

restrictive than necessary to meet a legitimate objective. To determine whether a measure is inconsistent with Article 2.2 a panel must therefore:

- a. determine whether the objective of a measure is one that falls within the range of legitimate objectives set out in Article 2.2; and
- b. be satisfied that the measure is not more trade-restrictive than necessary, that is, be satisfied that:
 - i. the measure is rationally connected to and can fulfil the legitimate objective; and
 - ii. any adverse impact of the measure on the conditions of competition in the domestic market is appropriate and proportionate to the legitimate objective.

a. Objectives of the Order

27. The preamble to the Order outlines the objectives of the Order to be: to protect consumers, to regulate trade descriptions, to prevent fraud, to ensure fairness in commercial transactions and to protect the French language.

28. Prior to the consultations, Canada requested that the EC (France) elaborate further on the objectives outlined in the Order. The EC's written response to Canada's questions raised in the June 19, 1995, consultations, provided the following description of the Order's objective:

From the recitals of the order itself, it can be seen that the order had a number of purposes, namely to protect consumers, to regulate trade descriptions, to prevent fraud, to ensure fairness in commercial transactions and to protect the French language.¹⁵

29. Canada recognizes that, in general, objectives such as consumer protection, prevention of fraud and deceptive practices, ensuring fairness in commercial transactions and the protection of language fall within the scope of legitimate objectives contemplated under Article 2.2 of the TBT Agreement.

30. However, at least one of the stated objectives in this case, the regulation of trade descriptions, clearly cannot constitute a legitimate objective. The illustrative list of legitimate

¹⁵ This answer responded to the first question of Canada: "[W]hy did the French Government introduce Order NOR MERP9300051A of March 22, 1993?"