

requirements in respect of a product - frozen scallops.¹¹ The requirements are mandatory.¹² Thus, the Order meets the elements of a technical regulation as defined in the TBT Agreement.

25. France's notification of the two Orders amending the original March 1993 Order to the Committee on Technical Barriers to Trade (the "TBT Committee") pursuant to Article 2.5.2 of the 1979 Agreement on Technical Barriers to Trade (the "1979 TBT Code") confirms this fact.¹³

2. The Order is inconsistent with Article 2.2

26. Article 2.2 obliges WTO Members to ensure that technical regulations are not prepared, adopted or applied with the objective or effect of creating unnecessary obstacles to international trade.¹⁴ To this end, Article 2.2 provides that technical regulations must not be more trade-

¹¹ Article 1 of the Order provides that frozen scallops set out in the schedule to the Order must be labelled and marketed in accordance with the schedule.

¹² Article 1 provides that the scallops set out in the schedule to the Order "shall", when frozen, be labelled in accordance with the terms set out in that schedule.

¹³ Article 2.5.2 of the 1979 TBT Code provides:

2.5 Whenever a relevant international standard does not exist or the technical content of a proposed technical regulation or standard is not substantially the same as the technical content of relevant international standards, and if the technical regulation or standard may have a significant effect on trade of other Parties, Parties shall:

2.5.2 notify other Parties through the GATT secretariat of the products to be covered by technical regulations together with a brief indication of the objective and rationale of proposed technical regulations

¹⁴ Article 2.2 provides:

2.2 Members shall ensure that technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade. For this purpose, technical regulations shall not be more trade-restrictive than necessary to fulfil a legitimate objective, taking account of the risks non-fulfilment would create. Such legitimate objectives are, *inter alia*: national security requirements; the prevention of deceptive practices; protection of human health or safety; animal or plant life or health, or the environment. In assessing such risks, relevant elements of consideration are, *inter alia*: available scientific and technical information, related processing technology or intended end-uses of products.