

to use it) is not subject to the disciplines of the TBT Agreement" is not a reasonable interpretation of the scope of the TBT Agreement.¹⁸ The obligation to use a particular term on a label is connected inextricably to the "definition" of the term or what the term means or is perceived to mean. It is not logical to consider an obligation to label and to affix a trade name to a product separately from the name by which that product is required to be known. Indeed, the EC recognizes implicitly that the two must be considered together where, at paragraph 39 of its first oral submission, it states that the definition of product characteristics that are determined by nature, when combined with an obligation to label a product in a particular manner, falls within the definition of a technical regulation.

b. The Order creates an unnecessary obstacle to trade contrary to Article 2.2

38. Canada showed in its initial written and oral submissions that to determine whether a measure is inconsistent with Article 2.2 a panel must:

- i. determine whether the objective of a measure is one that falls within the range of legitimate objectives set out in Article 2.2; and
- ii. be satisfied that the measure is not more trade-restrictive than necessary: that is, be satisfied that the measure is rationally connected to and can fulfil the legitimate objective, and that any adverse impact of the measure on the conditions of competition in the domestic market is appropriate and proportionate to the legitimate objective.¹⁹

39. Canada recognizes generally that all but one (the regulation of trade descriptions) of the stated objectives of the Order fall within the range of legitimate objectives set out in Article 2.2, but has shown that the Order is more trade-restrictive than necessary. In contrast, the EC incorrectly claims that the regulation of trade descriptions is itself a legitimate objective under Article 2.2, and that it is legitimate and justified under the TBT "to ensure that all shellfish do not appropriate the name of a well-known shellfish".²⁰

¹⁸ See paragraph 57 of the EC's first written submission.

¹⁹ See paragraph 26 of Canada's first written submission.

²⁰ See paragraph 66 of the EC's first written submission.