OPINION OF ADVOCATE GENERAL SAGGIO
delivered on 9 MARCH 2000 *

Subject of the case and national legislation

1. By this reference for a preliminary ruling, the Tribunal de Police (Local Criminal Court) Belley, France, effectively asks the Court to establish whether French legislation which prohibits the use of the designation 'Emmenthal' for cheese which does not have a hard rind of a yellow golden colour constitutes a measure having equivalent effect to a quantitative restriction on imports within the meaning of Article 30 of the EC Treaty (now, after amendment, Article 28 EC). Before answering the question however, it must first be ascertained whether the conditions for that Community provision to be applied by the national court are fulfilled, as the case concerns criminal proceedings against a French company which produces and markets cheese on the national territory.

2. It is clear from the order for reference and the comments made by the French Government that the first paragraph of Article 3 of Decree No 84-1147 of 7 September 1984 provides that 'the labels and labelling methods used must not be such as to give rise to confusion in the mind of the purchaser or the consumer, particularly as to the characteristics of the foodstuff and, specifically, as to its nature, identity, properties, composition, quantity, durability, method of conservation, origin or provenance, method of manufacture or production.'

The 'characteristics of the foodstuff', as described in Article 3, are defined in Decree No 88-1206 of 30 December 1988 (hereinafter 'the 1988 decree'), which states that 'the designations listed in the Annex [to that decree] are reserved for cheese meeting the requirements relating to manufacture and composition which are described in the said Annex.' Emmenthal cheese is described as follows: 'a firm cheese produced by curing, pressing and salting on the surface or in brine; of a colour between ivory and pale yellow, with holes of a size between a cherry and a walnut; hard, dry rind, of a colour between golden yellow and light brown'.

National proceedings and question referred for a preliminary ruling

3. Following an inspection carried out on 5 March 1996 at the premises of the

* Original language: Italian.

company Schoeffer S.A. in Avignon, the Directorate for Competition, Consumer Affairs and Prevention of Fraud of the Department of Vaucluse found 260 whole Emmenthal cheeses without any hard, dry rind. Those cheeses came from the 'Laiterie d'Argis' whose technical manager is Mr Jean-Pierre Guimont, the appellant in the main proceedings.

On 6 January 1998 Mr Guimont was ordered, under the simplified criminal procedure, to pay 260 fines of FRF 20 each for holding for sale, selling or offering a foodstuff with deceptive labelling. The foodstuff in question was Emmenthal cheeses without any rind.

Mr Guimont lodged a formal objection to the order, arguing, inter alia, that French legislation concerning the designation 'Emmenthal' constituted a measure having equivalent effect to a quantitative restriction to imports and was therefore contrary to the general rules on the single market as laid down in Articles 3(a) (now, Article 4 EC), and 30 et seq. of the EC Treaty.

4. The Tribunal de Police in Belley therefore considered it necessary to stay the proceedings before it and submitted the following question to the Court for a preliminary ruling: 'On a proper construction of Articles 3(a) and 30 et seq. of the Treaty establishing the European Community, as amended, must the French rules enacted by Decree No 88-1206 of 30 December 1988, which prohibit the manufacture and marketing in France of a cheese without rind under the designation "Emmenthal", be regarded as constituting a quantitative restriction or a measure having equivalent effect on intra-Community trade?'

Admissibility

5. The French Government, supported by the Danish Government, considers that the question referred for a preliminary ruling is inadmissible, arguing that the case in dispute is of a purely domestic nature.

Both the intervening parties ask the Court not to confirm the line taken in the *Pistre* case of 1997,[1] in which the Court gave a judgment on a question referred for a preliminary ruling, even though the factual elements of the main dispute were restricted to national territory. In that case, the French referring Court asked the Court

1 — Joined Cases C-321/94, C-322/94, C-323/94 and C-324/94 *Pistre* [1997] ECR I 2343.

to interpret Article 30 in relation to French legislation which prohibited the inclusion of the designation 'mountain' or 'Monts des Lacaune' on the label of cooked meat products without prior authorisation from the competent administrative authorities; such authorisation concerning the use of indications reserved for mountainous areas. The persons charged in the case were French citizens who had been prohibited from producing and marketing their own cooked meat products in France. In that judgment the Court, referring to the concept of a measure having equivalent effect to a restriction on imports, as stated in the *Dassonville* case,[2] and allowing that the application of a national measure which did not in any way concern the importation of goods did not fall within the scope of Article 30 of the Treaty,[3] nevertheless stated that 'Article 30 cannot be considered inapplicable simply because all the facts of the specific case before the national court are confined to a single Member State.' It went on to hold that,with regard to the situation in which the national dispute arose, 'the application of the national measure [might] also have effects on the free movement of goods between Member States, in particular when the measure in question facilitates the marketing of goods of domestic origin to the detriment of imported goods.' According to the Court, the application of internal rules 'even if restricted to domestic producers, in itself creates and maintains a difference of treatment between those two categories of goods, hindering, at least potentially, intra-Community trade.'[4]

That case, unlike that presented to us by the Tribunal de Police, Belley, was thus characterised by the fact that the domestic legislation on the designation 'mountain' linked the production of cooked meat products to a specific place of origin of the ingredients in the product and made the use of that designation conditional upon an express authorisation procedure. The Court appears to have inferred from those circumstances that even the simple application of the disputed legislation to national products could, to some degree, have had an effect on the importation of cooked meat products with the same designation.

6. It cannot, however, be disregarded that such an approach has earlier origins,[5] and, more particularly, in Case 298/87 *Smanor*

2 — Case 8/74 *Dassonville* [1974] ECR 837, paragraph 5.

3 — On this point the Court referred to Case 286/81 *Oosthoek's Uitgeversmaatschappij* [1982] ECR 4575, in which it was stated that 'the application of the Netherlands legislation to the sale in the Netherlands of encyclopaedias produced in that country is in no way linked to the importation or exportation of goods and does not therefore fall within the scope of Articles 30 and 34 of the EEC Treaty. However, the sale in the Netherlands of encyclopaedias produced in Belgium and the sale in other Member States of encyclopaedias produced in the Netherlands are transactions forming part of intra-Community trade' which is within the purposes of the achievement of the common market (paragraph 9). Also, see Joined Cases 314/81 to 316/81 and 83/82 *Waterkeyn* [1982] ECR 4337.

4 — This case-law would appear to be confirmed in Case C-184/96 *Commission* v *France* [1998] ECR I-6197, in which the Court gave a judgment on an action for infringement which concerned the national legislation concerning trade descriptions to preparations with *foie gras* as a base, therefore on a measure applicable indiscriminately to domestic and foreign products. In that case, however, given the nature and object of the action brought by the Commission and thus the absence of a national dispute waiting to be resolved, the problem of the relevance of the judgment of the Community Court in relation to purely domestic situations did not arise.

5 — I refer to the detailed case-law which can be found in the opinion of Advocate General Jacobs delivered on 24 October 1996 in the *Pistre* case [1997] ECR I-2346.

[1988] ECR 4489, in which the Court ruled on a reference for a preliminary ruling concerning facts which had no bearing outside the national territory. The national proceedings had been brought by a French company which disputed the French legislation on the labelling and presentation of yoghurt, which had prohibited it from producing and selling frozen yoghurt on French territory. The Advocate General pointed out, in his Opinion, that the situation underlying the national proceedings was exclusively national. However, he considered that it was up to the referring court to determine whether a reply to the question referred for a preliminary ruling was necessary for it to give its decision and that, therefore, once the question had been referred, the Court was bound to make a reply. The Court accepted that argument. On the basis of the finding that French legislation could produce restrictive effects on the import of products from other Member States and stating that 'it is for the national courts, within the system established by Article 177 of the Treaty, to weigh the relevance of the questions which they refer to the Court in the light of the facts of the cases before them', [6] it ruled that Article 30 precluded national rules reserving the use of the designation yoghurt to fresh yoghurt only and not frozen yoghurt. However, it limited its reply exclusively to imported products. [7]

7. In my view, the problem raised by the French and Danish Governments concerning the applicability of Article 30 to the resolution of the dispute in the main proceedings should therefore not be resolved solely on the basis of an abstract analysis of the effects of national legislation on imports from other Member States, as it also concerns the relevance of the preliminary ruling in the context of the national judgment, at least with reference to the interpretation of Article 30 of the Treaty. There is no doubt that examination of the characteristics of the case which is the subject of the main action, and the assessment as to its purely internal nature, is in principle a matter for the national court; it is precisely on the basis of the applicability of Community law to the national dispute that the latter is required to assess the relevance of a possible question referred for a preliminary ruling. However, as Advocate General Cosunas has rightly pointed out in the *Belgapom* case, [8] the Court may refrain from replying to a question referred for a preliminary ruling where the facts set out by the national court clearly establish that the situation which gave rise to the national dispute is purely internal. With regard to the dispute pending before the Tribunal de Police, Belley, there is no doubt as to the

6 — The Court expressed a view on this point recently in Case C-254/98 *Tk-Heimdienst Sass* [2000] ECR I-151, where it rejected an objection of inadmissibility raised by the claimant in the main proceedings relating to the irrelevance of the preliminary ruling for the settlement of the national case, such objection being based precisely on the fact that the interpretation of the Court 'is not relevant to other Member States'; the Court stated that 'it is solely for the national court ... to determine, in the light of the particular circumstances of the case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court' and that therefore 'where the questions submitted by the national court concern the interpretation of Community law, the Court of Justice is, in principle, bound to give a ruling' (see in particular, paragraphs 11 to 14).

7 — It is stated in the decision that 'Article 30 of the Treaty precludes *a Member State from applying to products imported* from another Member State... national rules which reserve the right to use the name yoghurt solely to fresh yoghurt to the exclusion of deep-frozen yoghurt' (emphasis added).

8 — Opinion delivered on 23 March 1995 in Case C-63/94 *Belgapom* v *ITM and Vocarex* [1995] ECR I-2467, in particular paragraph 15.

purely internal nature of this case, taking into account the nationality of the undertaking which produces and distributes the product and the place of its production and sale. Therefore, the prohibition imposed on Member States by Article 30 against adopting or maintaining quantitative restrictions on imports or measures having equivalent effect cannot be of any relevance.

That conclusion is, as the Danish Government points out, confirmed by the fact that other questions referred for a preliminary ruling, concerning the free movement of persons rather than of goods, did not have same outcome as the action in *Pistre*. In many judgments in which a similar problem arose, the Court has not hesitated to decline to reply to questions, having regard to the irrelevance and therefore the non-applicability of Community provisions to factual situations before the national courts, given the purely internal nature of the national dispute. [9] Finally, it may also be asked whether a judgment in a preliminary ruling such as in *Smanor* and *Pistre* could affect the settlement of the case pending before the referring court. Community law cannot counter the effects of national legislation in relation to situations which are purely internal, even where, as in *Pistre*, (local) producers are required to use a particular designation only for ingredients, that is to say components of the product, which come from a specific region of the national territory. It follows that even if, in its interpretation, the Court of Justice finds national legislation to be contrary to Article 30, the national court may in the absence of 'intra-Community trade', [10] apply that legislation to national undertakings wishing to produce and market their own products on national territory.

It is of no importance in that regard that, in this case, as in *Smanor* and *Pistre*, the obligation placed on the national producer to comply with specific production standards taking the form of a prohibition on using a designation for goods that do not exhibit particular characteristics and in respect of which a given method of manufacture has therefore not been complied with, may have some effect (potential and fairly remote in my opinion, especially in relation to the present case and *Smanor*) on imports. Manufacturing rules imposed at national level are not generally aimed at protecting local production, but rather at ensuring that the quality of the product remains consistent; an aim which, in my opinion, is in keeping with the general aims guiding Community law in the matter of the manufacture and marketing of agricultural products.

9 — See case-law stated by the Danish Government, namely Joined Cases C-54/88, C-91/88 and C-14/89 *Nino et al* [1990] ECR I-3537; Joined Cases C-330/90 and C-331/90 *Brea and Palacios* [1992] ECR I-323 and Joined Cases C-64/96 and C-65/96 *Uecker and Jacquet* [1997] ECR I-3171. For the contrary view, Joined Cases 98/85, 162/85 and 258/85 *Bertini et al* [1986] ECR 1885.

10 — This is the phrase used in the *Oostboek's Uitgeversmaatschappij* case.

8. On the basis of all these considerations, I consider that, given the purely internal nature of the situation at issue in the main proceedings, the provisions of Community law of which interpretation is requested do not apply to it, and that it is not necessary to give a ruling on their compatibility with the French measures concerning use of the designation Emmenthal.

Merits

Article 30 of the Treaty

9. If the Court adopts a solution other than that suggested, it will be necessary to determine the compatibility of the French legislation with the principal provisions of Community law on the free movement of goods, which prohibit obstacles to the importation of products from other Member States.

10. a) The Community system does not provide any specific protection for the designation 'Emmenthal'; it is not a protected designation of origin within the meaning of Council Regulation (EEC) No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs, and neither has any [11] certificate of specific character been issued for it under Council Regulation (EEC) No 2082/92 of 14 July 1992 on certificates of specific character for agricultural products and foodstuffs. [12]

11. According to the applicant in the main proceedings, supported by the German, Austrian and Netherlands Governments, it is a generic name within the meaning of Article 3(1) of Regulation No 2081/92. That article, in addition to prohibiting the registration of generic names, lists the factors used to determine whether a name has become generic; these are '[the] existing situation in the Member State in which the name originates and in areas of consumption, [the] existing situation in other Member States, [the] relevant national or Community laws.' No evidence has been put forward against that argument; on the contrary, in the observations of all the intervening parties the generic nature of this name is assumed, in the sense that it is not linked to production in a particular

11 — OJ 1992 L 208, p.1.

12 — Commission Regulation (EC) No 1107/96 of 12 June 1996, on the registration of geographical indications and designations of origin under the procedure laid down in Article 17 of Council Regulation (EEC) No 2081/92 (OJ 1996 L 148, p. 1). According to that regulation, the French designations 'Emmenthal Est-Central' and 'Emmenthal de Savoie' are protected as geographical indications.

place and therefore to the geographical provenance of the product, but only to the (generic) characteristics of the product itself, linked to the fact that the product has the same general characteristics because similar manufacturing processes are used.

Concerning the production of Emmenthal without rind in Community territory, it can be seen from the information provided by the applicant in the main proceedings and confirmed by the Commission that this type of cheese is produced in Denmark and Germany and marketed in Spain. It is therefore quite clear that the French legislation, which recognises the right to use that designation only in respect of cheeses with a rind of ivory yellow colour, may involve a restriction on the importation of Emmenthal cheese produced in those Member States.

12. Do those possible effects on intra-Community trade make the measure open to censure under the Treaty provisions on the free movement of goods?

A reading of the Court's case-law on the interpretation of the provisions on this matter, with regard to domestic measures which set the conditions for the use of a designation, leaves no room for doubt; taking its inspiration from the broad concept of measures having equivalent effect, stated in *Dassonville*, the Court held, first, that where a name is considered generic in the common market, a Member State is not entitled to limit its use to domestic products which have particular characteristics, and, second, apart from the generic nature of the name, a State cannot, by applying its own rules on the designation of foodstuffs, prohibit the entry into its territory of a product which is labelled with the same name used in accordance with the rules on the matter applicable in the State of provenance.

Concerning the first aspect, that is to say with regard to limitations on the use of generic names, I recall that in 1981, giving judgment on an infringement action with regard to Italian legislation prohibiting the importation and marketing, under the name 'vinegar', of products which were not wine-based, the Court, after finding that the name was generic, held that 'it would not be compatible with the objectives of the common market, and in particular with the fundamental principle of

the free movement of goods, for national legislation to be able to restrict a generic term to one national variety alone, to the detriment of other varieties produced, in particular, in other Member States.' [13]

13. Concerning the second aspect, regarding limitation on the use of names, I refer to the *Deserbais* judgment, [14] which was referred to several times by the parties involved in this case, in which the Court had been asked to give a judgment on the interpretation of Articles 30 et seq. in relation to a French regulation which restricted use of the name 'Edam' to cheeses with a minimum fat content of 40%. The Court of Justice found, first, that the name constituted neither an appellation of origin nor an indication of origin, both expressions describing products coming from a specific geographical area. It then noted that at the time, in 1988, there were no common rules governing the names of the various types of cheeses in the Community, and concluded that States were entitled to lay down rules making the use of names for cheeses subject to compliance with particular rules of manufacture. However, it also stated that it would be 'incompatible with Article 30 of the Treaty and the objectives of a common market to apply such rules to imported cheeses of the same type where those cheeses have been lawfully produced and marketed in another Member State under the same generic name, but with a different minimum fat content.' [15]

That case-law clearly shows that, although Member States retain the competence to issue rules concerning the manufacture of products and therefore the use of specific names, such internal rules may not amount to a prohibition on the marketing and thus the importation of products which have the same name as the national products, on the ground that the imported products do not

13 — Case 193/80 *Commission* v *Italy* [1981] ECR 3019, in particular paragraph 26. See also Case 178/84 *Commission* v *Germany* [1987] ECR 1277, in particular paragraphs 33 et seq. I should point out that in Case 12/74 *Commission* v *Germany* [1975] ECR 181, the Court had already given a judgment on a similar national measure, which, however, limited the use of the generic designation to products which had not only been manufactured according to the traditional rules, but which had also been produced on the national territory. On that occasion the Court had considered that the German regulation was a measure having equivalent effect to a restriction on imports as it reserved the designations 'sekt' and 'weinbrand' respectively for sparkling wines and strong spirits produced in Germany and having particular requirements of quality, as these designations did not constitute either indications of origin or indications of provenance and therefore, within the meaning of Article 2(3)(s) of Directive 70/50/EEC, they could only be applied to national products (in particular, paragraph 14).

14 — Case 286/86 *Deserbais* [1988] ECR 4907.

15 — See in agreement with this point, Case C-210/89 *Commission* v *Italy* [1990] ECR I-3697, and *Commission* v *France*, already mentioned.

comply with the domestic manufacturing rules. Products lawfully labelled in the Member State of origin must be able to move freely throughout the Community territory.

14. The French regulation at issue in this case is similar to that examined in *Deserbais*. There is no doubt that the French legislation which prohibits the use of the designation 'Emmenthal' for cheese without rind is, like that relating to the designation 'Edam', an actual or potential obstacle to the marketing in France of a cheese which has been lawfully manufactured and packaged in another Member State. It therefore constitutes a measure having equivalent effect to a restriction on imports within the meaning of Article 30 of the EC Treaty.

15. b) The French Government affirms the legitimacy of its own regulation by arguing that it applies only to domestic products inasmuch as it concerns the production and not the marketing of Emmenthal cheese. In support of that interpretation of its national legislation it states that the flow into France of Emmenthal without rind has increased consistently over time. From that it could be deduced that there has not been any obstacle in the importing phase and subsequent marketing. In addition, the French Government recalls that Article 18 of Decree No 88-1206, in dispute in the main proceedings, states that its provisions are not to prevent 'the application of the rules on manufacture, designation and labelling regarding cheeses which have a designation of origin.' The Government argues that, rather, the French regulations give rise to reverse discrimination; they put French producers in a less favourable position than foreign producers and cannot, therefore, for that reason alone, be regarded as a measure having equivalent effect to a restriction on intra-Community trade in agricultural products.

16. In my opinion, these observations by the French Government are irrelevant to the interpretation of Community provisions which the Court is asked to make. It is not for the Community judicature to determine the scope of domestic legislation, even if, as in this case, the application of the internal rules to imported goods is disputed.

In the order for reference, the national court interprets the domestic regulation as

prohibiting 'the manufacture and *marketing in France*' (emphasis added) of a cheese without rind under the designation 'Emmenthal'. [16] In my view, the Court cannot depart from that interpretation of the French rules unless, in the light of the actual or potential effects of the measure, it identifies factors which in fact contradict the meaning attributed to that regulation by the national court. Such factors certainly cannot be inferred from the fact that 'Emmenthal' cheese without rind is constantly imported into France, since, if one refers to the letter of that French provision, there is nothing to exclude the possibility that the administrative authorities might have applied the domestic legislation in the past, or might apply it in the future, in such a way as to prohibit, or in some way impede, the free marketing of that product under the name 'Emmenthal'.

17. c) The French Government also argues that the disputed national legislation was adopted in accordance with the provisions of a treaty. The Stresa Convention, concluded on 1 June 1951 between the French Republic, the Kingdom of the Netherlands, the Republic of Austria, the Kingdom of Denmark, The Italian Republic and the Swiss Confederation on the use of appellations of origin and names of cheeses, lays down the specific characteristics of cheeses for which the name 'Emmenthal' is reserved. More precisely, Article 4 of Annex B requires that whole 'Emmenthal' cheeses be surrounded by 'a hard, dry rind, of a colour between golden yellow and light brown.' [17]

Concerning that argument, it is sufficient to note that the Stresa Convention, being an international agreement concluded before the EC Treaty came into force between a number of Member States and one non-Member State, has no binding effect in relations between the Member States and does not therefore detract from the obligations upon the latter under primary and secondary Community law. Although Article 234 of the EC Treaty (now Article 307 EC) provides that the provisions of the Treaty are not to affect rights and obligations under previous agreements, it requires Member States to eliminate all incompatibilities of the prior convention provisions with Community law, so that, on the basis of that Article, the relations between Mem-

16 — See in particular the question for a preliminary ruling on page 7 of the order for reference.

17 — In its pleading the French Government also referred to the *Codex Alimentarius*, fixed jointly by the FAO and the WHO, which establishes that a cheese can be sold with the designation 'Emmenthal' provided that the cheeses have a minimum weight of 50 kg or are in rectangular form, with or without rind, with a minimum weight of 30 kg. Apart from the fact that the *Codex* does not exclude the possibility that cheese without rind may be designated 'Emmenthal', it is in agreement with what was stated in the *Deserbais* judgment, in reply to the arguments of the Netherlands Government which called upon the same international source; and that is that the provisions of the *Codex* 'set the purpose of providing indications which allow the characteristics of these products to be identified. However, the simple fact that goods do not entirely comply with the provision does not mean that its marketing may be prohibited.'

ber States and non-Member States remain unchanged. [18]

18. d) Finally, I note that the French Government does not raise any imperative requirement to justify the restrictive measure, but only argues that the presence of the rind presupposes more exacting manufacturing methods; the rind would increase the loss of fat and the cost of labour for refining operations, in particular because of the need to turn, wash and brush the cheeses before packing; operations which mean an increase in the retail price of Emmenthal of about 1.5 FRF per kilogramme.

In my opinion, it cannot be deduced from these factors that the presence of the rind around the Emmenthal cheese justifies the imposition of a different designation; in both cases the cheese is manufactured with ingredients and following criteria which are substantially the same and the final product corresponds to what is traditionally known as 'Emmenthal'. As the Court of Justice rightly stated in *Deserbais*, a measure prohibiting the use of a given designation, which is, however, allowed in another Member State, can be considered justified and therefore lawful within the meaning of the Treaty, only if the product imported 'is so different as regards its composition or production, from the products generally known by that name in the Community, that it cannot be regarded as falling within the same category.' [19]

I recall in that respect that Article 5(1) of Council Directive 79/112/EEC of 18 December 1978 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs for sale to the ultimate consumer, [20] as amended by Directive 97/4/EC, [21] establishes that, in the absence of specific provisions at Community level, the designation of the product is that recognised in the State of origin at the time of sale to the consumer and that the only circumstances in which it cannot be used in the State of marketing are those where the product 'is so different as regards its composition or production, from the prod-

18 — On this point also I refer to the *Deserbais* judgment, which states in paragraphs 17 and 18 that 'the purpose of Article 234(1) of the Treaty is to lay down, in accordance with the principles of international law, that the application of the Treaty does not affect the duty of the Member State concerned to respect the rights of non-Member countries under a prior agreement and to perform its obligations thereunder ... Consequently, provided that, as in the present case, the rights of non-Member countries are not involved, a Member State cannot rely on the provisions of a pre-existing convention of that kind in order to justify restrictions on the marketing of products coming from another Member State where the marketing thereof is lawful by virtue of the free movement of goods provided for by the Treaty.' See also Case 10/61 *Commission* v *Italy* [1962] ECR 1 and Case 812/79 *Burgoa* [1980] ECR 2787.

19 — See paragraph 13, and in the same vein, the *Smanor* judgment, paragraph 25, and *Commission* v *France*, already mentioned.

20 — OJ 1979 L 33, p. 1

21 — Directive of the European Parliament and the Council of 27 January 1997, amending Directive 79/112/EEC on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs (OJ 1997 L 43, p. 21).

uct known by that name' that additional information on the label would not be 'sufficient to ensure, in the Member State of marketing, correct information for consumers' [b) and c)].

If, however, as the French Government argues, the difference in manufacturing criteria involves a difference in the quality of the product, it would in my view be justified to adopt measures which, while not prohibiting the use of the name, warn the consumer of the difference in the product — particularly because, at the moment of sale to the final consumer, it could be difficult, (in the case of sale in pre-packaged portions) to distinguish between Emmenthal cheese with or without a rind. In this case, given that mere indication of the place of manufacture, which already appears on the label, it is not sufficient to distinguish Emmenthal with a rind from that without a rind, since both types of cheese may be produced in one State, it would in my view be justified and proportionate to have a national measure making it obligatory to inform the final consumer of the presence of a rind with an appropriate indication on the label, particularly when the product is sold in pre-packaged portions.

Article 34 of the EC Treaty

19. The Commission has also considered the effects of the regulation at issue on the export of French Emmenthal, given that the prohibition on manufacture effectively entails a prohibition on exporting cheese without a rind produced in France. Referring to the *Groenveld* judgment of 1979,[22] it has concluded that in this case the factors establishing an infringement of Article 34 are not present, as the national provisions did not have as their object or effect a specific restriction on the export of Emmenthal.

I agree with that argument. I recall that, from the *Groenveld* judgment onwards, the Court's interpretation of Article 34 has always been to exclude from the scope of that provision national measures applicable without distinction to domestic and exported products, which could indirectly produce some effect on the sale of products intended for export and therefore to consider as measures having equivalent effect to export restrictions only those which restrict 'patterns of exports' thereby giving rise to a 'difference in treatment between the domestic trade of a Member State and its export trade in such a way as to provide a particular advantage for national produc-

22 — Case 15/79 *Groenveld* [1979] ECR 3409. See also *ex multis*, Case 237/82 *Jongeneel Kaas et al* [1984] ECR 483, and Case C-80/92 *Commission* v *Belgium* [1994] ECR I-1019.

tion or for the domestic market of the State in question at the expense of the production or of the trade of other Member States.' [23] There is a clear difference in the treatment of measures directly or indirectly affecting imports compared with those affecting exports; since the judgement in *Dassonville*, Article 30 has been interpreted as applying to all national measures having any effect whatsoever on trade in a product, irrespective of the existence and scope of actual consequences on imports, whereas the interpretation of Article 34 is still linked to the specific effects of the legislation upon exports of products and the existence of discrimination between the system of exports and the system of marketing in the country of production. [24]

In my view, that line of authority from the Court should be confirmed. To include amongst the measures which hinder intra-Community trade all those which are in some way unfavourable to the manufacture and therefore the sale of national products which could potentially be intended for export would be effectively to hold that Community law on the free movement of goods affects any national rule which contains any discrimination in the production and sale of domestic products. In other words, a broad interpretation of Article 34 would damage a cardinal principle of the regulatory foundation which has made it possible to achieve the single market, a principle which consists in excluding from the obligations of the Member States linked to the process of integration a prohibition on adopting or maintaining in force any measures which place people, products, capital or internal services at a disadvantage compared with those in other countries, that clearly being in the absence of sectoral Community provisions normally contained in acts of secondary legislation. [25]

On the basis of those considerations, I therefore consider that the French legislation in question does not constitute a measure having equivalent effect to a restriction on exports within the meaning of Article 34 of the EC Treaty.

23 — Paragraph 7.

24 — I should point out, however, that in Case C-272/95 *Deutsches Milch-Kontor* [1997] ECR I-1905, the Court appears, on a first reading, to extend to Article 34 the concept of a measure having equivalent effect to a restriction on imports as stated in the *Dassonville* judgment, as in paragraph 24 it states that the prohibitions stated in Articles 30 and 34 of the Treaty 'extend to cover all trading rules of the Member States which are likely to impede, directly or indirectly, actually or potentially, intra-Community trade'.

25 — Concerning the legitimacy of the so-called reverse discrimination, I refer to, amongst others, Case 355/85 *Driancourt* [1986] ECR 3231, and Case 98/86 *Mathot* [1987] ECR 809.

Conclusions

20. In view of the above considerations, I suggest that the Court answer the question referred for a preliminary ruling by the Tribunal de Police, Belley, as follows:

(1a) Article 30 of the EC Treaty (now Article 28 EC) et seq. do not apply to purely domestic situations in a Member State, such as that of an undertaking established in a Member State which, on the basis of domestic legislation concerning the use of a designation, is prohibited from producing and marketing its own products within the national territory.

If the Court adopts the opposite solution to that suggested under 1a), I propose that it answer the same question as follows:

(1b) Article 30 of the EC Treaty (now Article 28 EC) precludes a national regulation which makes the right to designate a type of cheese as 'Emmenthal' subject to the condition that it has a hard rind of a golden yellow colour.

(2) Article 34 of the EC Treaty (now Article 29 EC) does not preclude a national regulation which makes the right to designate a cheese as 'Emmenthal' subject to the condition that it has a hard rind of a golden yellow colour.