

11. The EC stated in its first oral submission that confusion has reigned in the French scallop market for many years because there was no reliable test to distinguish between "true" and "false" "coquilles Saint-Jacques". The EC asserted that since the mid-1980s France has been "perfecting" a method to differentiate between species of scallops using electrophoretic analysis.

12. However, the EC has failed to provide the Panel with adequate information on its process of developing such a method, and has provided limited information on the final results of France's work in this area. The information that has been provided relates to work conducted in 1995, *two years after the Order came into force*. The EC has failed to show that France used electrophoretic analysis either during the formulation of the Order or in respect of the later amendments to the Order. This contradicts the EC's assertion that it was France's "perfection" of this methodology, after many years of work, that led to the introduction of the Order.⁷

13. It is Canada's understanding that the EC's claim is based on profiles made using iso-electric focusing.⁸ Iso-electric focusing normally is not used as a regulatory tool to distinguish between species because the iso-electric profiles generated are too detailed. For example, iso-electric focusing profiles would show clear differences between populations of the same species from different geographic locations. Therefore, the establishment of a single profile defining a species or a *genus* using iso-electric focusing would be problematic, if not impossible.

14. For the EC's claim to be tenable, France would have had to have developed a baseline standard that covers all species of the genus *Pecten* and against which comparisons of other scallops could be made. However, the only information that has been provided by the EC is a comparison of profiles for *Pecten maximus* and *Placopecten magellanicus*. On the basis of this single comparison the EC states incorrectly that it can make a valid and reliable determination of which scallops are *Pectens* and can be called "coquilles Saint-Jacques" and which scallops are non-*Pectens* and must be called "pétoncles".

15. Even if the profiles were assumed to be different, they do not show that *Placopecten magellanicus* can be differentiated from all scallops of the genus *Pecten*. Moreover, if the profiles of all *Pectens* and *Placopecten magellanicus* were compared, there would be greater

⁷ Iso-electric focusing is a refinement of electrophoretic techniques that allow more detailed analysis of the protein composition of seafood products. Basic electrophoretic profiles consist of a series of bands which indicate the presence of certain proteins in a sample, and can be used to distinguish between species of fish and seafood. Iso-electric focusing gives more detailed resolution of these broad bands of proteins into many sub-bands.

⁸ It should be noted that iso-electric focussing has been available for over twenty years. Neither France nor the EC has provided any indication that France has made significant advances in the use of technology that would substantiate this claim.