

higher costs for Canadian exporters who have had to make several packaging changes and have had to export in smaller lot sizes.

99. Prior to the Order, Canadian scallops could be labelled with a term that did not place them at a competitive disadvantage to like domestic and imported scallops. France had treated *Pectens* and *Placopecten magellanicus* in the same manner; neither species of scallop received better treatment than the other and they competed on an equal basis. Under the Order, however, Canadian products are subjected to regulatory conditions that have upset the competitive relationship between *Pecten maximus* and *Placopecten magellanicus* that had existed for many years, even prior to the binding of the tariff in 1964.

iii. *The government measure could not have been reasonably anticipated at the time of the negotiation of the tariff concession*

100. Canada disagrees with the EC's assertion that the only reasonable expectation that Canada could have had at the time the tariff was bound for scallops was that France and the EC would observe the provisions of the TBT Agreement and GATT Article III.<sup>67</sup> This is a misstatement of the concept of reasonable expectation. If at the time a tariff binding is negotiated two products are grouped together and are treated uniformly by an importing Member, that exporting Member should be able to reasonably expect the continuation of the same treatment for the two products.<sup>68</sup> In other words, the reasonable expectation that a Member may have when a tariff is bound is that the importing Member will not undermine the value of the tariff concession by taking unilateral action that upsets the competitive relationship between the products in question.<sup>69</sup> Indeed, such a reasonable expectation may be assumed.<sup>70</sup>

101. As Canada could not have reasonably foreseen at the time the tariff binding was negotiated that France would take steps to undermine the value of that binding through the unilateral imposition of an unnecessary internal labelling requirement, the benefits of that tariff concession have been nullified or impaired.

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<sup>67</sup> See paragraph 118 of the EC's first written submission.

<sup>68</sup> *The Australian Subsidy on Ammonium Sulphate*, Report of the Working Party adopted on 3 April 1950, BISD II/188.

<sup>69</sup> *Treatment by Germany of Imports of Sardines*, Report of the Panel adopted on 31 October 1952, BISD 1S/53, at paragraph 16.

<sup>70</sup> Working Party on "Other Barriers to Trade", Report of the Working Party at the 1954-55 Review Session noted by the Contracting Parties on 16 February 1955, 3S/77.