities imported a total of 27 982 tonnes of preserved sardines. 25 516 tonnes were imported from Morocco. 232 t were imported from Peru; this quantity might have been wrongly declared or wrongly recorded as *Sardina pilchardus*.

2.4.2. Sardinops¹⁴

49. In 2000 the European Communities imported a total of 5 801 tonnes of preserved sardinops. The main imports, 2 721 tonnes, came from Peru. Of this quantity, the UK imported 2 653 tonnes, France 46 tonnes and Netherlands 22 tonnes¹⁵. Nothing has been imported into Germany in the year 2000. Since 1988, date of our oldest statistical records, only in 1999 there is a trace of some imports of canned sardinops in Germany (50 tonnes).
50. This is confirmed by the figures on Peru's exports provided by the Peruvian delegation during the consultations (see Exhibit EC-17) where the UK appears as one of the most important world markets for Peruvian sardinops. Other European Communities countries do not appear as any of the major export destinations of the Peruvian product.

2.4.3. Sardinella¹⁶

51. In 2000 the European Communities imported a total of 1.137 tonnes. The main imports, 727 tonnes, came from Thailand. 26 tonnes appear to have been imported from Peru.

2.4.4. Import tariff regime in the European Communities for prepared sardines and sardinops¹⁷

52. 98,19% of European Communities imports of canned sardines in year 2000 (27.475 tonnes) entered the Community market duty free.

¹³ See Exhibit EC-14.

¹⁴ See Exhibit EC-15.

¹⁵ See imports by Member States from Peru of canned sardinops (Exhibit EC-16).

¹⁶ See Exhibit EC-18.

¹⁷ See Exhibit EC-19.

53. 86,62% of European Communities imports of canned sardinops in year 2000 (5.025 tonnes) entered the Community market duty free.
54. Morocco, the main exporting country of canned sardines to the EU, benefits from a total exemption of duties under the "*ACCORD EURO-MEDITERRANEEN ETABLISSANT UNE ASSOCIATION ENTRE LES COMMUNAUTES EUROPEENNES ET LEURS ETATS MEMBRES, D'UNE PART, ET LE ROYAUME DU MAROC D'AUTRE PART*" of 15 November 1995.
55. Peru, the main exporting country of sardinops, also benefits from a total exemption of duties under the special provisions of the "drug GSP regime".
56. The MFN duties applied to all other WTO Members are 12,5% for whole or filleted prepared fish and of 25% for other preparations.

2.5. Trade descriptions for food in the European Communities

2.5.1. The regulation of trade description for foodstuffs

57. The measure at issue in this case, Council Regulation (EEC) No. 2136/89 (hereinafter "the Regulation"), does not exist in a vacuum but is part of, and can only be understood in the framework of, the system of rules concerning the labelling of foodstuffs in the European Communities – a system in which the names or trade descriptions of foodstuffs has an important place.
58. This framework is established by 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, a copy of which is Exhibit EC-20.¹⁸ Directive 2000/13 sets out the basic framework and is designed to be complemented by more detailed European Communities rules or, in their absence, more detailed Member States rules (recital 11). Directive 2000/13 consolidates in a single text the frequent and substantial amendments being made to Council Directive 79/112/EEC of 18 December on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuff.¹⁹
59. The objectives of Directive 2000/13 are to inform and protect the consumer (recital 6) and to prevent distortions of competition within the European Communities (recital 2). This is achieved by laying down detailed and precise requirements as to how products should be labelled. One of the principal requirements for labelling under Directive 2000/13 is, according to Article 2.1(a)(i), that:

The labelling and methods used must not:

¹⁸ OJ L 109 of 6.5.2000, p. 29-42.

¹⁹ OJ L 33 of 8.2.1979, p.1.

(a) be such as could mislead the purchaser to a material degree, particularly:

(i) as to the characteristics of the foodstuff and, in particular, as to its nature, identity, properties, composition, quantity, durability, origin or provenance, method of manufacture or production;

60. Article 3 of Directive 2000/13 sets out the compulsory labelling particulars required to achieve this objective. The first compulsory labelling particular is the ‘name under which the product is sold’ – Article 3.1(1).

61. The rules concerning the names of foodstuffs are laid down in Article 5.1(a) as follows:

The name under which a foodstuff is sold shall be the name provided for in the Community provisions applicable to it.

(a) In the absence of Community provisions, the name under which a product is sold shall be the name provided for in the laws, regulations and administrative provisions applicable in the Member State in which the product is sold to the final consumer or to mass caterers.

Failing this, the name under which a product is sold shall be the name customary in the Member State in which it is sold to the final consumer or to mass caterers, or a description of the foodstuff, and if necessary of its use, which is clear enough to let the purchaser know its true nature and distinguish it from other products with which it might be confused.

62. This provision establishes the principle that there should be a single correct name for a given foodstuff (*‘the name under which a foodstuff is sold shall be the name...’*) and that this name is determined according to a hierarchy of rules, as follows:

- the name laid down in European Communities legislation;
- the name provided for in the laws, regulations and administrative provisions applicable in the Member State in which the product is sold;
- the name customary in the Member State in which it is sold; and finally
- a description of the foodstuff, and if necessary of its use, which is clear enough to let the purchaser know its true nature and distinguish it from other products with which it might be confused.

63. This system allows consumers to rely on the name of the product as providing reliable information about the nature and identity of a foodstuff. This serves the goal of consumer protection and also ensures market transparency and means that competition between manufacturers and producers is based on the quality and price of their products and not on attempting to make consumers believe that they are buying something they are not. This system of precise names for foodstuffs also ensures that a certain specific reputation can be associated with each particular name. This is an essential element of the European Communities system for the

labelling of foodstuffs and an important factor in maintaining high quality and product diversity. Under a system where names are more flexible and a greater range of foodstuffs can be sold under each name, there is a natural tendency for all producers to use the cheapest ingredients that qualify for the name and allow the associated reputation to be exploited. This leads to a smaller range of products being made available on the market and a lowering of quality and choice – often referred to as ‘levelling down’.

2.5.2. Trade descriptions for sardines and sardine-type products

64. In most parts of the European Communities, especially in the production countries, the term "sardine" has historically made reference only to the *Sardina pilchardus*.²⁰ However, other species like sprats (*Sprattus sprattus*) were sold in tiny quantities on the European Communities market with the denomination "briesling sardines". In view of the confusion that this created in the market place, the European Communities has constantly tried to clarify the situation, both externally (note of 16/04/73 to Norway²¹) and internally (Regulation 2136/89).
65. This situation has now created uniform consumer expectations throughout the European Communities, the term "sardine" referring only to a preserve made from *Sardina pilchardus*.
66. The objectives of the Regulation²² as indicated in its recitals are the following :
- To keep products of unsatisfactory quality off the market;
 - To facilitate trade relations based on fair competition;
 - To ensure transparency of the market;
 - To ensure good market presentation of the product;
 - To provide appropriate information to consumers.

In order to achieve the above mentioned objectives, the Regulation defines what should be called a preserved sardine and also regulates the market presentation of the product, the covering media of the sardine, the ratio between the weight of sardines in the container after sterilisation and the net weight, the need for the trade

²⁰ See Spanish legislation (Exhibit EC-21) and French legislation (Exhibit EC-22).

²¹ See Exhibit EC-23.

²² In paragraph 26 of its submission, Peru is making an improper reference to the consultations held by the parties preceding the establishment of the Panel. During these consultations the EC clearly explained what the objectives of the Regulation were and never limited them to only ensuring market transparency. The objectives of the Regulation are clearly set out in the preamble and are those indicated above.

- description to correspond with to the presentation of the sardine including the designation of the covering medium and an assessment procedure to ensure that manufacturing batches conform with the Regulation.
67. The Regulation does not concern sardine-type products. These products are regulated by the general food principles settled by Directive 2000/13.
68. It is important to point out that article 2.1 (a) of Directive 2000/13 says that "the labelling ... used must not be such as could mislead the purchaser ... as to the characteristics of the foodstuff and, in particular, as to its nature, identity...". This is particularly important in the case of preserved products, which are not visible to the consumer.
69. According to that Directive, every product must bear its proper trade description or name. If not settled at Community level, the trade description is established by each Member State.
70. The trade description given in the two countries referred to by Peru (UK and Germany) for sardinops are the following :
- UK : Pacific Pilchard (exhibit EC-24),
- Germany : Sardinops or pilchard (exhibit EC-25).
71. The European Communities does not contest the use by Peru of the name "sardina" for its preserved sardinops on its own market (described in the FAO document as a local name), even if such description would be not in line with the Codex standard.
72. This is not the case on the European Communities market, where a well established tradition has reserved the term "sardine" to the *Sardina pilchardus*.
73. Peru's most important export country in the European Communities is UK (2.653 tons in 2000 and 97% of the total Peruvian exports of preserved sardinops to the EU), where, in accordance with the UK Law, the concerned product is labelled as "Pacific pilchard fillets". This figure shows that the Regulation has not hindered Peru to sell significant quantities of preserved sardinops in the UK market.

2.6. The Codex standard

74. Peru relies heavily on Articles 1 and 2.1.1 of the Codex standard for canned sardines and sardine-type products (CODEX STAN 94-1981 REV. 1-1995) which envisages that countries may allow certain non-sardine products ("sardine-type products") to use the word 'sardine' in their names.
75. The current version of the Codex standard lists 20 "sardine-type" species belonging to 11 genera. The rationale behind the species included in this list is not apparent as it includes very different species. It is not the fact that they are from a same family, as some of these genera belong to a different family than *Clupeidae*, such as

Engraulis anchoita, *E. mordax* and *E. ringens* (anchovies), which belong to the family *Engraulidae*.

76. Some of these species do not even have sardine as part of their common names. The *Ethmidium maculatum* (common name "Menhaden") is not reported by FishBase to be called "sardine..." anywhere in the world. The same goes for the *Hyperlophus vittatus* (common name "Sandy Sprat") and the *Nematalosa vlaminghi* (common name "Western gizzard shad") which are not reported to be called "sardine ..." anywhere in the world.
77. Moreover, the *Ophisthonema oglinum* (common name "Atlantic thread herring") is only reported to be called "sardine" in Brazil ("Sardinha bandeira") by FishBase while other species of the genus *Ophisthonema*, like *O. bulleri*, *O. libertate* or *O. medirastre*, which are reported to be called sardine in other parts of the world (Mexico, Spain, Ecuador) are not included in Codex.
78. The standard also covers herrings (*Clupea harengus*), sprats (*Sprattus sprattus*) and anchovies (*Engraulis anchoita*).
79. At the Codex Committee meeting in June 2000 in Alesund (Norway), the delegation of Morocco, supported by a number of other countries, expressed its objections to the inclusion of *Clupea bentinckti* in the list of "sardine-type" products under the current standard and stressed that the current procedures should be reviewed. As regards the need to review the current procedure for the inclusion of species, the Committee agreed that the delegation of France would prepare a discussion paper considering the issues of labelling requirements concerning the name of the product, in view of the need for consistency across Codex standards, and the need to re-examine the current procedure.²³
80. The 24th Session of the Codex Alimentarius Commission took place on 2/7 July 2001 in Geneva and examined the issue of the inclusion of *Clupea bentinckti*.²⁴ The Delegation of Morocco, supported by several other non-European and European countries, expressed its objection to the amendment as only *Sardina pilchardus* should be presented as sardine on the market, and the debate was adjourned without reaching any conclusion.
81. The non-inclusion of *Clupea bentinckti* in the list of sardine-type products is the result of the growing concern that this list could theoretically end by including all Clupeidae species and potentially all *Engraulidae*. The clear consequence would be that the Codex standard would include such a big number of "sardine-type" species that it would be more misleading than informative for the consumer.
82. Exhibit Peru-4 clearly illustrates that the section of the Codex standard for canned sardines and sardine-type products dealing with the labelling requirements has been adapted by many countries to their own particular geographical, historical and

²³ See report of the Codex Committee (Exhibit EC-26).

²⁴ See report of the Codex Commission (Exhibit EC-27).

cultural conditions. Peru is selling domestically its sardinops and exporting then to more than 20 countries around the world under the trade description "sardine" and not "Pacific sardine" where the Codex standard does not allow "sardinops" to be called simply "sardines". This example again highlights the difficulties and the controversies found among Codex members on the question of the fish species covered by the standard and the trade description to be given to these products.

3. LEGAL ASSESSMENT

3.1. Peru's claim

83. In its request for the establishment of this Panel, Peru alleged that the Regulation "creates an unnecessary obstacle to international trade" and that the common marketing standards it lays down for preserved sardines "cause discriminatory treatment of preserved sardines from Peru". It thus concluded that the Regulation is contrary to Articles 2 and 12 of the Agreement on Technical Barriers to Trade and to Articles I, III and XI.1 of GATT 1994.²⁵
84. The European Communities notices that, in its first submission, Peru fails to mention any claim under Article 12 of the *TBT Agreement* and Articles I and XI.1 of GATT 1994. In light of the Panel's working procedures, the European Communities assumes that these matters are not being pursued by Peru.
85. The European Communities also notices that, in its first submission, Peru modifies the scope of the case identifying the European Communities measure at stake in this case not as the Regulation as a whole, but only its Article 2. Peru alleges, in particular, that
- Article 2 contains a prohibition "to market products prepared from fish of the species *Sardinops Sagax* originating in Peru under the name "sardines" combined with an indication of the name of either the country of origin ("Peruvian Sardines"); or the geographic area in which the species is found ("Pacific Sardines"); or the species ("*Sardinops Sagax*"); or under the common name of the species *Sardinops Sagax* customarily used in the language of the Member State of the European Communities in which the product is sold (such as "Peruvian sardine" in English, or "Südamerikanische Sardine" in Germany)".
 - this constitutes a violation of Article 2, paragraphs 4, 2 and 1, of the *TBT Agreement* and of Article III, paragraph 4, of GATT 1994.
86. In other words, Peru claims that each exporter has the right to choose freely, among a number of different names, which one to use to market its product on a foreign market. It challenges that any limitation of such right, enacted for domestic as well

²⁵ See WT/DS231/6 of 8 June 2001.

as for foreign producers, would amount to a violation of the *TBT Agreement* as well as to a less favourable treatment for imported products.

87. The European Communities believes that these claims are unfounded in law because contrary to the very scope of the *TBT Agreement* and of the GATT, and have not been proven in fact.

3.2. Technical Regulation

88. Peru starts from the assumption that Article 2 of the Regulation constitutes a "technical regulation" as defined by paragraph 1 of Annex 1 of the *TBT Agreement*.²⁶

89. According to paragraph 1 of Annex 1 of the *TBT Agreement*, technical regulations set out:

- (1) the specific characteristics of a product - such as its size, shape, design, functions and performance, or
- (2) the way a product is produced (product's process and production methods), or
- (3) the way a product is named, identified by a symbol or a mark, labelled or packaged before it is put on sale.

90. Technical regulations are often aimed at protecting consumers through information, mainly in the form of labelling requirements. Other regulations include classifications and definitions, packaging requirements, and measurements (size, weight etc.). Quality regulations - e.g. those requiring that vegetables and fruits reach a certain size to be marketable - are very common in certain countries.

91. The aim of avoiding deceptive practices is central to the *TBT Agreement*. The Preamble to the Agreement expressly states that

no country should be prevented from taking measures necessary to ensure the quality of its exports, or for the protection of human, animal, and plant life or health, of the environment, or for the prevention of deceptive practices, at the levels it considers appropriate.

92. As described in more detail above, the Regulation determines the marketing standards for the product "preserved sardines" in the Community. The European Communities has thus nothing against it being considered as a technical regulation within the meaning of Annex 1 of the *TBT Agreement*. On the contrary, the European Communities itself notified the Regulation under the Tokyo Round TBT Code in 1989.²⁷

²⁶ Peru's first written submission, paragraph 8.

²⁷ See Exhibit EC-28.

93. However, the European Communities does not consider it possible to single out, as Peru does, one aspect of a measure and to classify and analyse it alone as a "technical regulation". As the Appellate Body has pointed out in *European Communities – Asbestos*,

In our view, the proper legal character of the measure at issue cannot be determined unless the measure is examined as a whole.²⁸

94. Article 2 can only be interpreted in the context of the entire Regulation. In it, the European Communities prescribes, among other marketing requirements, that preserved sardines

must be prepared exclusively from fish of the species '*Sardina pilchardus Walbaum*'.

95. This requirement corresponds to the European Communities principle that consumer in the country of marketing must be able to know the true nature of the foodstuff and to distinguish it from foodstuff with which they could confuse it. Article 2 thus fits in the Regulation wider aim of ensuring consumer protection through market transparency and fair competition.

3.3. The issue of the burden of proof

96. The European Communities agrees with Peru that it is upon the party asserting a particular claim or a defence to prove such claim or defence.²⁹

97. The European Communities rejects, instead, the remaining standard for the allocation of the burden of proof developed by Peru.

98. Basing its reasoning on an original interpretation of Article 2.5 of the *TBT Agreement*, Peru maintains that its burden of proof in this case will be satisfied by presenting a *prima facie* case that:

- with regard to Article 2.4 of the *TBT Agreement*, Article 2 of the Regulation is a technical regulation; a relevant international standard exists; the European Communities has not based its measure on it;
- with regard to Article 2.2 of the *TBT Agreement*, Article 2 of the Regulation is a technical regulation; and it is trade-restrictive.

99. First of all, the European Communities notices that Peru has indicated no standard to allocate the burden of proof with regard to its claims under Article 2.1 of the *TBT*

²⁸ Appellate Body Report, *European Communities – Measures Affecting Asbestos and Asbestos-Containing Products* ("European Communities – Asbestos"), WT/DS135/AB/R, adopted 5 April 2001, para. 64.

²⁹ Peru's first written submission, paragraph 13.

Agreement and Article III.4 GATT. The European Communities therefore assumes that, in line with the consolidated WTO jurisprudence on the matter,³⁰ Peru agrees that it is up to it to present evidence and argument sufficient to establish a presumption that Article 2 of the Regulation is inconsistent with its obligations under these articles. In other words, that (1) it is a law, regulation or requirement affecting the internal sale, offering for sale, purchase, distribution or use; (2) the imported and domestic products affected by it are "like"; and (3) the treatment accorded to the imported products is less favourable.

100. Second, the European Communities rejects Peru's interpretation of Article 2.5 of the *TBT Agreement*.³¹ Scope of this norm is to enhance the transparency a central government body has to follow when preparing, adopting and applying a technical regulation. This is clear from the letter and context of the norm. Article 2.5 of the *TBT Agreement* is not intended, as Peru alleges, to establish for the *TBT Agreement* a higher threshold of explanation to be provided during the consultations held under Article 4 DSU or a different standard of proof.

101. Peru argues also that Article 2.5

suggests by implication that, whenever a regulation is not based on international standards, as in the case before the Panel, the burden is on the respondent to show that the international standards are not an effective and appropriate means for the fulfilment of the legitimate objective that it pursues.

102. This issue has already been dealt with and solved by the Appellate Body in the *European Communities – Hormones* case. Called to review the Panel's allocation of the burden of proof, the Appellate Body held with regard to the parallel norm to Article 2.5 of the *TBT Agreement* in the *SPS Agreement*:

Article 5.8 of the SPS Agreement does not purport to address burden of proof problems; it does not deal with a dispute settlement situation. To the contrary, a Member seeking to exercise its right to receive information under Article 5.8 would, most likely, be in a pre-dispute situation, and the information or explanation it receives may well make it possible for that Member to proceed to dispute settlement proceedings and to carry the burden of proving on a prima facie basis that the measure involved is not consistent with the SPS Agreement.³²

³⁰ See, most recently, Appellate Body Report, *European Communities – Asbestos*, cited above, para. 102-103.

³¹ Peru's first written submission, paragraph 15 and 17.

³² Appellate Body Report, *EC Measures Concerning Meat and Meat Products (Hormones)* ("*European Communities – Hormones*"), WT/DS26/AB/R, WT/DS48/AB/R, adopted 13 February 1998, para. 102.

103. Moreover, in the present case, the assertion that Article 2 of the Regulation is not based on international standards is one of the issues alleged by Peru and contested by the European Communities. Peru's implicit argument that Article 2 of the Regulation is not based on international standards shows its intention to confuse the principles governing the allocation of the burden of proof. The issue here is not what happens after a *prima facie* case of violation is established, but which party must first show that there is a violation. The principle that it is upon the party asserting a particular claim or a defence to prove such claim or defence means exactly that Peru has to prove this allegation before the European Communities would have the need to provide any defence and not viceversa.

104. As the Appellate Body stated in its Report on *United States – Shirts and Blouses*,

In addressing this issue, we find it difficult, indeed, to see how any system of judicial settlement could work if it incorporated the proposition that the mere assertion of a claim might amount to proof. It is, thus, hardly surprising that various international tribunals, including the International Court of Justice, have generally and consistently accepted and applied the rule that the party who asserts a fact, whether the claimant or the respondent, is responsible for providing proof thereof. Also, it is a generally-accepted canon of evidence in civil law, common law and, in fact, most jurisdictions, that the burden of proof rests upon the party, whether complaining or defending, who asserts the affirmative of a particular claim or defence. If that party adduces evidence sufficient to raise a presumption that what is claimed is true, the burden then shifts to the other party, who will fail unless it adduces sufficient evidence to rebut the presumption.³³

105. Nothing in Peru's arguments, not even those under Articles 2.2 and 2.4 of the *TBT Agreement*, justify the need to jump one stage of the normal dispute settlement procedure and to reverse the burden for a complainant of proving the violations of the rules it invokes. On the contrary, such an approach would dangerously impair the need to respect due process, the principle of equality of arms, and the adversarial nature of the WTO dispute settlement system.

106. Peru's arguments under Article 2.5 of the *TBT Agreement* are wrong not only in law but also in fact. First of all, the European Communities, on the basis of a similar norm contained in the 1979 TBT Code, had notified the Regulation at the time of adoption and, upon request of other Members, explained the justifications for it.³⁴ Furthermore, the European Communities contests Peru's affirmation that it has "vainly requested explanations during its consultations with the European Communities". The European Communities considers to have fulfilled its duty to

³³ Appellate Body Report, *United States – Measure Affecting Imports of Woven Wool Shirts and Blouses from India* ("United States – Shirts and Blouses"), WT/DS33/AB/R, adopted 23 May 1997, page 13.

³⁴ See Exhibit EC-28.

"accord sympathetic consideration to and afford adequate opportunities for consultation" to Peru with regard to the issue at stake in the present case.³⁵

107. Finally, Peru's conclusions with regard to the standard of proof necessary to establish a violation of Article 2.4 of the *TBT Agreement* is contrary to the WTO jurisprudence. In *European Communities – Hormones*, the Panel found that, with regard to the burden of proof under a SPS provision similar to Article 2.4, the party challenging a measure has first to make a *prima facie* case that there is an international standard with regard to that measure and that this is not based on that standard, at which point the burden shifts to the party taking the measure,³⁶ which is the same standard of proof identified by Peru in this case. However, called to review this point, the Appellate Body held

Lastly, the Panel seeks support for its general interpretative ruling in Article 3.2 of the *SPS Agreement*, which establishes a presumption of consistency with relevant provisions of that Agreement and of the GATT 1994 for measures that conform to international standards, guidelines and recommendations. From this presumption, the Panel extracts a reverse inference that if a measure does *not* conform to international standards, the Member imposing such a measure must bear the burden of proof in any complaint of inconsistency with a provision of the *SPS Agreement*.

... The presumption of consistency with relevant provisions of the *SPS Agreement* that arises under Article 3.2 in respect of measures that conform to international standards may well be an *incentive* for Members so to conform their SPS measures with such standards. It is clear, however, that a decision of a Member not to conform a particular measure with an international standard does not authorize imposition of a special or generalized burden of proof upon that Member, which may, more often than not, amount to a *penalty*.

...

We believe, therefore, and so hold that the Panel erred in law both in its two interpretative points and its finding set out in paragraphs 8.86 and 8.87 of the US Panel Report and paragraphs 8.89 and 8.90 of the Canada Panel Report ...³⁷

108. In conclusion, the European Communities considers that the burden of proving that the Article 2 of the Regulation is not in conformity with Article 2, paragraphs 4, 2

³⁵ In any case, the EC notes that a violation of Article 4 DSU is not with the terms of reference of this Panel.

³⁶ Panel Report, *EC Measures Concerning Meat and Meat Products (Hormones)* ("European Communities – Hormones") WT/DS26/R, WT/DS48/R, adopted 13 February 1998, as modified by the Appellate Body Report, WT/DS26/AB/R, WT/DS48/AB/R, para. 8.48-8.55.

³⁷ Appellate Body Report, *European Communities – Hormones*, WT/DS26/AB/R, WT/DS48/AB/R, cit. above, paragraphs 101-106.

and 1, of the *TBT Agreement* and of Article III, paragraph 4, of GATT 1994 rests entirely with Peru. However, as it will be explained in more details below, Peru has not satisfied this burden and, contrary to Peru's implicit requests, the Appellate Body has made it clear in several occasions that a panel cannot make a case for the complainant. In particular, a panel cannot rule in favour of a complaining party "which has not established a *prima facie* case of inconsistency based on specific legal claims asserted by it".³⁸

3.4. Article 2.4 of the of *TBT Agreement*

109. Peru's claim that the prohibition of trade descriptions containing the word 'sardines' for preserved fish of other species is inconsistent with Article 2.4 of the *TBT Agreement* is unfounded for a series of reasons. First, Article 2.4 is, according to its clear terms, not applicable to measures that were drawn up before its entry into force. Second, the Codex standard 94 to which Peru refers is not 'a *relevant international standard*'. Third, Article 2 of the Regulation is based on it when properly understood. Fourth, to the extent that the Codex standard 94 is capable of being understood as requiring the use of trade descriptions of the kind 'X sardines' for what it refers to as sardine-type products, the use of such trade descriptions in the European Communities would be inappropriate in the light of consumer perceptions in the European Communities.

3.4.1. *Article 2.4 is not applicable to measures that were drawn up before its entry into force*

110. The basic obligation in Article 2.4 of the of *TBT Agreement* is expressed as follows:

Where technical regulations are required and relevant international standards exist or their completion is imminent, Members shall use them, or the relevant parts of them, as a basis for their technical regulations ...
(emphasis supplied)

111. Article 2.4 requires WTO Members to *use* existing relevant international standards *as a basis for* drawing up their technical regulations when they decide that these are required.

112. The Regulation was prepared by the European Communities (and notified under the GATT 1947) in 1989. Article 28 of the *Vienna Convention on the Law of Treaties* is entitled 'Non-retroactivity of treaties' and clearly states that:

³⁸ Report by the Appellate Body on *Japan - Measures Affecting Agricultural Products*, AB-1998-8, WT/DS76/AB/R, 22 February 1999, at paragraph 129. See also Report by the Appellate Body on *Brazil – Export Financing Programme for Aircraft*, AB-1999-1, WT/DS46/AB/R, 2 August 1999, at paragraph 194.

Unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party.

113. The adoption of the Regulation was an ‘act ... which took place ... before the date of the entry into force of the treaty’ and, since there is no expression of contrary intention Article 2.4 does not apply to it. Indeed, the language of Article 2.4 affirmatively makes clear that it is not intended to apply to measures that are already in existence. It requires that relevant international standards be *used as a basis for* drawing up technical regulations – that is that the obligation exists prior to adoption and not afterwards. It may also be noted that there would be no violation of Article 2.4 where a relevant draft international standard is not used as a basis for a technical regulation if its adoption is not ‘imminent’. This further confirms that Article 2.4 does not apply to existing measures. Since there is no obligation to have used a draft international standard as a basis for a technical regulation if its adoption was not ‘imminent’, it cannot be considered to have been intended that an already existing technical regulation could become inconsistent with Article 2.4 when the adoption of the draft international standard becomes ‘imminent’ or when it is actually adopted and becomes ‘existing’.

3.4.2. Codex standard 94 is not ‘a relevant international standard’

114. Even if Article 2.4 could be considered, by some as yet unknown mechanism, to have a retroactive effect, Codex standard 94 can hardly be considered a *relevant* international standard.
115. First, it did not exist and its adoption was not ‘imminent’ when the Regulation was adopted. Peru would have had to invoke non-conformity with the predecessor standard in order to make its case and it has not done so. The European Communities would draw the attention of the Panel to the fact that it did comply with the requirements of the Tokyo Round TBT Code when it adopted the Regulation and notified it to the GATT. It is obvious that a 1994 standard cannot be a "relevant standard" for a Regulation adopted in 1989. It has also not been demonstrated by Peru that the objectives of the Codex standard are sufficiently close to those of the Regulation.

3.4.3. Article 2 of the Regulation is sufficiently ‘based on’ the Codex standard 94

116. Peru has made no proper attempt to interpret the terms of Codex standard 94. If it did it would realise that a WTO Member could draw up and adopt today a measure identical to Article 2 of the Regulation that Peru is contesting even if it used Codex standard 94 as a basis.

117. Article 6.1.1 (i) of the Codex standard reserves the denomination "Sardines" for *Sardina pilchardus* exclusively. The standard goes on to say that countries may provide that the other species listed may be described as:

English version:³⁹

6.1.1 (ii) "X Sardines" of a country, a geographical area, the species, or the common name of the species in accordance with the law and customs of the country in which the product is sold, and in a manner not to mislead the consumer.

French version:⁴⁰

6.1.1 (ii) "Sardines X", "X" désignant un pays, une zone géographique, l'espèce ou le nom commun de l'espèce en conformité des lois et usages du pays où le produit est vendu, de manière à ne pas induire le consommateur en erreur.

Spanish version:⁴¹

6.1.1 (ii) "Sardina X" de un país o una zona geográfica, con indicación de la especie o el nombre común de la misma, en conformidad con la legislación y la costumbre del país en que se venda el producto, expresado de manera que no induzca a engaño al consumidor.

118. Unlike in the case of 'sardines', the standard leaves the trade description of 'sardine-type products' to be determined by the country of sale by specifying that the name must be 'in accordance with the law and customs of the country in which the product is sold.' It also adds another *caveat* not found in the provision relating to sardines which is that the trade description for sardine type products must not mislead the consumer in the country in which the product is sold.
119. Any name for what are considered 'sardine-type products' that contains the word 'sardine' would not be in accordance with the law and custom of the European Communities Member States and would mislead European Communities consumers.
120. The European Communities has explained in Section 2.5.2 above what names for preserved *Sardinops sagax* are in accordance with the law and custom of the two European Communities Member States referred to by Peru and would not mislead their consumers.

³⁹ See Exhibit Peru-3.

⁴⁰ See Exhibit EC-30.

⁴¹ See Exhibit EC-31.

121. Accordingly, Article 2 of the Regulation does follow the guidance provided by Codex standard 94 when properly understood.
122. Even if the provision in the Codex standard relating to the names of what it calls ‘sardine-type products’ were to be read in the way that Peru would wish – that is to require that whatever the law and custom of the country concerned and whatever may be necessary to avoid misleading consumers, the names of these products must incorporate the word ‘sardine’ combined with a further element (X), being the name of a country, a geographic area or the common name of the species - then Article 2.4, even if applicable, still would not require such a name to be used.
123. Article 2.4 simply requires an international standard that exists and is relevant to be used ‘as a basis for’ the technical regulation.
124. The expression ‘a basis for’ means that the technical regulation does not have to exactly follow the standard. Article 2.4 also only requires that the relevant international standard be used as *a* basis for the technical regulation – not that it should be used as *the* basis for the technical regulation or still less that it should be identical to the international standard.
125. The Appellate Body has already held in a similar context that ‘based on’ cannot be interpreted as meaning ‘conform to’ and reversed a panel ruling that was based on such an error.⁴² It was considering the obligation in Article 3.1 of the *SPS Agreement* that WTO Members ensure that their regulations be ‘based on’ international standards and a finding of the Panel in that case that the European Communities measure was not ‘based on’ a Codex standard because it did not conform to it. The Appellate Body reasoned in particular that ‘specific and compelling language’ would be needed to persuade it that sovereign countries had intended to vest Codex standards which were in ‘recommendatory in form and language’ with obligatory force.⁴³
126. There is no such intention expressed in Article 2.4 of the *TBT Agreement*. In fact, the text of this provision indicates an even weaker requirement to take a standard into account than was the case with the *SPS Agreement*. Article 2.4 of the *TBT Agreement* only requires that the relevant international standard be used as *a* basis for the technical regulation – not that it should be used as *the* basis for the technical regulation.
127. Thus, a WTO Member could draw up today a technical regulation for sardines that is identical to the Regulation and still be said to have used the Codex Standard 94 ‘as a basis for’ doing so.

⁴² Appellate Body Report, *European Communities – Hormones*, WT/DS26/AB/R, WT/DS48/AB/R, cit. above, paragraphs 163 to 166.

⁴³ *Ibidem*, para. 165.

3.4.4. *The use of a trade description incorporating the word ‘sardine’ for products made from fish other than *Sardina pilchardus* would be inappropriate in the European Communities*

128. Even if a measure such as Article 2 of the Regulation were to be adopted by a WTO Member today and the Codex standard 94 were considered a relevant international standard and were to be construed as requiring that the names of what it calls ‘sardine-type products’ incorporate the word ‘sardine’ combined with the element (X), and that a measure that did not allow this in all cases could not possibly be considered to have been drawn up using the standard as a basis, then it must still be recalled that Article 2.4 of the *TBT Agreement* would still allow a WTO Member to maintain a conflicting measure if following the standard would be ‘ineffective or inappropriate’. The full text of Article 2.4 provides that:

Where technical regulations are required and relevant international standards exist or their completion is imminent, Members shall use them, or the relevant parts of them, as a basis for their technical regulations *except when such international standards or relevant parts would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued, for instance because of fundamental climatic or geographical factors or fundamental technological problems.* (emphasis supplied)

129. As the European Communities has explained in Section 2.3 above, it has a system in which each food product must bear a precise trade description on which the consumer can rely as a guarantee of the nature and characteristics of the product. European Communities consumers expect that products of the same nature and characteristics will always have the same trade description (even though individual producers may add their own trademarks). A system whereby a producer can choose its own trade description for marketing reasons or simple preference undermines this system. Consumers would have no guarantee that a product bearing a certain trade description meets their expectations.

130. In addition, consumers in most Member States of the European Communities have always, and consumers in other Member States have for at least 13 years, associated the word ‘sardine’ exclusively with *Sardina pilchardus*. They have also come to know and no doubt appreciate canned *Sardinops sagax* under trade descriptions such as Pacific pilchards in the UK or Sardinops Pilchard in Belgium. As explained in Section 2.4 above, Peru is simply wrong in its claim that European Communities consumers associate *Sardinops sagax* with the trade description ‘sardines’; they associate it with trade descriptions such as Pacific pilchards. Changing these trade descriptions would cause disruption and confusion. This would not be an ineffective or inappropriate means for the fulfilment of the legitimate objectives of consumer protection, market transparency and fair competition and pursued by Article 2 of the Regulation.

3.4.5. Conclusion

131. For the above reasons the European Communities submits that Article 2.4 of the *TBT Agreement* is not applicable to Article 2 of the Regulation and, if it were, Article 2 of the Regulation would be perfectly compatible with it.

3.5. Article 2.2 of the *TBT Agreement*

132. Peru's arguments under Article 2.2 of the *TBT Agreement* are based on a number of false assumptions (as well as gratuitous and incorrect accusations addressed at other alleged European Communities measures, not the subject of this proceeding). They therefore fail to establish any of the necessary requirements for a violation of Article 2.2 of the *TBT Agreement*.

133. Article 2.2 of the *TBT Agreement* provides that:

Members shall ensure that technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade. For this purpose, technical regulations shall not be more trade-restrictive than necessary to fulfil a legitimate objective, taking account of the risks non-fulfilment would create. Such legitimate objectives are, *inter alia*: national security requirements; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment. In assessing such risks, relevant elements of consideration are, *inter alia*: available scientific and technical information, related processing technology or intended end-uses of products.

134. Accordingly Peru would have to establish that Article 2 of the Regulation:

- was 'prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade';
- that is, that it is 'more trade-restrictive than necessary to fulfil a legitimate objective, taking account of the risks non-fulfilment would create'

135. Peru does not address the question of whether Article 2 of the Regulation was 'prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade' but seems to assume that it is an obstacle to trade and is 'more trade restrictive than necessary'. It also falsely alleges that Article 2 of the Regulation has an objective of market protection that is not 'legitimate.' It claims that there is not 'rational connection' between the objective of market transparency (that it presumably accepts as legitimate) and Article 2 of the Regulation, falsely asserting that it reduces market transparency. Peru also does not address the other objective of the Regulation – that of market transparency.

136. The European Communities will now proceed to analyse systematically Article 2 of the Regulation under Article 2.2 of the *TBT Agreement*.

3.5.1. *The Regulation was not 'prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade'*

137. The Regulation was prepared and adopted in 1989, that is before Article 2.2 of the *TBT Agreement* entered into force. The only action that is continuing under the regime of the *TBT Agreement* which is part of the WTO is the *application* of the Regulation. Therefore, in accordance with Article 28 of the Vienna Convention,⁴⁴ the only part of Article 2.2 that can be invoked against the Regulation is the obligation not to *apply* it with a view to or with the effect of creating unnecessary obstacles to international trade.
138. In order to establish a violation of this obligation Peru would have to show that there is some margin of manoeuvre for the European Communities authorities in applying Article 2 of the Regulation and that the manner in which they have chosen to apply it creates an unnecessary obstacle to international trade. Peru has not attempted to do so.
139. To hold that the very existence of Article 2 of the Regulation can be considered contrary to Article 2.2 (as Peru seems to assume) would give retroactive effect to Article 2.2 contrary to Article 28 of the Vienna Convention and the intent behind the provision.
140. In any event, Peru has also not attempted to demonstrate that Article 2 of the Regulation by its very existence creates an unnecessary obstacle to international trade. Peru sells large quantities of its sardines in the European Communities market under the trade description 'Pacific Pilchards'. It presumably considers that it could sell more if it could benefit from the reputation of another product (sardines) and mislead consumer into buying its product. But it cannot be an obstacle to trade to require a product to be called by its name. International trade require products to have names. Perhaps exporters of margarine could sell more of it if they could call it butter. Is this the kind of trade that the WTO is intended to promote?
141. In any event, Peru has not even tried to demonstrate that it would sell more preserved *Sardinops sagax* if it could call them sardines, or that any temporary increase in exports would be maintained. The European Communities firmly believes that Peru's best option for increasing trade to the European Communities in its product is to develop its own reputation with its own name and persuade the consumer to appreciate its product with its own characteristics. This has already been done by producers of other species of *Clupeidae*, such as of sardinops from Namibia and of sardinella of Thailand, who are selling freely their products in the European Communities market under the trade description "pilchards" or "sardinops pilchard".⁴⁵ It is for this reason that the European Communities has offered to help Peru promote its product by establishing a uniform name for its product in the European Communities and lay down marketing standards for its product (if it

⁴⁴ See the explanation and argument in Section 3.4.1 above.

⁴⁵ See Exhibit EC-29.

considers these measures would help increase its sales). However, Peru has rejected all these offers.

3.5.2. *Article 2 of the Regulation is not 'more trade-restrictive than necessary to fulfil a legitimate objective, taking account of the risks non-fulfilment would create'*

142. Even if the *existence* of Article 2 of the Regulation (rather than its application) could be challenged, Peru, in order to establish that Article 2 of the Regulation is 'more trade-restrictive than necessary to fulfil a legitimate objective, taking account of the risks non-fulfilment would create,' would have to
- demonstrate a trade restrictive effect,
 - identify correctly the legitimate objectives pursued and finally
 - show that these trade restrictive effects are more trade restrictive than necessary, taking into account the benefits to be expected from the realisation of the legitimate objectives – that is that they are *out of proportion* to the benefits.

Peru has done none of this.

3.5.2.1.No trade restrictive effect

143. The European Communities has explained in Section 3.5.1 above that Peru has not shown that, and why the European Communities does not consider that, Article 2 of the Regulation is an 'obstacle to trade'. The European Communities considers that for the same reasons Article 2 of the Regulation has no trade restrictive effect (and Peru has not shown that it has).

3.5.2.2.Peru incorrectly identifies the legitimate objectives

144. Peru's first argument is to quote from the recital of the Regulation that refers to a likely effect of the marketing standards to be to improve profitability of sardine production and to allege that this expresses an intent to create an obstacle to trade.⁴⁶ It assumes that this improved profitability will be at the cost of other countries' products and that it is an objective of the Regulation.⁴⁷
145. Peru is distorting the Regulation and its argument is fallacious.
146. The primary objective of the Regulation is to establish marketing standards for preserved sardines. The European Communities considered that establishing high quality standards for preserved sardines would improve the reputation of the product in the European Communities and improve its profitability. The quoted recital does

⁴⁶ Peru's first written submission, paragraph 40.

⁴⁷ Peru's first written submission, paragraph 41.

not imply that profitability will be improved by keeping competing products (at the time herring and sprat and now also various species of sardinops and sardinella) off the market. These products were and still are sold in the European Communities but of course the marketing standards of the Regulation do not apply to them. It is clear that when adopting a marketing regulation it is necessary to take into consideration the impact it will have on producers as well as consumers.

147. The second recital simply indicates what the legislator thought could be one of the consequences of the Regulation. It seems obvious that a law that ensures market transparency and fair competition, that guarantees the quality of the products and the appropriately informs the consumer of this, will most likely result in an improvement of the profitability of sardine production in the Community. Products of quality are better perceived by the consumer that will be willing to pay a higher price for them. The fact that one consequence of a marketing regulation may be to improve the profitability of an industry may be a relevant fact to recall by the legislator along with the objectives of the Regulation, such as market transparency and consumer protection (acknowledged by Peru).
148. The European Communities would repeat that Peru is wrong to insinuate that this recital expresses a protectionist intent. It would also repeat that it is a significant importer of sardines and also of other small pelagic fish such as sardinops.

3.5.2.3. The issue of ‘proportionality’ or ‘rational connection’

149. Since Peru has not demonstrated any trade restrictive effects it cannot of course begin to demonstrate that these are more than necessary for the achievement of the legitimate objectives.
150. Peru’s reasoning relates instead to an alleged absence of what it calls a ‘rational connection’ between Article 2 of the Regulation and the legitimate objective of market transparency.⁴⁸ This argument is based on the false assumption that common name for *Sardinops sagax* (or rather the correct trade description of preserved *Sardinops sagax*) in the Member States of the European Communities includes the word ‘sardine.’ This is, as the European Communities has shown in Section 2.2 above, false.
151. For the European Communities it is obvious that there is a ‘rational connection’ between the legitimate objective of market transparency (and that of consumer protection) and the need to ensure that products are sold under their correct trade descriptions.
152. Peru goes on to make various allegations about European Communities measures not the subject of this proceeding on which the European Communities will not comment further than to reject them.⁴⁹

⁴⁸ Peru’s first written submission, paragraph 42.

⁴⁹ Peru’s first written submission, paragraph 44.

153. The final point that the European Communities will deal with here is the attempt by Peru to back up its argument by asserting that other countries accept the word ‘sardine’ on labels of preserved *Sardinops sagax*.⁵⁰
154. The European Communities has not attempted to verify whether the labels contained in Exhibit Peru-3 are legal in the countries to which they relate (or to seek out labels from other countries in the world where the Peruvian products is sold under other names). It would rather point out that consumer expectations and market practices in other countries are not necessarily the same as in the European Communities. Also, some other WTO Members appear not to have a policy of using specific and precise trade descriptions for foodstuffs. For example Peru refers to the fact that the United States allows several ‘acceptable market names’ for Sardinops, one of which is ‘sardines’ (another is ‘pilchard’).⁵¹ WTO Members no doubt have the right to allow a multiplicity of names. But the European Communities equally considers that it has the right to maintain the policy explained in Section 2.3 above of preserving specific and precise trade descriptions for foodstuffs in order to protect and inform consumers, ensure that competition between producers is focussed on quality and maintain product diversity.

3.5.3. Conclusion

155. For the above reasons, the European Communities rejects the allegation of Peru that Article 2 of the Regulation is inconsistent with Article 2.2 of the *TBT Agreement*.

3.6. Article 2.1 of the *TBT Agreement*

156. The European Communities notes that Peru's arguments under Article 2.1 of the *TBT Agreement* refer to its arguments under Article III.4 GATT. Therefore, the European Communities will deal with them in Section 3.7 below on Article III:4 GATT.

3.7. Article III:4 GATT 1994

157. As succinctly pointed out above, Article III:4 GATT requires domestic laws and regulations affecting the sale and use of goods not to discriminate between imported and domestic "like" products. In order for a violation of this obligation to be established, a three-step analysis is needed to ascertain: (1) whether the measure at issue is a law, regulation or requirement affecting the internal sale, offering for sale, purchase, distribution or use; (2) whether the imported and domestic products

⁵⁰ Peru's first written submission, paragraph 45.

⁵¹ Peru's first written submission, paragraph 38. The US ‘market names’ are set out in Exhibit Peru-9.

affected by it are "like"; and (3) whether the treatment accorded to the imported products is less favourable.

158. The fact that the measure at issue, Article 2 of the Regulation, is a "law, regulation or requirement affecting the internal sale, offering for sale, purchase, distribution or use" is not contested. In order for the Panel to determine a violation of Article III.4 GATT, Peru has therefore the burden of proving the likeness of sardines and sardinops and the discriminatory treatment operated by Article 2 of the Regulation against an imported product.

3.7.1. *Sardines and sardinops are not "like" products for the purposes of this case*

159. In *European Communities – Asbestos*, the Appellate Body had for the first time the occasion to examine the meaning of the term "like" in Article III.4 GATT. It held that:

Thus, a determination of "likeness" under Article III:4 is, fundamentally, a determination about the nature and extent of a competitive relationship between and among products. In saying this, we are mindful that there is a spectrum of degrees of "competitiveness" or "substitutability" of products in the marketplace, and that it is difficult, if not impossible, in the abstract, to indicate precisely where on this spectrum the word "like" in Article III:4 of the GATT 1994 falls. We are not saying that *all* products which are in *some* competitive relationship are "like products" under Article III:4.⁵²

The Appellate Body then went on to indicate how a treaty interpreter should proceed in determining whether products are "like" under Article III.4 GATT.⁵³ After having recalled its previous jurisprudence on the need for a case-by-case determination in which is necessary "to utilise an unavoidable element of individual discretionary judgement",⁵⁴ the Appellate Body indicates general criteria or "grouping of potentially shared characteristics", which "provide a framework for analyzing "likeness" of particular products on a case-by-case basis", i.e. (i) the properties, nature and quality of the products; (ii) the end-uses of the products; (iii) consumers' tastes and habits in respect of the products; and (iv) the tariff classification of the products. Not less importantly, the Appellate Body specified also that:

The kind of evidence to be examined in assessing the "likeness" of products will, necessarily, depend upon the particular products and the legal provision at issue. When all the relevant evidence has been examined, panels must

⁵² Appellate Body Report, *European Communities – Asbestos*, cited above, paragraph 99.

⁵³ *Ibidem*, paragraph 101-102.

⁵⁴ Appellate Body Report, *Japan – Taxes on Alcoholic Beverages* ("Japan – Alcoholic Beverages"), WT/DS8/AB/R, WT/DS10/AB/R, WT/DS11/AB/R, adopted 1 November 1996, page 113-114.

determine whether that evidence, as a whole, indicates that the products in question are "like" in terms of the legal provision at issue.⁵⁵

160. In the present case, Peru refers to Article III.4 GATT in connection with Article 2.1 of the *TBT Agreement* in order to allege that the requirement contained in Article 2 of the Regulation accords a less favourable treatment to imported products than to like products of national origin. Therefore, the issue at stake is whether the evidence presented by Peru indicates that sardines and sardinops are "like" for the purposes of Article 2 of the Regulation which prescribes, among other things, that preserved sardines be prepared exclusively from fish of the species *Sardina pilchardus*.
161. In this light, the European Communities consider that the "likeness" required of products for the purposes of naming them is much more stringent than it would be for the same products for the purposes of for example taxation. For the purposes of naming a product, not all products which are in some competitive relationship are "like" under Article III GATT. In other terms, if vodka and shochu can be considered "directly competitive or substitutable" for the purpose of internal taxation, it would be hard to say that they "likeness" go as far as imposing that they be called in the same way. If this was the case, apples and oranges, or chicken and turkeys, because in a competitive relationship, should be called in the same way. Identical products can have the same name; like products must not.
162. In the present case, Peru has submitted two opinions it has obtained which, according to it, demonstrate "that the two species of fish are physically very similar" and that the Peruvian product is "regarding the appearance superior to"⁵⁶ and more "jugoso and agradable"⁵⁷ than sardines. And, "as a result of these similarities, they are capable of serving the same or similar end-uses and consumers perceive and threat the products as alternative means to satisfy the demand for preserved sea food".⁵⁸
163. On the basis of this logic, all "preserved sea food" could be called sardines.
164. The European Communities considers that Peru has not discharged its burden of proving that the degree of "likeness" between sardines and sardinops is such that they should be entitled to the same name.
165. With regard to living organisms, different species cannot be regarded as "like" for the purposes of being granted the same name because species represent the basic units of biological classifications outside which organisms cannot interbreed and produce viable offspring. At least, European consumers do not consider different species to be so "like" that they should be called with the same name.

⁵⁵ Appellate Body Report, *European Communities – Asbestos*, cited above, paragraph 103.

⁵⁶ Peru's first written submission, paragraph 52 and 53.

⁵⁷ Exhibit Peru-10.

⁵⁸ Peru's first written submission, paragraph 54.

3.7.2. *Sardinops are not treated less favourably than sardines*

166. According to the Appellate Body,

"even if two products are "like", that does not mean that a measure is inconsistent with Article III:4. A complaining Member must still establish that the measure accords to the group of "like" *imported* products "less favourable treatment" than it accords to the group of "like" *domestic* products. The term "less favourable treatment" expresses the general principle, in Article III:1, that internal regulations "should not be applied ... so as to afford protection to domestic production". If there is "less favourable treatment" of the group of "like" imported products, there is, conversely, "protection" of the group of "like" domestic products. However, a Member may draw distinctions between products which have been found to be "like", without, for this reason alone, according to the group of "like" *imported* products "less favourable treatment" than that accorded to the group of "like" *domestic* products."⁵⁹

167. In this context, according national treatment means according a product its correct name, not granting to a different product a competitive opportunity represented by the use of another product's name.

168. Even with regard to this requisite, Peru has not discarded its burden of proving that there is either legal or *de facto* discrimination. In particular, Peru has not brought a single piece of evidence that by requiring sardines and sardinops to be called by their correct names, the latter is being treated less favourably. Indeed, the regulation, by prescribing strict standards for the former and not for the latter, is in fact treating sardines less favourably.

169. Sales of Peruvian sardinops in the UK, as well Namibian sardinops and Thai sardinella, shows that it is possible to sell successfully under a name which does not contain the word "sardines" in conformity with the Regulation.

3.7.3. *Conclusion*

170. For the above reasons, the European Communities rejects the allegation of Peru that Article 2 of the Regulation is inconsistent with Article III.4 GATT.

⁵⁹ Appellate Body Report, *European Communities – Asbestos*, cited above, paragraph 100.

4. CONCLUSIONS

171. In conclusion, the European Communities respectfully requests the Panel to reject Peru's claims.
172. As explained above, Peru has no significant export tradition of preserved sardinops to other EC countries than UK. Facts show that in that market, significant quantities of preserved sardinops have already been consumed, based on the qualities and the special characteristics of the Peruvian preserved sardinops. It is therefore difficult to understand how Peru could have been badly treated by the EC.
173. On the contrary, Peru benefits from the EU GSP drug scheme, which allows it to export duty free the preserved sardinops to the EU market.
174. In these circumstances, the Peruvian sardinops has been perfectly able to compete on a level playing field with the European, the Moroccan and other developing countries preserved products in the EC market. Against Peru's allegation, the EC has offered to help Peru promote its products by establishing a uniform name for its products in the EC and lay down, if wished so by Peru, marketing standards for its products.
175. However, the EC favours as far as possible a multilateral approach, based on consensus rather than on dispute settlements or partial solutions. As said before, the labelling requirements concerning the name of a product are not limited to the *Sardinops sagax* but to many others *Clupeidae* and potentially *Eugraulidae* species. The non-inclusion of *Clupea bentincki* in the list of "sardine-type" products during the 24th session of the Codex Alimentarius Commission (2/7 July 2001) clearly demonstrates that the Codex standards related to "sardine-type" products are not any more satisfactory and that the need for consistency across Codex standards for preserved products is felt by many countries as more and more necessary.
176. In this regard, the European Communities would consider it wiser to wait for the discussion paper referred to in paragraph 79 of the present submission.
177. This would be the first step for a fresh debate, in which not only Peru and the EC, but all the countries involved in the production of "sardine-type" products, would have the opportunity to reach a sensible compromise at international level.
178. The EC recognises that such a debate could take some time, but as emphasized above, Peru has not been discriminated against or badly treated as a consequence of the Regulation.
179. In the meantime, Peru should have more confidence in the high level of quality of its preserved sardinops and promote its production in a both more effective and fairer way, as other countries, such as Namibia and Thailand, are doing. After the enlargement of the EC, the Peruvian preserved sardinops will have access, at zero duty, to a market of 370 millions inhabitants.

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LIST OF EXHIBITS

Exhibit EC-1	Classification of sardines and sardinops
Exhibit EC-2	FAO/SIDP Species Identification Sheet for <i>Sardina pilchardus</i>
Exhibit EC-3	FAO/SIDP Species Identification Sheet for <i>Sardinops sagax</i>
Exhibit EC-4	Common Names of <i>Sardinops sagax</i> in fishbase
Exhibit EC-5	Fishbase list of Common Names with “sardin”
Exhibit EC-6	List of Common Names with “sardin” organised by species
Exhibit EC-7	Multilingual Dictionary
Exhibit EC-8	Fishbase’s Key Facts about Fishes of the Clupidae Family
Exhibit EC-9	Fishbase’s Key Facts on <i>Sardina pilchardus</i>
Exhibit EC-10	Fishbase’s Key Facts on <i>Sardinops sagax</i>
Exhibit EC-11	IFREMER – Diagnose d’espèce des produits de type sardine
Exhibit EC-12	FAO Map of Fishing Area
Exhibit EC-13	Landings of <i>Sardina pilchardus</i>
Exhibit EC-14	EC imports of <i>Sardina pilchardus</i> prepared or preserved
Exhibit EC-15	EC imports of prepared or preserved sardinops
Exhibit EC-16	EC imports by Member States from Peru of prepared or preserved sardinops
Exhibit EC-17	Date on Peru’s exports of Sardinops provided by Peru during the consultations
Exhibit EC-18	EC imports of sardinella prepared or preserved
Exhibit EC-19	Tariff Regime
Exhibit EC-20	Directive 2000/13
Exhibit EC-21	Spanish Legislation
Exhibit EC-22	French Legislation

- Exhibit EC-23** Exchange of Letters between the European Communities and Norway
- Exhibit EC-24** U.K. Legislation
- Exhibit EC-25** German Legislation
- Exhibit EC-26** Report of the Codes Committee on Fish and Fishery Products of 5-9 June 2000
- Exhibit EC-27** Report of the Codes Commission of 2-7 July 2000
- Exhibit EC-28** Notification of Council Reg (EEC) 2136/89 to the GATT 1997
- Exhibit EC-29** Labels of Thai sardinellas and Namibian sardinops marketed in the EC
- Exhibit EC-30** French version of the Codex standard 94
- Exhibit EC-31** Spanish version of the Codex standard 94