

internationally recognized trade description related to a particular species such as "Beluga" (*Huso huso*). Similarly, in the case of labelling *Placopecten magellanicus* "coquilles Saint-Jacques" could be supplemented by "du Canada", or "Placopecten magellanicus" or "noix de Saint-Jacques" followed by either of these terms. Of course, any alternative measure would have to be applied to *all genera* and species of scallops, including all *Pectens*.

c. The Order is inconsistent with the non-discrimination obligation in Article 2.1

48. As noted by both the EC and Canada in their first written submissions, Article 2.1 incorporates the non-discrimination principles set out in GATT Articles III and I. However, as Canada stated in its first oral submission, the non-discrimination principles in the TBT Agreement are broader than those in the GATT. Whereas the non-discrimination principles under the GATT may be interpreted by a panel in the light of the language of the particular Article incorporating the obligation, there is no language in Article 2.1 of the TBT Agreement that qualifies or limits the scope of its non-discrimination obligations.

49. Therefore, although a panel assessing the consistency of a measure with Article 2.1 may be guided generally by the type of analysis that might be conducted under GATT Articles III and I, it is not required to adhere rigidly to the precise form of such analyses. This is relevant to analyses of whether there is discrimination between imported and like domestic products and imported and like imported products, and to an analysis of whether such products are "like", under the TBT Agreement.

2. The GATT 1994

a. Pecten maximus and Placopecten magellanicus are like products

50. The EC has raised two issues regarding the like product analysis proposed by Canada in respect of Articles I and III. The EC argues that: (i) the like product analysis is not the same for Articles I and III; and (ii) Canada has not proposed the relevant criteria for likeness.

i. Contrary to the EC contention, in this case the like product analysis is the same for Articles I and III

51. In this case, the relevant criteria to be taken into account in conducting a like product analysis under GATT Articles I and III include the products' physical characteristics, end-use, tariff classification and treatment, and consumer tastes and preferences.²⁷

²⁷ See paragraph 58 of Canada's first written submission.