

Article 2.1 of the TBT Agreement requires Members to ensure that imported products are accorded treatment no less favourable than that accorded to like domestic products and like products imported from other countries. The Order requires Canadian scallops to be labelled with a term that is perceived to apply to an inferior quality product, and permits the like domestic product and like products imported from other countries to be labelled with a term denoting a superior quality product. This places Canadian scallops at a competitive disadvantage in the French market in respect of the like domestic French product and like products imported from other countries, contrary to Article 2.1.

The Order is a discriminatory regulation inconsistent with Article III:4 of the GATT. Permitting domestic French scallops to use the term "coquilles Saint-Jacques", while like Canadian scallops are required to use the less favourable term "pétoncles", discriminates against Canadian scallops by placing Canadian scallops at a competitive disadvantage in the French market. Canadian scallops are thus accorded less favourable treatment than that granted to the like domestic French product, contrary to Article III:4.

Moreover, the Order is inconsistent with Article I:1 of the GATT as scallops imported from other countries may use the term "coquilles Saint-Jacques", while the like Canadian scallops are required to use the less favourable term "pétoncles". Permitting such scallops imported into France from countries other than Canada to reap the benefit of being labelled with a commercially favourable term constitutes the accordance of an advantage to those imports. As France has failed to accord that same commercial advantage to the like Canadian scallops, the imported scallops receive an advantage, favour, privilege or immunity not accorded to the like product imported into France from Canada, contrary to Article I:1.

The Order has had an adverse effect on imports of Canadian scallops into France. Prior to the Order, the volume of Canadian scallop exports to France and the Canadian share of the French scallop market had been increasing. After the implementation of the Order the demand for Canadian scallops decreased significantly. The labelling requirement resulted in a significant reduction in the volume of Canadian exports to France and in Canada's share of the French market. As a result of the Order, Canadian scallops are at a competitive disadvantage in respect of the like domestic French product and like products imported from other countries.

The Order nullifies or impairs benefits accruing to Canada under, and impairs the attainment of the objectives of, the WTO Agreement, the GATT and the TBT Agreement.