

iii. the government measure could not have been reasonably anticipated at the time of the negotiation of the tariff concession.⁶⁶

i. *Negotiation of a tariff concession*

95. The EC tariff rate for scallops (tariff items 0307.21 and 0307.29 in the EC tariff schedule) was first bound at eight per cent in 1964 and has not been altered since. The tariff rate is the same for all scallops of all species. At the time the tariff was bound and until 1993, Canada's exports of *Placopecten magellanicus* to France were permitted to be labelled "noix de Saint-Jacques".

ii. *The Order has upset the competitive relationship between domestic French and imported Canadian scallops*

96. Prior to the French Order entering into force in 1993, *Pectens* and *Placopecten magellanicus* could both bear labels containing the words "Saint-Jacques". The products competed directly with each other and consumers perceived them to be of equal quality and value. Prepared food products containing scallops could use the words "Saint-Jacques" on the label whether *Pectens* or *Placopecten magellanicus* were used. The French industry considered the scallops to be of the same value and indistinguishable for the purposes for which they were used.

97. Under the Order Canadian scallops are required to be labelled "pétoncles", a term that French consumers consider to be inferior to a product labelled with the term "Saint-Jacques". Shucked and frozen "pétoncles" command a significantly lower price and are in much less demand than scallops labelled "coquilles Saint-Jacques" or "noix de Saint-Jacques". This consumer preference for "coquilles Saint-Jacques" extends to food products that are made with scallops identified as "coquilles Saint-Jacques". Thus, seafood products containing "pétoncles" cannot compete effectively in the market, and manufacturers of such products will not use a product that is perceived negatively by consumers.

98. Moreover, the Order (and the modifications of December 1993 and October 1994) has created great uncertainty regarding labelling requirements for scallops in France and has destabilized the French market for Canadian scallops. This has led to generally lower sales and

⁶⁶ *The Australian Subsidy on Ammonium Sulphate*, Report of the Working Party adopted on 3 April 1950, BISD II/188; *Treatment by Germany of Imported Sardines*, Report of the Panel adopted on 31 October 1952, BISD 1S/53; and *European Community - Payments and Subsidies Paid to Processors and Producers of Oilseeds and Related Animal-Feed Proteins*, Report of the Panel adopted on 25 January, 1990, BISD 37S/86.