

of objectives advanced by France. Other labelling regimes, such as the labelling guidelines that were in place prior to the introduction of the Order, could, in fact, better meet the stated objectives without creating an obstacle to trade.

c. The Order creates an unnecessary obstacle to trade

51. Even if it were accepted that the stated objectives were legitimate, the Order is not rationally connected to and capable of achieving those objectives. Moreover, there is no evidence that there would be any risks arising from the non-fulfilment of the six stated objectives if the Order was not imposed. Certainly, France has not advised that it has identified any potential adverse effect or risk if the Order were not imposed. Therefore, the Order is more trade restrictive than necessary.

52. The labelling requirement creates an unnecessary obstacle to trade for exports of Canadian scallop to France, contrary to Article 2.2 of the TBT Agreement.

3. The Order is inconsistent with Article 2.1

53. Article 2.1 of the TBT Agreement incorporates the non-discrimination principles set out in Articles III:4 and I:1 of the GATT.²² Similar to an analysis of the consistency of a measure in respect of GATT Articles III:4 and I:1, a panel examining a measure under Article 2.1 must determine if the measure in question is a measure to which the provision applies (i.e. is it a technical regulation), if the products in question are like products, and if the measure results in less favourable treatment for the imported Canadian product than for the like domestic and imported products.

54. As set out in paragraphs 23 - 25 above, the Order is a technical regulation, thus Article 2.1 applies. As stated in paragraphs 57 - 58 below, Canadian *Placopecten magellanicus* is like the domestic French *Pecten maximus*, and is also like *Pecten maximus* imported into France from other countries. Canadian *Placopecten magellanicus* imported into France is accorded less favourable treatment than the domestic French *Pecten maximus*. Canadian *Placopecten magellanicus* is also accorded less favourable treatment than the like *Pecten maximus* imported into France from other countries.

²² Article 2.1 provides:

Members shall ensure that in respect of technical regulations, products imported from the territory of any Member shall be accorded treatment no less favourable than that accorded to like products of national origin and to like products originating in any other country.
