

originating in the territories of other contracting parties.³⁶

71. As noted above, *Placopecten magellanicus* is a "like product" to *Pecten maximus*. Frozen *Pecten maximus* is imported into France from other countries including the United Kingdom, and is permitted to be labelled "coquilles Saint-Jacques". Permitting *Pecten maximus* from other countries to be labelled "coquilles Saint-Jacques", while requiring *Placopecten magellanicus* to be labelled "pétoncles", gives *Pecten maximus* a competitive advantage over *Placopecten magellanicus*.

72. As the labelling requirement would preclude *Placopecten magellanicus* from receiving the competitive advantage gained through the use of the term "coquilles Saint-Jacques" on a label, the Order is inconsistent with GATT Article I:1 as that treatment has not been accorded "immediately and unconditionally" to *Placopecten magellanicus*.

C. The Order Nullifies or Impairs Benefits Accruing to Canada under, and Impedes the Attainment of the Objectives of, the WTO Agreement, the GATT and the TBT Agreement

73. The Order's inconsistency with the WTO Agreement, namely the GATT and the TBT Agreement, establishes a *prima facie* case of nullification or impairment pursuant to GATT Article XXIII:1(a) and Article 3.8 of the DSU.³⁷

74. However, even if the Panel were to decide that the Order is consistent with the WTO Agreement, the application of the Order nullifies or impairs benefits accruing to Canada under that Agreement.³⁸ Three conditions have been established by GATT 1947 panels for determining whether a case of "non-violation" nullification or impairment exists. The conditions are:

³⁶ *United States - Denial of Most-favoured-nation Treatment as to Non-rubber Footwear from Brazil*, Report of the Panel adopted on 19 June 1992, BISD 39S/128, para. 6.11.

³⁷ Previous GATT 1947 Panels have determined that a *prima facie* case of nullification and impairment is established where there is an infringement of obligations under the GATT. The DSU codifies this in Article 3.8 which provides that where obligations under an agreement such as the GATT or the TBT Agreement are infringed, the action is considered *prima facie* to constitute a case of nullification or impairment.

³⁸ Article XXIII:1(b) has been interpreted to mean even if a measure is not inconsistent with a provision of the GATT, it may be challenged as nullifying or impairing benefits. *EEC - 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, paras. 142 - 154. Article 26.1 of the DSU confirms this interpretation.