

both from the chronology of the events leading up to the Order which Canada presented at the first oral hearing and from correspondence between the French Prime Minister and the Minister of Agriculture and Fisheries and his officials on one hand and representatives of the French scallop processing industry and French deputies writing on their behalf on the other. Neither the EC nor France has provided any evidence of consumer complaints, let alone evidence that consumers were consulted on the issue, except after the initiation of these proceedings.

The Order is arbitrary and unjustifiable. Even if it were accepted that some of the stated objectives of the Order are legitimate, the Order is more trade-restrictive than necessary to meet such objectives. There are many available alternatives which would be less trade-restrictive.

The Order discriminates against Canadian scallops in favour of the like domestic scallops contrary to Article III:4 of the General Agreement on Tariffs and Trade 1994 (the "GATT") and Article 2.1 of the TBT Agreement.

The impact of the Order has been to ensure that the scallops that are produced in the greatest quantities globally cannot compete on an equal basis with like domestic products. France has attempted to disguise the discriminatory effects of the Order by permitting a small number of imported species that are harvested in much lower quantities to have the same competitive opportunities as domestic French scallops. France has, however, limited competition in its domestic scallop market by restricting "coquilles Saint-Jacques" and "noix de Saint-Jacques" to *Pectens* which comprise less than five percent of the world scallop harvest while effectively excluding from its market the large quantities of non-*Pectens* that have competed in the past and would now otherwise compete directly with the domestic French scallop.

The Order denies to Canadian scallops the competitive opportunities that are given to other scallops that are indistinguishable from Canadian scallops. In the French market, scallops labelled "coquilles Saint-Jacques" or "noix de Saint-Jacques" command a premium price and are in greater demand than scallops labelled "pétoncles" because consumers consider "pétoncles" an inferior product. *Placopecten magellanicus* scallops labelled "Saint-Jacques" would have the same competitive opportunities as *Pecten* scallops and market share would be determined by commercial factors rather than by government fiat; labelled "pétoncles" these competitive opportunities are not available to them. The Order, therefore, is inconsistent with Article III:4.

The Order accords scallops from other countries an advantage not accorded to like Canadian scallops contrary to GATT Article I:I and TBT Agreement 2.1. The EC argues that Article I:I does not oblige a country to permit a product to use a particular trade name if the product is not the "same" as other imported products that are permitted to use that trade name. However "like" does not mean identical and *Placopecten magellanicus* are like products to *Pectens*. The EC also argues that the objective of Article I:I is not to force France to permit *Placopecten magellanicus* to continue to profit by using a trade name that has a favourable reputation in the French market. However, this is exactly what Article I:I requires in this case.