

**EUROPEAN COMMUNITIES - TRADE DESCRIPTION
OF SCALLOPS**

(REQUESTS BY PERU AND CHILE)

Report of the Panel

This report of the Panel is being circulated to all Members, pursuant to the DSU. The report is being circulated as an unrestricted document from 5 August 1996 pursuant to the procedures for the Circulation and Derestriction of WTO Documents (WT/L/160/Rev.1).

1. On 18 July 1995, the Government of Peru to the WTO requested consultations with the European Communities ("EC") concerning French Order NOR MERP9300051A of 22 March 1993 and its amendments, relating to the official names and permitted trade descriptions of scallops in France. This request was made pursuant to Article XXII:1 of the General Agreement on Tariffs and Trade 1994 ("GATT 1994"), Article 14.1 of the Agreement on Technical Barriers to Trade ("TBT Agreement"), and Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU"). In accordance with Article 4 of the DSU, the request was circulated to Members of the World Trade Organization ("WTO") on 25 July 1995 (WT/DS12/1).

2. Pursuant to Article 4.11 of the DSU, on 27 July 1995, Chile (WT/DS12/2) and Canada (WT/DS12/3) requested to be joined in the consultations initiated by Peru. On 31 July 1995, the EC informed the Dispute Settlement Body ("DSB") that it had accepted these requests (WT/DS12/4). Consultations were held on 10 August 1995.

3. These consultations failed to settle the dispute and, on 18 September 1995, Peru requested the DSB to establish a panel, at its next meeting, pursuant to Article XXIII of GATT 1994, Article 14 of the TBT Agreement and Articles 4 and 6 of the DSU (WT/DS12/7). Peru requested that the panel consider and find that the French Order and subsequent amendments are:

- (a) inconsistent with Articles 2 and 12 of the TBT Agreement;
- (b) inconsistent with Articles I and III of GATT 1994; and
- (c) nullifying and impairing benefits accruing to Peru under the WTO Agreement.

4. On 24 July 1995, the Government of Chile requested consultations with the EC concerning the same French Order referred to above in paragraph 1. This request was made pursuant to Article XXII:1 of GATT 1994, Article 14.1 of the TBT Agreement and Article 4 of the DSU. In accordance with Article 4 of the DSU, the request was circulated to Members of the WTO on 31 July 1995 (WT/DS14/1).

5. Pursuant to Article 4.11 of the DSU, Canada on 2 August 1995 (WT/DS14/2), Peru on 11 August 1995 (WT/DS14/3) and Japan on 10 August 1995 (WT/DS14/4) requested to be joined in the consultations initiated by Chile. The EC accepted these requests and consultations were held on 10 August 1995, jointly with the consultations referred to in paragraph 2.

6. These consultations failed to settle the dispute and, on 25 September 1995, Chile requested the DSB to establish a panel, at its next meeting, pursuant to Article XXIII of GATT 1994, Article 14 of the TBT Agreement and Articles 4 and 6 of the DSU (WT/DS14/6). Chile requested that the panel consider and find that the French Order and subsequent amendments are:

- (a) inconsistent with Articles 2 and 12 of the TBT Agreement;
- (b) inconsistent with Articles I and III of GATT 1994; and
- (c) nullifying and impairing benefits accruing to Chile under the WTO Agreement.

7. At its meeting on 11 October 1995, pursuant to the requests of Peru and Chile mentioned above in paragraphs 3 and 6 respectively, the DSB established a single panel related to the same matter in accordance with Article 9.1 of the DSU.

8. At that DSB meeting on 11 October 1995, Peru, Chile and the EC agreed that the Panel should have standard terms of reference. The terms of reference of the Panel are the following:

"To examine, in the light of the relevant provisions of the covered agreements cited by Peru and Chile in documents WT/DS12/7 and WT/DS14/6, the matter referred to the DSB by Peru and Chile in those documents and to make such findings as will assist the DSB in making the recommendations or in giving the rulings provided for in those agreements".

9. At that DSB meeting of 11 October 1995, Australia, Canada, Iceland, Japan and the United States reserved their rights to participate in the Panel proceedings as third parties. All these Members, except Australia, attended the session for third parties and submitted written communications to the Panel.

10. At its meeting of 19 July 1995, the DSB had established a panel in accordance with the request made by Canada (WT/DS7/7) concerning the same French Order. Chile and Peru had been joined in the consultations of this related dispute between the EC and Canada pursuant to their requests made and accepted in accordance with Article 4.11 of the DSU (WT/DS7/6). The Panel report of this related dispute is contained in document WT/DS7/R.

11. At the DSB meeting of 11 October 1995, Peru and Chile also requested the application of Article 9.3 of the DSU so that the same panelists serving on the Panel in the related dispute between the EC and Canada (referred to in paragraph 10 above) would also serve on the single Panel established pursuant to the requests of Peru and Chile (referred to in paragraph 7 above).

12. On 12 October 1995, the panelists serving on the Panel in the dispute between the EC and Canada agreed to act as panelists for the Panel established for the dispute between the EC and Peru and Chile.

13. The Panel established pursuant to the requests of Peru and Chile (referred to in paragraph 7 above) was therefore constituted on 12 October 1995 with the following composition:

Chairman: Mr. Michael Cartland
Members: Mr. Peter Palecka
Mrs. Barbara Rigassi.

14. The Panel met with the three parties on 11 December 1995 and on 5 February 1996. It met with interested third parties in the afternoon of 11 December 1995.

15. On 6 February 1996, pursuant to Article 12.9 of the DSU, the Chairman of the Panel informed the DSB that the Panel would not be able to issue its report within six months (Article 12.8 of the DSU). The reasons for that delay are provided in document WT/DS12/9, WT/DS14/8.

16. The Panel issued the Descriptive Part of its report on 19 February 1996. It issued the Interim Report on 14 March 1996.

17. On 2 April 1996, at the request of the EC, the Panel held a review meeting with the parties pursuant to Article 15.2 of the DSU, to hear the comments of the parties on the Panel's Interim Report.

18. On 16, 19 and 29 April 1996, the parties requested the Panel to postpone issuance of the Final Report to the parties.

19. On 2 May 1996, the parties again requested the Panel to postpone issuance of the Final Report to the parties until 10 May 1996 (WT/DS12/10 and WT/DS14/9).

20. On 10 May 1996, the parties requested the Panel to suspend the Panel proceedings in accordance with Article 12.12 of the DSU because they were discussing the terms of a mutually agreed solution (WT/DS12/11 and WT/DS14/10).

21. On 5 July 1996, pursuant to Article 3.6 of the DSU, the parties notified the DSB and the relevant Councils and Committees that they had reached a mutually agreed solution, which was circulated as documents WT/DS12/12 and WT/DS14/11 on 19 July 1996.

22. The Panel takes note of this mutually agreed solution between the parties to the dispute and of the provisions of Article 12.7 of the DSU which provide that “where a settlement of the matter among the parties to the dispute has been found, the report of the panel shall be confined to a brief description of the case and to reporting that a solution has been reached”. Accordingly, the Panel concludes its work by reporting that a mutually agreed solution to this dispute has been reached between the parties.