

argument would significantly narrow the scope of Article III:4 and undermine its utility.

59. For a measure to be covered by Article III:4 it must satisfy two conditions. First, it must be a law, regulation or requirement; and second, it must affect the domestic sale, offering for sale, purchase, transportation, distribution or use of the products in question. GATT 1947 panels have broadly interpreted Article III:4 to apply to laws, regulations and requirements *governing* and *affecting* the conditions of sale or purchase.³³ The Order is a law, regulation or requirement that affects and indeed governs conditions of sale of scallops in the French market. Thus, Article III:4 applies to the Order.

ii. *The Order discriminates against imported scallops in favour of domestic scallops*

60. The EC asserts that Canada has failed to establish that France intended to discriminate against imported products.³⁴ The EC argues that as the Order permits *Pectens* of other countries to be labelled "coquilles Saint-Jacques", the Order does not have the effect of discriminating against imported products. These arguments cannot be sustained as both the intent and the effect of the Order have been to discriminate against Canadian scallops. In *United States - Section 337 of the Tariff Act of 1930*, the GATT 1947 panel found that even where a formally identical legal provision is applied to domestic and imported products alike, if in practice the effect of the application of the measure is to accord less favourable treatment to imported products, the

(G/TBT/W/11) dated 29 August 1995 setting out the "Negotiating History of the Coverage of the Agreement on Technical Barriers to Trade with Regard to Labelling Requirements, Voluntary Standards and Processes and Production Methods Unrelated to Product Characteristics".

³³ The GATT 1947 Panel in *Italian Discrimination Against Imported Agricultural Machinery* stated that:

The selection of the word "affecting" would imply, in the opinion of the Panel, that the drafters of the Article intended to cover in paragraph 4 not only the laws and regulations which directly governed the conditions of sale or purchase but also any laws or regulations which might adversely modify the conditions of competition between the domestic and imported products on the internal market.

Report of the Panel adopted on 23 October 1958, BISD 7S/60, paragraph 12.

³⁴ See paragraphs 93 and 94 of the EC's first written submission.