

objectives set out in Article 2.2 is intended to ensure that society in general, and humans, animals and plant life are protected from serious harm. That the objectives in Article 2.2 are directed to serious harm is evident from the fact that Article 2.2 requires a panel to take into account the risks that would arise from non-fulfilment of a legitimate objective. Regulating trade descriptions is not an objective that, if unfulfilled, would pose a risk of the sort contemplated by Article 2.2.

31. Moreover, the regulation of trade descriptions cannot constitute a policy objective. Such regulation is simply the **means** of **fulfilling** policy objectives. For example, the regulation of trade descriptions might be one method of achieving an objective of consumer protection, but the regulatory measure itself is not a policy objective. Therefore, the regulation of trade descriptions cannot constitute a policy objective generally, or a legitimate objective in these particular circumstances.

b. The Order is more trade-restrictive than necessary to meet the stated objectives

32. However laudable some of the purported objectives of the French Order, the measures implemented to advance those objectives must also satisfy the requirements of Article 2.2.

33. The second step in the Article 2.2 analysis requires the panel to determine whether the measures in question are more trade-restrictive than necessary. Such a determination has two elements: first, the Panel must determine whether the *nature* of the restrictions imposed is such as to advance the stated objectives, that is, whether the impugned measures have a rational connection to the stated objectives and are capable of fulfilling those objectives. Second, the Panel has to determine whether the *extent* of the restrictions imposed on international trade by the impugned measures is more than that necessary to fulfil those objectives.

(i) There is no rational connection between the Order and the stated objectives

34. The analysis under this part of the test is straight-forward: will the stated objectives be fulfilled if the Order is implemented? This forms an integral part of an analysis under Article 2.2; otherwise, all technical regulations could be justified on the basis of a tenuous or non-existent connection to a legitimate objective.

35. The Order is a commercial labelling requirement aimed at purchasers of scallops. Scallops are purchased on the basis of their composition, texture, size, and colour. The Order, however, artificially creates a commercial distinction between scallops that is not based on any