

By the EC's own admission, there is a benefit or "profit" accorded to scallops that are permitted to be labelled "coquilles Saint-Jacques" or "noix de Saint-Jacques". As such scallops have a significant competitive advantage over scallops labelled with the pejorative term "pétoncles", the Order grants *Pecten maximus* from other countries an advantage not given to *Placopecten magellanicus*.

The EC argues that if the Order is inconsistent with one or both of GATT Articles III:4 and I:I it is justifiable under the general exception contained in GATT Article XX(d). GATT 1947 Panels have construed this exception narrowly, placing the burden of proof on the party invoking the exemption. The EC has failed to meet its burden of proof in this case.

The EC has alleged that Canada has not properly raised nullification and impairment as it was not set out specifically in the consultations and the request for the establishment of a panel and that Canada has failed to satisfy the conditions of Article 26(1) of the Understanding on Rules and Procedures Governing the Settlement of Disputes (the "DSU"). Canada confirmed during the oral hearing before the Panel on October 12-13, 1995 that it had raised nullification or impairment in its request for consultations dated May 19, 1995 and in its request for the establishment of a panel dated July 7, 1995. Canada also raised nullification and impairment generally during the consultations held in June, 1995. Canada has therefore properly raised non-violation nullification or impairment.

In response to the EC's assertion that Canada should provide a more detailed non-violation or impairment complaint Canada reiterates its earlier arguments on this matter. Canada disagrees with the EC's assertion that the only reasonable expectation that Canada could have had at the time the tariff for scallops was bound was that France and the EC would observe the provisions of the TBT Agreement and GATT Article III. This is a misstatement of the concept of reasonable expectation.

Canada requests the Panel to find that the provisions of the Order discussed above are not consistent with France's or the EC's obligations under the WTO Agreement and that the Order nullifies or impairs benefits accruing to Canada under that Agreement whether or not the Order is found to be inconsistent with the WTO Agreement. Canada requests that the Panel recommend that France and the EC ensure that the Order is brought into conformity with their obligations under the WTO Agreement.