

55. In respect of the Canadian imported scallop and the like French *Pecten maximus*, the different and discriminatory labelling requirements disrupts the conditions of competition between the two products, as set out in paragraphs 59 - 72. Requiring the Canadian product to be labelled "pétoncles" while the like domestic product is permitted to use the premium label "coquilles Saint-Jacques" alters the conditions of competition in favour of the domestic *Pecten maximus* and to the detriment of Canadian scallops. Similarly, in respect of the imported Canadian scallop and *Pecten maximus* imported into France from other countries, the Order alters the conditions of competition in favour of the imported *Pecten maximus* and to the detriment of the imported Canadian *Placopecten magellanicus*.

56. The Order therefore accords less favourable treatment to the Canadian *Placopecten magellanicus* than to the like domestic and imported products, contrary to Article 2.1 of the TBT Agreement.

B. THE GATT

57. The Order is inconsistent with Articles III:4 and I:1 of the GATT. Articles III:4 and I:1 apply in respect of measures discriminating between like products. Canadian *Placopecten magellanicus* is a like product to domestic French *Pecten maximus*, and to *Pecten maximus* imported into France from other countries.²³

58. GATT 1947 panels have considered a variety of criteria in making "like product" determinations, including: physical characteristics;²⁴ product end-use;²⁵ tariff classification and

²³ For example, *Pecten maximus* is exported from the United Kingdom to France.

²⁴ *EEC - Measures on Animal Feed Proteins*, Report of the Panel adopted on 14 March 1978, BISD 25S/49; *EEC - Programme of Minimum Import Prices, Licences and Surety Deposits for Certain Processed Fruits and Vegetables*, Report of the Panel adopted on 18 October 1978, BISD 25S/68; *Spain - Tariff Treatment of Unroasted Coffee*, Report of the Panel adopted on 11 June 1981, BISD 28S/102; *United States - Taxes on Petroleum and Certain Imported Substances*, Report of the Panel adopted on 17 June 1987, BISD 34S/136; *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 *European Economic Community - Restrictions on Imports of Dessert Apples*, Report of the Panel adopted on 22 June 1989, BISD 36S/93.

²⁵ *Spain - Tariff Treatment of Unroasted Coffee*, Report of the Panel adopted on 11 June 1981, BISD 28S/102; *United States - Taxes on Petroleum and Certain Imported Substances*, Report of the Panel adopted on 17 June 1987, BISD 34S/136; *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