

SUMMARY OF THE CANADIAN SUBMISSION

French Order NOR MERP9300051A (the "Order") entered into force on March 28, 1993. The Order requires certain shucked and frozen scallops to be labelled and marketed as "pétoncles", and provides that other shucked and frozen scallops may be labelled and marketed as "coquilles Saint-Jacques".

In France, "pétoncles" is a term associated with inferior quality scallops. "Coquilles Saint-Jacques" is a term associated with premium quality scallops that are preferred by consumers and command a higher price than "pétoncles".

Under the Order, Canadian exports of shucked and frozen scallops to France are required to be labelled "pétoncles".¹ The Order was modified in December 1993 and again in October 1994, but the amendments ultimately did not result in a change to the labelling requirement. Domestic French scallops, which are like products to Canadian scallops, may be labelled "coquilles Saint-Jacques". Similarly, shucked and frozen scallops imported from other countries that are like products to the Canadian scallops may be labelled "coquilles Saint-Jacques". The discriminatory labelling requirement places Canadian scallops at a competitive disadvantage in respect of like scallops harvested domestically in France and imported into France from other countries.

The Order is inconsistent with the Marrakesh Agreement Establishing the World Trade Organization (the "WTO Agreement"). More specifically, it is inconsistent with Article 2 of the WTO Agreement on Technical Barriers to Trade (the "TBT Agreement"), is inconsistent with Articles III and I of the General Agreement on Tariffs and Trade 1994 (the "GATT"), and nullifies or impairs benefits accruing to Canada under, and impairs the attainment of the objectives of, the WTO Agreement, the GATT and the TBT Agreement.

Article 2.2 of the TBT Agreement requires Members to ensure that technical regulations do not have the purpose or effect of creating unnecessary obstacles to trade. Such an obstacle is created if a technical regulation does not have a legitimate objective, or if it is more trade-restrictive than necessary to fulfil a legitimate objective. France has advanced six separate objectives of the Order. However, even if those stated objectives are found to be legitimate, the imposition of the Order would not result in those objectives being met. Thus, the Order is more trade-restrictive than necessary, contrary to Article 2.2.

¹ The Order was amended by Order NOR ECOC9300090A (dated December 29, 1993) and Order NOR ECOC9400066A (dated October 3, 1994).
