

tariff treatment;²⁶ consumer tastes and habits;²⁷ and the practices of other countries.²⁸ It is clear that *Placopecten magellanicus* is a "like product" to *Pecten maximus*, when it is assessed against these criteria typically employed to determine the "likeness" of products. For example:

- a. the basic physical characteristics of shucked frozen *Placopecten magellanicus* and *Pecten maximus* scallops are the same:
 - i. there is no pattern of physical or compositional characteristics in respect of size, weight, colour, texture or moisture content that justifies differentiating between *Placopecten magellanicus* and *Pecten maximus*, and
 - ii. in terms of size and colour (the most important determinants of consumer purchase decisions) *Placopecten magellanicus* are more like domestic French *Pectens* (e.g. *Pecten maximus*) than are certain other *Pectens*, such as *Pecten alba*);
- b. *Placopecten magellanicus* and *Pecten maximus* have the same end-use - human consumption;
- c. although the EC tariff schedule distinguishes frozen *Pecten maximus* from frozen scallops of all other species, including several *Pectens* that may be labelled "Saint-Jacques" under the Order, all scallops are subject to the same tariff rate of 8%, and French import statistics show that *Placopecten magellanicus* from Canada have entered France under the *Pecten maximus* tariff line, even though it is well known that *Pecten maximus* are not found in Canadian waters;

1992, BISD 39S/206.

²⁶ *The Australian Subsidy on Ammonium Sulphate*, Report of the Working Party adopted on 3 April 1950, BISD II/188; *EEC - Measures on Animal Feed Proteins*, Report of the Panel adopted on 14 March 1978, BISD 25S/49; *Japan - Customs Duties, Taxes and Labelling Practices on Imported Wines and Alcoholic Beverages*, Report of the Panel adopted on 10 November 1987, BISD 34S/83; and *United States - Measures Affecting Alcoholic and Malt Beverages*, Report of the Panel adopted on 19 June 1992, BISD 39S/206.

²⁷ *Japan - Customs Duties, Taxes and Labelling Practices on Imported Wines and Alcoholic Beverages*, Report of the Panel adopted on 10 November 1987, BISD 34S/83.

²⁸ *The Australian Subsidy on Ammonium Sulphate*, Report of the Working Party adopted on 3 April 1950, BISD II/188; and *Spain - Tariff Treatment of Unroasted Coffee*, Report of the Panel adopted on 11 June 1981, BISD 28S/102.