

the Order with GATT Article III:4.<sup>37</sup> Canada does not argue that the "obligation" in Article III:4 is to protect expectations on all competitive relationships. Rather, a fundamental purpose or rationale underlying Article III is to protect the expectations of Members as to the competitive relationship between their products and domestic like products of other Members. One GATT 1947 Panel characterized the objective of Article III, in a manner that parallels the obligation in Article III:4, as "to provide equal conditions of competition once goods had been cleared through customs".<sup>38</sup> It is against the backdrop of this fundamental purpose that the specific obligation in Article III:4 must be viewed: Article III:4 calls for *effective equality of opportunity* in respect of the application of laws, regulations and requirements affecting the conditions of competition between imported products and the like domestic products in the internal market.<sup>39</sup>

70. Article III:4 requires that imported products receive treatment that is no less favourable than that given to the like domestic product. GATT 1947 panels have consistently interpreted this to mean that imported products must be granted competitive opportunities that are no less favourable than those accorded to like domestic products.<sup>40</sup> The denial of competitive opportunities or advantages accorded to the domestic like product constitutes less favourable treatment.<sup>41</sup> Even if the imported product can still be sold in the domestic market, if it "is denied the *full range* of competitive opportunities accorded to domestic like products" the measure in question is inconsistent with Article III:4.<sup>42</sup>

71. In the French market, scallops labelled "coquilles Saint-Jacques" or "noix de Saint-Jacques" command a premium price and are in greater demand than scallops labelled "pétoncles" because consumers consider "pétoncles" an inferior product.<sup>43</sup> *Placopecten magellanicus* scallops labelled with the words "Saint-Jacques" have the same competitive opportunities as *Pecten* scallops. However, if *Placopecten magellanicus* must be labelled "pétoncles", a term

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<sup>37</sup> See paragraphs 87-92 of the EC's first written submission.

<sup>38</sup> *Japan - Customs Duties, Taxes and Labelling Practices on Imported Wines and Alcoholic Beverages*, Report of the Panel adopted on 10 November 1987, BISD 34S/83 at paragraph 5.5(c).

<sup>39</sup> *Supra*, note 35, at paragraphs 5.11-5.13.

<sup>40</sup> *United States - Measures Affecting Alcoholic and Malt Beverages*, Report of the Panel adopted on 19 June 1992, BISD 39S/206, at paragraph 5.30.

<sup>41</sup> *Ibid.*, at paragraph 5.31.

<sup>42</sup> *Ibid.*, at paragraph 5.34, emphasis added.

<sup>43</sup> See paragraph 18 of Canada's first written submission.

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