

- d. French consumer tastes and habits and the preferences of French importers are based on product characteristics such as size, colour and texture - neither consumers nor importers differentiate between *Placopecten magellanicus* and *Pecten maximus* on the basis of their taxonomic classification; and
- e. a review of fourteen countries' (not including Canada and France) scallop labelling regulations did not reveal any countries with measures making a distinction similar to that made by the Order.

1. *The Order is inconsistent with GATT Article III:4*

59. Article III:4 provides:

The products of the territory of any [Member] imported into the territory of any other [Member] shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale ...

60. Article III:4 requires the panel to determine whether:

- a. the imported product is a like product to the domestic product;
- b. the impugned measure is a law, regulation or requirement affecting, *inter alia*, the sale or offering for sale of the products; and
- c. the imposition of the measure could result in the imported products receiving less favourable treatment than the like domestic product (i.e. whether there is the potential that the imported product may be accorded competitive opportunities less favourable than those accorded to the like domestic product).

61. As noted above, Canadian *Placopecten magellanicus* is a like product to French *Pecten maximus*, thus it satisfies one element of the analysis.

62. The Order is a regulation governing the marketing and labelling of frozen scallops in France. As discussed in paragraphs 17 - 19 above, scallops marketed in France under the label "coquilles Saint-Jacques" have a competitive advantage over those labelled "pétoncles"; thus, the Order affects the relative competitive condition between the two products. By affecting the relative competitive conditions between the two like products, the Order clearly constitutes a "law, regulation or requirement" affecting the internal sale or offering for sale of scallops in the French market.