

SUMMARY OF THE CANADIAN SUBMISSION

In this second submission Canada responds to the arguments put forward by the European Communities (the "EC") and elaborates upon arguments made by Canada in its first submission.

French consumers prefer to purchase scallops labelled "coquilles Saint-Jacques" or "noix de Saint-Jacques" even when they are more expensive than scallops labelled "pétoncles". French producers of prepared dishes containing scallops consider "pétoncles" to be a commercially less-valuable term than either "coquilles Saint-Jacques" or "noix de Saint-Jacques". The French consumer survey does not establish that consumers consider the species of scallop important when purchasing shucked frozen scallops. The only clear evidence on the record is that the French consumer considers the name "coquilles Saint-Jacques" to be important.

The EC has asserted throughout its first written and oral submissions that the "true" or "correct" trade name for *Pectens* is "coquilles Saint-Jacques" but has failed to demonstrate that there is an exclusive connection between "coquilles Saint-Jacques" and *Pecten* scallops. There is no clear consistent usage in France of the non-scientific term "coquilles Saint-Jacques" to refer to *Pectens* nor does international usage support the distinction made in the French Order. Further, the scientific classification of *Pectinids*, which an international expert on scallop taxonomy has said is in need of drastic revision, cannot be linked to commercial nomenclature and therefore cannot be used as the basis for regulation.

The EC has claimed that it is the development of a sophisticated electrophoretic technique which made it possible to determine which scallops should be labelled "coquilles Saint-Jacques" and which "pétoncles". However, not only is this technique not new, it is not capable of supporting the distinction made in the Order. It is also significant that the information provided by the EC appears to indicate that electrophoretic analysis was not used until after the Order was made and after Article XXII consultations failed to lead to a mutually satisfactory result. The electrophoretic analysis argument is a self-serving *ex post facto* justification, not the underlying reason for the making of the Order.

Canada has experienced a severe decline in its exports of scallops to France which cannot, as has been alleged by the EC, be attributed to a supply problem in Canada. The sharp decline coincides with the requirement to include the term "pétoncles" on the label, although scallop exports to France had already begun to decline before then due to the prolonged period of uncertainty as to the labelling requirements.

The Order creates an unnecessary obstacle to trade contrary to Article 2.2 of the Agreement on Technical Barriers to Trade (the "TBT Agreement"). Contrary to the assertion made by the EC that the Order fulfils a number of legitimate objectives which meet the requirements of the TBT Agreement, it is clear that the motivation for the making of the Order is economic and that the real purpose of the Order is to deny 95 per cent of the world scallop production equal access to the French market. The discriminatory intent of the Order is evident,