

# WORLD TRADE ORGANIZATION

RESTRICTED

**WT/DS/7/1**

24 May 1995

(95-1377)

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Original: French

## EUROPEAN COMMUNITIES - TRADE DESCRIPTION OF SCALLOPS

### Request for Consultations by Canada

The following communication dated 19 May 1995 from the Permanent Mission of Canada in Geneva to the Permanent Delegation of the European Commission was received by the WTO Secretariat on 19 May 1995 and is circulated in accordance with Article 4.4 of the DSU.

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The Government of Canada requests consultations with the European Union concerning the French Government Order NOR MERP9300051A of 22 March 1993 and subsequent amendments laying down the official names and the trade description of pectinidae (scallops). This request is made pursuant to Article XXII of the General Agreement on Tariffs and Trade 1994 (GATT 1994), Article 14.1 of the Agreement on Technical Barriers to Trade, and Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes of the World Trade Organization. The Government of Canada hopes that these consultations will lead to the full restoration of its long-standing competitive position on the French market for the pectinidae (scallops) called "noix de coquille Saint-Jacques" or "noix de Saint-Jacques" in France.

As already mentioned, this issue concerns the original Order and the amendments NOR ECOC9300190A of 29 December 1993 and NOR ECOC9400066A of 3 October 1994, whose effect is to restrict the trade description that may be used in France for the marketing of the Canadian scallops whose scientific name is Placopecten magellanicus. The most recent amendment imposes use of the term "pétoncle (Saint-Jacques)" (small scallop) until 31 December 1995; after that date, only the word "pétoncle" will be authorized. The requirement that Canadian scallops should be described as "pétoncles" has already greatly weakened the competitive position of the Canadian product on the French market and has decreased the volume and value of Canadian exports. The eventual prohibition on using the description "Saint-Jacques" will only worsen the situation.

This measure by the French Government is unjustified because it is contrary to traditional trade practice and the consumer does not make any distinction between Placopecten magellanicus and other scallops which can be called "noix de Saint-Jacques"; there is in fact no difference between these products in terms of colour, size, texture, appearance and use.

Contrary to the European Union's obligations under Article III of GATT 1994, Canadian scallops are given less favourable treatment than that given to the like national product. Moreover, contrary to Article I of GATT 1994, scallops from other member countries may be described as "noix de Saint-Jacques", whereas the Canadian product, which is a like product, cannot be so described.

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In addition, the measure is not consistent with Article 2 of the Agreement on Technical Barriers to Trade.

Since 1993, Canada has made several sincere efforts to settle the issue with the French Government. Subsequently, consultations with the EU under Article XXII.1 of the General Agreement on Tariffs and Trade 1947 enabled a temporary solution to be identified, although Canada clearly stated that a permanent solution was necessary. Not only has no permanent solution arisen but, in October 1994, the French Government introduced an amendment which annulled the temporary solution.

The original Order, as well as the subsequent amendments, cannot be justified under the Agreement Establishing the World Trade Organization (WTO Agreement); they nullify and impair the rights Canada enjoys under the WTO Agreement. Furthermore, the material economic injury suffered by Canada as a result of the Order, in comparison with its reasonable expectations, also constitutes nullification and impairment.

In conclusion, the Government of Canada requests consultations with a view to arrive at a mutually satisfactory agreement.