

exporters in 1995, and their earlier decline cannot be attributed to variations in the supply and demand pressures of the French market.

b. Scallops labelled "pétoncles" consistently command a lower price than scallops labelled "coquilles Saint-Jacques"

30. The EC argues that the decline in the value of Canadian scallop exports to France has been less than the decline in the volume of exports.¹² However, prices for Canadian scallops imported into France have not risen as quickly, nor to the same level, as prices for scallops still permitted to use the term "coquilles Saint-Jacques" on their label. Import prices for Canadian scallops did not rise as quickly up to the present time as did prices for scallops still permitted to be labelled "coquilles Saint-Jacques". In fact, in 1995 prices have dropped for Canadian scallops while prices for scallops still using the term "coquilles Saint-Jacques" have continued to rise.

31. Canada's review of retail prices in the French market found that prices of scallops which can no longer use the label "Saint Jacques" (normally these scallops were labelled "noix de Saint-Jacques") have risen less than prices for scallops which can continue to use the term "Saint Jacques", and that scallops which use the term "pétoncles" consistently receive a lower price than scallops which may be labelled "coquilles Saint-Jacques". Thus, the EC's assertion that the label "pétoncles" does not have a negative meaning in the French market cannot be maintained.

B. Legal Arguments

1. The TBT Agreement

32. Canada's first written and oral submissions show that the Order: (a) is a technical regulation and is subject to the TBT Agreement; (b) creates an unnecessary obstacle to international trade, contrary to Article 2.2; and (c) accords less favourable treatment to Canadian scallops than that accorded to the like domestic French scallops and like scallops imported into France from other countries, contrary to Article 2.1.¹³

33. The EC disputes Canada's assertion that the Order is a technical regulation governed by the TBT Agreement, and argues that the Order is not inconsistent with either Article 2.2 or 2.1.

¹² See paragraph 46 of the EC's first written submission.

¹³ See paragraphs 22-56 of Canada's first written submission.