

commercial or market considerations.¹⁶ The classification required by the Order is, in fact, based on highly technical and specialised biological characteristics of the scallops that are completely irrelevant to commercial purchasers and end-users alike. Since the Order is not based on any information relevant to the French consumer of scallops, it is *ipso facto* not connected to any of the purportedly consumer- or market-based objectives advanced by EC (France).

36. One stated objective of the Order is to provide better information to the consumer. The labelling requirement does not, however, distinguish between *Placopecten magellanicus* and *Pecten* on the basis of any factors relevant to the consumer; indeed, the Order is based on a criterion, genus, that consumers do not take into account. Therefore, and particularly given that some *Pecten* permitted to be labelled "coquilles Saint-Jacques" are smaller than *Placopecten magellanicus*, the Order is likely to create confusion in the French scallops market.¹⁷

37. A second stated objective is the protection of consumers. The regulation of labelling practices for consumer protection purposes typically aims to ensure that consumers receive accurate information about product characteristics such as quantity, size, quality, end-use, ingredients, origin, and manufacturer or producer. The objective of consumer protection labelling regulations is to ensure that consumers are not misled as to the quality or quantity of the product they are purchasing, or that consumers are able to make informed decisions to protect themselves from health risks such as food allergies. Neither France nor the EC have provided information as to how the Order will protect French consumers, or from what harm French consumers need to be protected. Because the distinction is irrelevant to consumers, the Order is not rationally connected to and cannot fulfil the objective of consumer protection and is therefore not necessary.

38. A third stated objective is to prevent fraud or deceptive practices. Since, for commercial purposes, *Placopecten magellanicus* and the French *Pecten maximus* are indistinguishable,¹⁸ labelling *Placopecten magellanicus* "coquilles Saint-Jacques" does not perpetrate a fraud on the consumer or importer of scallops. In any event, neither France nor the EC have provided any information regarding consumer or importer complaints about the former labelling system. Thus, there is no evidence that the Order is necessary to prevent fraud and there is nothing to suggest that it could fulfil such an objective.

¹⁶ The technical analysis did not reveal any pattern of differences between *Placopecten magellanicus* and *Pecten* that would justify the distinction being made by the Order.

¹⁷ For example, *Pecten alba* are significantly smaller than *Pecten maximus* and *Placopecten magellanicus*.

¹⁸ In fact, a French Government official stated in 1991 that all pectinides could be described as "coquilles Saint-Jacques" because once shucked and processed, the products could not be distinguished from each other.