

39. A fourth stated objective is to ensure fairness in commercial transactions. Canada has serious reservations about the scope of "fairness in commercial transactions" as a legitimate objective for the purposes of Article 2.2 and the potential number of measures that could be justified by reference to such an objective. In any event, in the circumstances of this case, Canada recognizes that an objective of fairness in commercial transactions could fall within the range of legitimate objectives in Article 2.2 if it were directed to ensuring that products that compete directly with one another are traded under the same conditions of competition. That is, a product should not be given a competitive advantage that is denied to a directly competitive product; a product should not be required to conform with a measure that places it at a competitive disadvantage in respect of a directly competitive product. The Order is, however, contrary to its stated objective by requiring *Placopecten magellanicus* to comply with a measure that places it at a competitive disadvantage *vis-à-vis* the commercially indistinguishable French *Pecten maximus*. Therefore, the Order is not necessary to ensure fairness in commercial transactions as it would not fulfil that objective.

40. A fifth stated objective is the protection of the French language. Although Canada agrees that labelling requirements may contribute to the protection of language, it is clear in this case that the protection of the French language would not be attained through the implementation and enforcement of the Order.

41. The term "coquilles Saint-Jacques" is not a scientific designation. It originated in the Middle Ages to describe the shells worn on the hats and coats of the pilgrims of Saint-Jacques-de-Compostelle.¹⁹ Linguistically, the term has never been associated with a particular species of pectinid. The only dictionary reference to any particular characteristic associated with the word is size: historically, the term "coquilles Saint-Jacques" has denoted large scallops, while the word "pétoncles" has denoted small scallops.²⁰ To describe large scallops such as *Placopecten magellanicus* as "pétoncles" is to completely ignore the historic meaning and roots of the two terms. Thus, the Order is not necessary to protect the French language as it would not fulfil that objective.

42. Therefore, even if it were accepted that the stated objectives were legitimate, there is no nexus between the imposition of the Order and fulfilment of those objectives. The Order is not necessary to attain those objectives, and would not, if implemented, fulfil them.

¹⁹ *Dictionnaire Historique de la Langue Française.*

²⁰ See *ibid.*, and *Petit Larousse Illustré*. For example, *Petit Larousse* notes that the word "pétoncles" is a diminutive form of "*Pecten*".
