

II. FACTUAL ASPECTS

A. Trade Items Affected

7. The Order governs commercial terms to be used in the labelling of shucked scallops when preserved, semi-preserved or frozen.

8. The items affected by the Order are classified under tariff item 0307.29 (scallops, including queen scallops, of the genera *Pecten*, *Chlamys* or *Placopecten*) of Chapter Three of the Harmonized Tariff System.⁴ The EC Schedule subdivides the 0307.29 tariff line to the eight digit level: item 0307.29.10 (coquilles St. Jacques (*Pecten maximus*) frozen), and 0307.29.90 (Other).⁵ Canada exports frozen shucked scallops of the species *Placopecten magellanicus* to France. It is Canada's understanding, based on French import statistics, that Canadian scallops have been imported into France under both tariff lines.

9. As background, all living organisms are classified scientifically according to long-established international convention. Such classification is not static as new discoveries result in constant changes to the taxonomic classification of many organisms, particularly at the species level. All scallops are of the Kingdom Animalia, of the Phylum Mollusca, of the Class Bivalvia, of the Order Ostreoid, and of the Family Pectinidae. The Family classification is subdivided into genus and species. There are two species of scallops particularly relevant to this matter: Canadian *Placopecten magellanicus* (of the genus *Placopecten*) and *Pecten maximus* (of the genus *Pecten*). The fact that *Placopecten magellanicus* and *Pecten maximus* are different species is irrelevant in respect of distinguishing between scallops for commercial designation purposes.⁶

⁴ The EC has bound tariffs for all scallops at 8%.

⁵ It is of note that the Order cannot be based on tariff classification as under the EC tariff schedule, only frozen *Pecten maximus* is classified under tariff item 0307.29.10 as "coquilles St. Jacques". All other frozen scallops, including *Pectens* (other than *Pecten maximus*) permitted under the Order to be labelled "coquilles Saint-Jacques", are classified under tariff item 0307.29.90 as "other".

⁶ A technical analysis of different species of scallops including *Placopecten magellanicus* and *Pecten maximus* concluded that there is no pattern of physical or compositional characteristics such as size, weight, colour, texture or moisture content that would justify differentiating between *Placopecten magellanicus* and *Pecten maximus* for commercial labelling purposes.