Reports of Cases

OPINION OF ADVOCATE GENERAL
ĆAPETA
delivered on 21 March 2024[1]

Case C-399/22

Confédération paysanne
v
Ministre de l'Agriculture et de la Souveraineté alimentaire,
Ministre de l'Économie, des Finances et de la Souveraineté industrielle et numérique

(Request for a preliminary ruling from the Conseil d'État (Council of State, France))

(Reference for a preliminary ruling – Consumer information on foodstuff – Country of origin labelling requirements – Fruit and vegetables harvested in Western Sahara – Member States' competence to prohibit unilaterally the importation of products not bearing a correct 'country of origin' label)

I. Introduction

1. 'The territory of Western Sahara does not belong to the Kingdom of Morocco; consequently, a label indicating that the origin of those goods is Morocco infringes EU foodstuff labelling requirements.'

2. That, in a nutshell, is the argument of the applicant before the national court. The applicant accordingly sought a decision from the ministère de l'agriculture et de la souveraineté alimentaire (Ministry of Agriculture and Food Sovereignty, France) and the ministère de l'économie, des finances et de la souveraineté industrielle et numérique (Ministry of Economics, Finance and Industrial and Digital Sovereignty, France) ('the Ministries') to prohibit the importation of cherry tomatoes and Charentais melons ('the products at issue') originating in the territory of Western Sahara that are labelled as originating in the Kingdom of Morocco.

3. The dispute raises two distinct questions.

[1] Original language: English.

4. The first is whether the Member States may act unilaterally in the field of the common commercial policy to prohibit the importation of certain goods from third countries. While not a novel question, in view of recent Member States' measures against imports from Ukraine, the question is certainly topical from a broader perspective. [2]

5. The second issue to be resolved relates to the labelling of foodstuffs originating in the territory of Western Sahara. The question here is whether those products may be marketed as originating in the Kingdom of Morocco. That question may be placed within the context of the judgments in *Council* v *Front Polisario* [3] and in *Western Sahara Campaign UK*, [4] in which the Court recognised the separate territorial status of the territory of Western Sahara. [5]

II. The legal and factual context of the present case and the questions referred for a preliminary ruling

6. Western Sahara is a territory in northwest Africa. It was colonised by the Kingdom of Spain in the 19th century. In 1963, during the context of the process of decolonisation, that territory was added by the United Nations to the list of non-self-governing territories. [6] It remains on that list to this day.

7. The process of decolonisation has not (yet) been accomplished and Western Sahara remains the only non-self-governing territory in Africa. Spain renounced its responsibility as a colonial administering power in 1976. Ever since, a conflict, including of a military nature, over the territory has persisted between the Kingdom of Morocco, which controls approximately 80% of the territory of Western Sahara and claims sovereignty over its entirety, and the Front Populaire pour la libération de la saguia-el-hamra et du rio de oro ('Front Polisario'), which controls the remainder of the territory of Western Sahara and claims to represent the Sahrawi people. The Sahrawi people were recognised as holding the right to self-determination by the International Court of Justice in its Advisory Opinion on Western Sahara. [7]

2 Starting in March 2023, the Bulgarian, Hungarian, Polish, Romanian and Slovakian Governments threatened to prohibit unilaterally the importation of tariff-free Ukrainian grain and agricultural products (a measure imposed in response to the Russian Government's targeting of grain exports through Ukraine's Black Sea ports). In response, the European Commission, initially until 5 June 2023 (Commission Implementing Regulation (EU) 2023/903 of 2 May 2023 introducing preventive measures concerning certain products originating in Ukraine (OJ 2023 L 114I, p. 1)) and then until 15 September 2023 (Commission Implementing Regulation (EU) 2023/1100 of 5 June 2023 introducing preventive measures concerning certain products originating in Ukraine (OJ 2023 L 144I, p. 1)), introduced temporary preventive measures to prohibit the release for free circulation or placing under certain customs procedures of wheat, maize, rapeseed and sunflower seeds from Ukraine, unless those goods are moved to another Member State or to a country or territory outside the customs territory of the European Union.

3 Judgment of 21 December 2016, *Council* v *Front Polisario* (C-104/16 P, EU:C:2016:973; '*Council* v *Front Polisario*').

4 Judgment of 27 February 2018, *Western Sahara Campaign UK* (C-266/16, EU:C:2018:118; '*Western Sahara Campaign UK*').

5 *Council* v *Front Polisario*, paragraph 108, and *Western Sahara Campaign UK*, paragraph 64.

6 United Nations, Report of the Committee on Information from Non-Self-Governing Territories, Supplement No 14 (A/5514) (1963), Annex III 'List of Non-Self-Governing Territories under Chapter XI of the Charter at 31 December 1962 classified by geographical region'.

7 See Advisory Opinion of the International Court of Justice of 16 October 1975, Western Sahara (ICJ Reports 1975, p. 12, paragraph 162). For a more detailed description of the events leading up to the present political situation of Western Sahara, see my Opinions of today in Joined Cases C-778/21 P and C-798/21 P *Commission and Council* v *Front Polisario*, points 5 to 15, and in Joined Cases C-779/21 P and C-799/21 P, *Commission and Council* v *Front Polisario*, points 8 to 28.

8. The conflict in Western Sahara is not new to the Court. Recognising that the right to self-determination binds the European Union in its conduct of external relations, the Court held in *Council* v *Front Polisario* and in *Western Sahara Campaign UK*, that the territory of Western Sahara enjoys a status separate and distinct from that of any State, including from the Kingdom of Morocco. [8]

9. On that basis, the Court interpreted the Association Agreement and the and Fisheries Partnership Agreement, [9] the territorial application of which were respectively limited to the 'territory of the Kingdom of Morocco' and the 'waters falling within the sovereignty or jurisdiction of the Kingdom of Morocco', as not including the territory of Western Sahara or the waters adjacent thereto. [10]

10. The Council instructed the Commission to act upon the Court's judgments in *Council* v *Front Polisario* and in *Western Sahara Campaign UK*. [11] The outcome of the ensuing negotiations with the Kingdom of Morocco is reflected, in one part, in an agreement extending tariff preferences to goods originating in the territory of Western Sahara, [12] and, in another, by the agreement and implementation protocol relating to sustainable fishing in the waters adjacent to Western Sahara. [13]

11. Front Polisario have challenged the decisions approving those agreements. The appeals against the judgments of the General Court, by which it annulled those decisions, [14] are pending before the Court. In parallel to the present Opinion, I will also deliver my Opinions in those two sets of appeals today. [15] However, and irrespective of whether the Court will follow my Opinions in those cases, their outcome will not affect the solution of the present case.

12. In the present case, the applicant in the main proceedings before the national court is Confédération paysanne, a French agricultural union. It sought from the Ministries an order *prohibiting the importation* of the products at issue harvested in the territory of Western Sahara. Those products are imported and marketed in France with a label indicating the Kingdom of

8 *Council* v *Front Polisario*, paragraph 92, and *Western Sahara Campaign UK*, paragraph 69.

9 Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part (OJ 2000 L 70, p. 2; 'the Association Agreement'), at issue in *Council* v *Front Polisario*, and the Fisheries Partnership Agreement between the European Community and the Kingdom of Morocco (OJ 2006 L 141, p. 4; 'the Fisheries Partnership Agreement'), at issue in *Western Sahara Campaign UK*.

10 *Council* v *Front Polisario*, paragraph 92, and in *Western Sahara Campaign UK*, paragraphs 64 and 69.

11 See Council Decision (EU) 2019/217 of 28 January 2019 on the conclusion of the agreement in the form of an Exchange of Letters between the European Union and the Kingdom of Morocco on the amendment of Protocols 1 and 4 to the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part (OJ 2019 L 34, p. 1), and Council Decision (EU) 2019/441 of 4 March 2019 on the conclusion of the Sustainable Fisheries Partnership Agreement between the European Union and the Kingdom of Morocco, the Implementation Protocol thereto and the Exchange of Letters accompanying the Agreement (OJ 2019 L 77, p. 4).

12 Agreement in the form of an Exchange of Letters between the European Union and the Kingdom of Morocco on the amendment of Protocols 1 and 4 to the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part (OJ 2019 L 34, p. 4; 'the Agreement in the form of an Exchange of Letters').

13 Sustainable Fisheries Partnership Agreement between the European Union and the Kingdom of Morocco (OJ 2019 L 77, p. 8), and Protocol on the implementation of the Sustainable Fisheries Partnership Agreement between the European Union and the Kingdom of Morocco (OJ 2019 L 77, p. 18).

14 See judgments of 29 September 2021, *Front Polisario* v *Council* (T-279/19, EU:T:2021:639), and of 29 September 2021, *Front Polisario* v *Council* (T-344/19 and T-356/19, EU:T:2021:640).

15 See note 7 of this Opinion.

Morocco as their place of origin.[16] The applicant claims that this is contrary to the EU foodstuff labelling requirements that mandate the labelling of a product's correct country of origin. The applicant submits that, when the products at issue are imported into France, they wrongly indicate the Kingdom of Morocco instead of the territory of Western Sahara as their country of origin. Their importation should, therefore, be prohibited.

13. Considering the Ministries as having implicitly rejected that request, the applicant filed an action before the Conseil d'État (Council of State).

14. The referring court is of the view that the applicable rules require that the country or territory of origin of a food product be indicated. That requirement, constituting an element of the marketing of food products, would, in principle, have to be met at the moment of importation. However, the referring court also notes that the applicable regulations do not expressly confer upon Member States the power to adopt measures prohibiting the importation of products which do not comply with that origin labelling requirement. Moreover, the referring court considers that, in light of the Court's judgments in *Council* v *Front Polisario* and in *Western Sahara Campaign UK*, the question arises as to whether the EU rules on foodstuff labelling must be interpreted as requiring that products originating in the territory of Western Sahara cannot refer to the Kingdom of Morocco as the country of origin but must instead make reference to the territory of Western Sahara.

15. In those circumstances, the Conseil d'État (Council of State) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Must the provisions of Regulation No 1169/2011, Regulation No 1308/2013, Regulation No 543/2011 and Regulation No 952/2013 be interpreted as authorising a Member State to adopt a national measure prohibiting the importation, from a specific country, of fruit and vegetables that infringe Article 26 of Regulation No 1169/2011 and Article 76 of Regulation No 1308/2013 for failing to indicate the country or territory from which they actually originate, in particular where that failure is significant and it is difficult to verify the origin once the produce enters the EU?

(2) If the first question is answered in the affirmative, must the Agreement in the form of an Exchange of Letters, approved by the Council Decision of 28 January 2019, amending Protocols 1 and 4 to the Euro-Mediterranean Agreement of 26 February 1996 establishing an association between the European Union and its Member States, and Morocco, be interpreted as meaning that, for the purpose of applying Articles 9 and 26 of Regulation (EU) No 1169/2011 and Article 76 of Regulation (EU) No 1308/2011, on the one hand, fruit and vegetables harvested in Western Sahara have Morocco as the country of origin and, on the other, the Moroccan authorities have the power to issue the certificates of conformity provided for by Regulation No 543/2011 to fruit and vegetables harvested in Western Sahara?

[16] See, in that regard, the submissions in the case before the Conseil d'État (Council of State, France) of rapporteur public Bokdam-Tognetti, who explains that '*des melons et tomates produits dans la région de Dakhla, c'est-à-dire au Sahara occidental, sont effectivement importés et commercialisés en France en mentionnant le Maroc comme pays d'origine, sans indication faisant état du Sahara occidental*' ('melons and tomatoes produced in the Dakhla region, that is to say, in Western Sahara, are actually imported and marketed in France, mentioning Morocco as the country of origin, without any indication of Western Sahara'): submissions of Emilie Bokdam-Tognetti, rapporteur public, No 445088 – Confédération paysanne (9 June 2022).

(3) If the second question is answered in the affirmative, does the Council Decision of 28 January 2019 approving the agreement in the form of an Exchange of Letters comply with Articles 3(5) and 21 TEU and the customary international law principle of self-determination set out, in particular, in Article 1 of the United Nations Charter?

(4) Must Articles 9 and 26 of Regulation (EU) No 1169/2011 and Article 76 of Regulation (EU) No 1308/2011 be interpreted as meaning that, at the stages of importation and sale to the consumer, the packaging of fruit and vegetables harvested in Western Sahara cannot indicate Morocco as the country of origin but must indicate the territory of Western Sahara?'

16. Written observations were submitted to the Court by the Confédération paysanne, the French Government, the Council and the Commission. Those parties also presented oral argument at the hearing that took place on 24 October 2023.

III. Analysis

17. As explained above, the present reference for a preliminary ruling is treated concurrently with two sets of appeals on which I am also delivering my Opinion today.[17] One of the two appeals concerns the validity of the preferential treatment granted to, inter alia, the products at issue imported into the European Union from the territory of Western Sahara.[18]

18. Whatever the outcome of those appeals, the two questions on which the Court has requested that I focus my analysis, namely Questions 1 and 4 as referred, remain relevant.[19]

19. I will address those two questions in turn. With regard to Question 1, I will assess whether the Member States have the competence under EU law to prohibit unilaterally the importation of certain goods into the European Union which allegedly do not bear a correct country of origin label.[20] In relation to Question 4, as referred, I will consider whether the products at issue should indicate Western Sahara as their country of origin, and whether they may also indicate the Kingdom of Morocco as their country of origin.

17 Joined Cases C-778/21 P and C-798/21 P *Commission and Council* v *Front Polisario* and Joined Cases C-779/21 P and C-799/21 P *Commission and Council* v *Front Polisario*.

18 In Joined Cases C-779/21 P and C-799/21 P *Commission and Council* v *Front Polisario*, the Commission and the Council respectively challenge the General Court's judgment of 29 September 2021, *Front Polisario* v *Council* (T-279/19, EU:T:2021:639), in which that court concluded that the Council had failed to comply with the principle of the relative effect of treaties as interpreted by the Court in paragraph 106 of *Council* v *Front Polisario*.

19 Question 3 of the referring court's order, which I shall not deal with in this Opinion, raises the question of the validity of Decision 2019/217; that is an issue which I shall assess separately in my Opinion in Joined Cases C-779/21 P and C-799/21 P *Commission and Council* v *Front Polisario*.

20 As shall become apparent from my Opinion, in light of the reply I propose to give to Question 1, there will be no need for the Court to answer Questions 2 and 3 (given that those questions, as formulated, are contingent on an affirmative reply to Question 1). As I shall also explain in point 56 et seq. of this Opinion, in light of my proposed reply to Question 1, there is also an argument that no answer to Question 4 need necessarily be given.

A. Question 1

1. Reformulating the question

20. Before venturing into the substance of Question 1, I consider it necessary to reformulate it. That is because the referring court explains the need for guidance on Question 1 by reference to the Food Information to Consumers Regulation,[21] the Agricultural Products Regulation,[22] the General Fruit and Vegetable Marketing Regulation,[23] and the Union Customs Code[24] as potential legal bases for the unilateral prohibition of imports that is sought by the applicant.

21. A ban on the importation of certain products is a policy measure governing trade in goods,[25] a matter that, according to Article 207(1) TFEU, falls within the scope of the common commercial policy. Indeed, in its reference for a preliminary ruling, the referring court explains that the measure sought by the applicant does not concern a *sales or marketing ban* of the products at issue in France. Instead, the applicant requested the French authorities to impose unilaterally an *import* ban of those products originating in Western Sahara owing to the alleged violation of EU foodstuff labelling requirements.

22. As the common commercial policy is an exclusive EU policy,[26] France does not have the competence to impose an import ban unless empowered or requested to do so by the European Union.

23. With the exception of the Union Customs Code, all other regulations mentioned by the referring court relate to EU foodstuff labelling on the EU market. Moreover, those regulations were not enacted on the basis of the provisions of the Treaties governing trade with third countries and the common commercial policy (Articles 206 or 207 TFEU), again except for the Union Customs Code. They were instead enacted on the basis of the articles governing agriculture (Article 43 TFEU) and the internal market (Article 114 TFEU).

21 Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004 (OJ 2011 L 304, 22.11.2011, p. 18) ('the Food Information to Consumers Regulation').

22 Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (OJ 2013 L 347, 20.12.2013, p. 671) ('the Agricultural Products Regulation').

23 Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors (OJ 2011 L 157, p. 1) ('the General Fruit and Vegetable Marketing Regulation').

24 Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (recast) (OJ 2013 L 269, 10.10.2013, p. 1) ('the Union Customs Code').

25 Council Regulation (EEC) No 990/93 of 26 April 1993 concerning trade between the European Economic Community and the Federal Republic of Yugoslavia (Serbia and Montenegro) (OJ 1993 L 102, p. 14), which imposed a trade embargo on certain products from, or transiting through, the Federal Republic of Yugoslavia (Serbia and Montenegro), and which was adopted on the basis of Article 113 of the Treaty establishing the European Economic Community (now Article 207 TFEU).

26 Article 3(1)(e) TFEU.

24. Given that they do not regulate trade with third countries, the Food Information to Consumers Regulation, the Agricultural Products Regulation, and the General Fruit and Vegetables Marketing Regulation cannot empower France to adopt the requested measure. In any event, none of those regulations authorise the Member States to prohibit unilaterally the importation of non-conforming products. [27]

25. In order to provide the referring court with a useful answer, I therefore suggest reformulating Question 1 to ask instead whether EU law, in particular the Union Customs Code, authorises a Member State to adopt a national measure prohibiting the importation of fruit and vegetables that do not bear a correct country of origin label.

2. Assessment

26. As I have explained in point 21 of this Opinion, trade in goods is a matter of the common commercial policy. That policy must be governed by uniform principles. [28]

27. Under Article 3(1)(e) TFEU, the European Union has exclusive competence in the area of the common commercial policy. That means that only the European Union can legislate and adopt legally binding acts relating to trade in goods with third countries. [29]

28. The corollary of that competence allocation is that the Member States are precluded from acting in the field of international trade unless specifically empowered to do so by the European Union, or where they implement EU acts.

29. The question before the Court is therefore whether EU primary or secondary law confers autonomous powers on the Member States to put in place the type of unilateral measure requested by the applicant.

30. At the level of EU primary law, the answer is no. The Treaties do not provide for a provision empowering the Member States to put in place unilateral measures that restrict or suspend trade with a third State or territory. [30]

27 As the French Government explains, while the Food Information to Consumers Regulation mandates that operators properly label the foodstuffs that they market (Article 8(2)), it does not prohibit them from importing those same products if the label does not comply with the provisions of that regulation. What is more, Article 38(1) of the same regulation specifically prohibits the Member States from adopting or maintaining measures not authorised by EU law. Similarly, while Article 33(3)(f) of the Agricultural Products Regulation provides for the possibility of market withdrawal, that power, which in any event can be circumscribed by the Commission (Article 37(d)), does not extend to restricting the importation of non-conforming products. What is more, emergency measures, which appear to extend to trade-related measures, may only be adopted by the Commission (recitals 189 and 201, and Article 221). This also applies for the General Fruit and Vegetables Marketing Regulation, which, while specifying that Member States are competent to verify the correct application of marketing standards through conformity checks (see, in particular, Article 9(1)), does not authorise the Member States to implement measures prohibiting the *importation* of non-conforming products.

28 In fact, the very wording of Article 207(1) TFEU refers to the common commercial policy being based on 'uniform principles'.

29 See Article 2(1) TFEU.

30 Needless to say, Article 207 TFEU may always serve as a legal basis to introduce an *EU measure* to suspend trade with a third State or territory: see, for example, Council Regulation (EEC) No 1432/92 of 1 June 1992 prohibiting trade between the European Economic Community and the Republics of Serbia and Montenegro (OJ 1992 L 151, p. 4), introducing a trade embargo covering all imports into the territory of the (then) Community from the Federal Republic of Yugoslavia as well as all exports from the Community to that country.

31. I consider the logic behind that approach to lie first and foremost in the danger of distorting the essential character of the powers of the European Union and its institutions, as provided for in the Treaty. [31]

32. Second, such measures would pose a threat to the uniformity of the European Union's external trade policy, thereby undermining one of the foundational principles on which the common commercial policy is based. [32]

33. Finally, beyond the European Union's external appearance as a reliable trading partner, there is a risk of exposure to liability before the WTO Dispute Settlement Body. [33]

34. At the level of EU secondary law, the answer is more nuanced.

35. There is at least one precedent for the circumstances in which the European Union allows Member States to maintain, subject to certain conditions, specific national measures that, strictly speaking, interfere with the competence allocation under the common commercial policy. [34] That, however, is rare.

36. What is more common are specific instruments allowing the European Union to adopt certain safeguard measures in relation to trade with third States or territories. [35] In those instances, the European Union may put into place certain measures to regulate the release of non-EU products in the customs territory of the European Union and, if necessary, [36] only in part thereof. [37]

37. It is true, as the French Government submits, that both the Basic Import Regulation and the Union Customs Code contain provisions that provide for the possibility of Member States to introduce *unilateral* trade measures in exceptional cases. Thus, Article 24(2)(a) of the Basic Import Regulation provides that 'this Regulation shall not preclude the adoption or application by Member States of … prohibitions, quantitative restrictions or surveillance measures on grounds of public morality, public policy or public security'. Similarly, pursuant to Article 134(1) of the Union Customs Code, 'goods brought into the customs territory of the Union … may be

31 See, to that effect, Opinion 1/00 (*Agreement on the establishment of a European Common Aviation Area*) of 18 April 2002 (EU:C:2002:231, paragraph 12 and the case-law cited).

32 See Article 207(1) TFEU, which specifies that 'the common commercial policy shall be based on uniform principles, particularly … the achievement of uniformity in measures of liberalisation'. See, in that regard, judgment of 5 July 1994, *Anastasiou and Others* (C-432/92, EU:C:1994:277, paragraph 53) (explaining that the existence of different practices among the Member States creates 'uncertainty of a kind likely to undermine the existence of a common commercial policy').

33 See, to that effect, judgment of 6 October 2020, *Commission* v *Hungary (Higher education)* (C-66/18, EU:C:2020:792, paragraph 84).

34 See Regulation (EU) No 1219/2012 of the European Parliament and of the Council of 12 December 2012 establishing transitional arrangements for bilateral investment agreements between Member States and third countries (OJ 2012 L 351, p. 40), which allows, under certain conditions, the Member States to maintain in force and amend their existing bilateral investment treaties ('BITs'), as well as to conclude new BITs, while generally requiring them to eliminate incompatibilities between those BITs and EU law.

35 See, for instance, the safeguard measures envisaged by Chapters V of Regulation (EU) 2015/478 of the European Parliament and of the Council of 11 March 2015 on common rules for imports (OJ 2015 L 83, p. 16; 'the Basic Import Regulation') (which covers imports for countries and territories that are WTO members), and of Regulation (EU) 2015/755 of the European Parliament and of the Council of 29 April 2015 on common rules for imports from certain third countries (OJ 2015 L 123, p. 33) (which covers imports from countries that are not WTO members).

36 See, for example, Commission Implementing Regulation (EU) 2019/159 of 31 January 2019 imposing definitive safeguard measures against imports of certain steel products (OJ 2019 L 31, p. 27) (imposing a tariff-rate quota of 25% on the release for free circulation in the European Union of certain steel product categories for a period of three years).

37 See Article 17 of the Basic Import Regulation and Article 15 of Regulation 2015/755. For a recent example of such a 'regionalised' safeguard measure, see Implementing Regulation 2023/1100, Article 1 (restricting the release for free circulation of imports of wheat, maize, rapeseed (colza) and sunflower seed originating in Ukraine in Bulgaria, Hungary, Poland, Romania or Slovakia).

subject to customs controls' and, 'where applicable, they shall be subject to such prohibitions and restrictions as are justified on grounds of, inter alia, public morality, public policy or public security.'

38. However, it is clear that those provisions do not constitute a standing authorisation, at the level of EU secondary law, to introduce unilateral measures to suspend imports for alleged breaches of EU food labelling requirements.

39. First, the type of measures envisaged by Article 24(2)(a) of the Basic Import Regulation must be applied *erga omnes* in so far as they are directed against WTO members and thus concern all imports of the product concerned, irrespective of origin.[38] The type of measure sought from France against products originating solely from the Kingdom of Morocco, a WTO member, cannot accordingly fall within the scope of that provision.

40. Moreover, the measures envisaged in Article 24(2)(a) of the Basic Import Regulation must be imposed, inter alia, 'on grounds of public morality, public policy or public security'. That provision accordingly enables an interference with the freedom to trade[39] for specific reasons of general interest that are comparable to those set out in Article 36 TFEU.[40]

41. I do not exclude the possibility that the concept of 'public morality' in particular, which denotes beliefs of right and wrong by a particular community, could cover false or misleading labelling of food products.

42. However, in view of the narrow interpretation that must be given to the types of derogations envisaged by Article 24(2)(a) of the Basic Import Regulation,[41] I am not convinced that a breach of EU harmonised *marketing* standards may constitute a reason to restrict the *importation* of a particular type of product into a single Member State.

43. Indeed, as the French Government has explained, it is clear that the liberalisation of imports of goods from third countries by means of the Basic Import Regulation and the Union Customs Code cannot be viewed as also having the aim or effect of liberalising the subsequent marketing of those imports.

44. That is only logical since, in the lifecycle of a product imported for sale on the European Union market, the *importation* stage takes place prior to the *marketing* stage.

45. Granted, both of those stages may form each other's 'necessary complement'.[42]

38 See, in that regard, Article 2(1) of the WTO Agreement on Safeguards, which lays down that requirement and which must accordingly inform the reading of the Basic Import Regulation. See, by analogy, judgment of 20 January 2022, *Commission* v *Hubei Xinyegang Special Tube* (C-891/19 P, EU:C:2022:38, paragraph 32 and the case-law cited) (explaining that the principle of *pacta sunt servanda* requires an interpretation in conformity of EU secondary legislation enacted in the light of one of the WTO agreements).

39 Although the Court has never recognised the freedom to trade internationally, it is at least arguable that the Treaties instil also within the European Union's external trade policy the idea of the same type of liberalising market order that initiated the European project *ab initio*. In support of that argument, see Petersmann, E.-U., 'National constitutions and international economic law', in Hilf, M., and Petersmann, E.-U. (eds), *National constitutions and international economic law*, Kluwer, Bielefeld, 1993, p. 24. For an opposing view, see Peers, S., 'Fundamental right or political whim? WTO law and the European Court of Justice', in de Burca, G., and Scott, J. (eds), *The EU and the WTO: Legal and Constitutional Issues*, Bloomsbury Publishing, 2001, p. 129.

40 See judgment of 30 May 2002, *Expo Casa Manta* (C-296/00, EU:C:2002:316, paragraph 34) (drawing an analogy with a predecessor provision to Article 24 of the Basic Import Regulation and Article 36 TFEU).

41 See, by analogy, judgment of 10 January 1985, *Association des Centres distributeurs Leclerc and Thouars Distribution* (229/83, EU:C:1985:1, paragraph 30) (explaining that the derogations in what is now Article 36 TFEU must be interpreted narrowly).

42 To use the language of Opinion of Advocate General Geelhoed in *Expo Casa Manta* (C-296/00, EU:C:2002:28, point 27).

46. However, the successful customs clearance of a product does not necessarily imply compliance with the rules on consumer labelling; and vice versa: as the Court noted in its judgment in *Expo Casa Manta*, 'just as a product lawfully manufactured within the Community may not be placed on the market on that ground alone, the lawful importation of a product does not imply that it will automatically be allowed onto the market'. [43]

47. But even if it was (wrongly) assumed that the customs clearance of a product implies compliance with consumer labelling rules, the measure envisaged by the applicant would, in any event, be ineffective, since the products at issue, where imported through other Member States, could still be marketed to the French consumer.

48. In this context, I do not consider it justified that a Member State can rely on the ground of public morality to restrict unilaterally the importation of certain products from third States (and thereby disrupt the intra-EU circulation of that product) on the pretext of remedying an alleged breach of EU harmonised marketing standards.

49. Second, the customs supervision envisaged by Article 134(1) of the Union Customs Code does not act as a self-standing empowerment to authorise Member States to introduce, inter alia, import bans for certain products.

50. Rather, the concept of customs supervision envisages a certain type of legal status for products imported into the European Union. It is on the basis of that status that the national customs authorities then carry out customs controls. [44] Those controls include the verification of the treatment imposed on the goods at issue (for example, their preferential tariff treatment) and compliance with the obligations imposed on the relevant importer (for example, the payment of customs and import duties).

51. Furthermore, the type of measure that is controlled by customs supervision must itself be established by EU or implementing Member State law. Those are the types of prohibitions and restrictions to which the second sentence of Article 134(1) of the Union Customs Code refers. [45]

52. In the present case, however, the applicant does not point to any provision of EU or implementing Member State law that would empower France to adopt the measures sought from the Ministries. [46]

53. It therefore follows that neither the Union Customs Code nor the Basic Import Regulation in themselves can be relied on to authorise the French Government to put in place a unilateral import ban on certain products originating in the territory of Western Sahara for not displaying a correct country of origin label.

54. Consequently, I propose that the Court answer Question 1 in the negative.

43 Judgment of 30 May 2002, *Expo Casa Manta* (C-296/00, EU:C:2002:316, paragraph 31).

44 The concept of customs controls is defined in Article 5(3) of the Union Customs Code as 'specific acts performed by the customs authorities in order to ensure compliance with the customs legislation and other legislation governing the entry, exit, transit, movement, storage and end-use of goods moved between the customs territory of the Union and countries or territories outside that territory, and the presence and movement within the customs territory of the Union of non-Union goods and goods placed under the end-use procedure'.

45 That is to say 'prohibitions and restrictions as are justified on grounds of, inter alia, public morality, public policy or public security'.

46 But even if there was such an empowerment, I would argue that the justifications on the basis of which such measures could be taken, as well as the limits of those measures, are the same as those discussed in point 40 et seq. of this Opinion, subject to the powers of the European Union and its institutions not being distorted (see, similarly, Opinion of Advocate General Kokott in *Commission* v *Council*, C-13/07, EU:C:2009:190, point 83).

B. Question 4

55. In Question 4, the referring court asks, in essence, whether the relevant rules on EU foodstuff labelling should be interpreted as meaning that, *at the stages of importation and sale to the consumer*, the packaging of fruit and vegetables harvested in Western Sahara must not indicate Morocco as the country of origin, but must instead indicate the territory of Western Sahara.

1. Admissibility

56. In their written observations to the Court, both the French Government and the Commission challenge the admissibility of that question. Both argue that the resolution of the dispute before the referring court is limited to determining the legality of the Ministries' implied decision not to prohibit unilaterally imports of the products at issue from the territory of Western Sahara. The determination of that dispute does not therefore require the answer to the question of whether products imported from Western Sahara should indicate that territory as its origin.

57. To my mind, it not obvious from the referring court's reference that an interpretation of the rules on EU foodstuff labelling for the products at issue bears no relation to the actual facts of the main action or its purpose.

58. Article 267 TFEU establishes the procedure for direct cooperation between the Court of Justice and the courts of the Member States.[47] In that procedure, which is based on a clear separation of functions, it is the national court that determines which elements of EU law it requires for the resolution of the dispute before it, since it is also that court alone that bears the responsibility for the decision to be taken.[48] A national court's questions thus enjoy a presumption of relevance, with the Court in principle bound to give a ruling.[49]

59. The Court may refuse to rule on a question referred to it by a national court only where it is quite obvious that the interpretation of EU law sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it.[50]

60. In the present case, even though Question 1 relates only to the ban on imports, it is not clear that the measure sought before the referring court was not supposed to cover both the stage of importation and the making available of the products concerned to the consumer on the French market. Question 4 is also posed in the referring court's order in such a way as to refer to both of those stages.

61. Although I take the position that those two stages cannot be conflated (see also point 44 of this Opinion), it is clear that the applicant's request, whether it is well founded or not, also relates to the satisfaction of EU foodstuff labelling requirements for the products at issue. That element therefore appears useful for the referring court's task of deciding on the legality of the implied decision at issue. Furthermore, the referring court considers that it has the power, under national

47 See, to that effect, judgment of 9 December 1965, *Singer* (44/65, EU:C:1965:122, p. 971).

48 See, to that effect, judgment of 16 December 1981, *Foglia* (244/80, EU:C:1981:302, paragraph 15).

49 See, to that effect, judgment of 7 September 1999, *Beck and Bergdorf* (C-355/97, EU:C:1999:391, paragraph 22).

50 See, for example, judgment of 10 December 2018, *Wightman and Others* (C-621/18, EU:C:2018:999, paragraph 27 and the case-law cited).

law, to prescribe *ex officio* the measure requested by the applicant, without further qualifying the situations in which that measure may be ordered. It appears to be for that reason, too, that the referring court deems it necessary to assess the merits of the applicant's case, which extends to the issues raised in Question 4.

62. Question 4 is therefore admissible.

2. Substance

63. Question 4 is worded in such a way as to enquire whether EU law imposes both negative and positive obligations for the correct labelling of the products at issue when originating in the territory of Western Sahara. The referring court asks whether EU foodstuff labelling requirements *prohibit* a country of origin label featuring/indicating the Kingdom of Morocco and whether they instead *require* the indication of the territory of Western Sahara as the country of origin.

64. I propose that the relevant EU foodstuffs labelling rules indeed require that products originating in the territory of Western Sahara must indicate that territory as their country of origin (the positive obligation), to the exclusion of other territorial references (the negative obligation). Those products cannot, therefore, bear any reference to the Kingdom of Morocco.

65. The analysis that will lead me to that conclusion is structured as follows: first, I shall establish that the general and/or specific rules on EU foodstuff labelling, as applicable to the products at issue, mandate a country of origin label in the first place (a). Then, I shall make clear that the territory of Western Sahara can be considered a country of origin within the meaning of those rules (b). Third, I shall explain why omitting Western Sahara as the country of origin of the products at issue risks misleading the EU consumers in their choices (c). Finally, I shall consider whether the EU rules on foodstuff labelling prohibit an additional reference to the Kingdom of Morocco (d).

(a) The law on EU foodstuff labelling

(1) General rules applicable to foodstuff

66. The Food Information to Consumers Regulation seeks to empower consumers through 'correct, neutral and objective' information 'to make informed choices' in relation to food they consume,[51] and to prevent any practices that may mislead consumers.[52] For that purpose, it requires 'clear, comprehensible and legible labelling of foods'.[53]

51 See judgment of 13 January 2022, *Tesco Stores ČR* (C-881/19, EU:C:2022:15, paragraphs 44 and 46 and the case-law cited).

52 Article 3(1) of the Food Information to Consumers Regulation recognises the wide spectrum of demands that the EU consumer places on his or her food products. It explains that 'the provision of food information shall pursue a high level of protection of consumers' health and interests by providing a basis for final consumers to make informed choices … with particular regard to health, economic, environmental, social and ethical considerations'. See also recital 4 of the Food Information to Consumers Regulation.

53 Recital 9 of the Food Information to Consumers Regulation.

67. Part of the information that (generally) must be provided to the consumer is the 'country of origin' or 'place of provenance'.[54] This refers to the place from which the foodstuff at issue comes.[55]

68. That requirement is an expression of the principle prohibiting misleading food information.[56]

69. The focus of the Food Information to Consumers Regulation is thus specifically on protecting the consumer from a lack of or incorrect information that *risks* misleading the consumer as to the true origin of the product.[57]

70. I will return to the importance of the element of risk in misleading the consumer below (point 102 et seq. of this Opinion); however, it is first necessary to determine what specific requirements derive from the law on fruit and vegetable labelling for the products at issue in this case.

(2) Specific requirements for fruit and vegetables

71. Adopted as additional rules to the Food Information to Consumers Regulation,[58] the Agricultural Products Regulation and the General Fruit and Vegetables Marketing Regulation lay down marketing requirements for fruit and vegetables.[59]

72. The marketing rules of the Agricultural Products Regulation must be complied with in order for a product to be marketed to consumers on the EU market.[60] The EU legislature considers that compliance with those standards 'is in the interest of producers, traders and consumers'.[61]

73. One of the marketing rules laid down by the Agricultural Products Regulation is that the place of farming and/or country of origin must be indicated.[62]

74. That indication is required for fruit and vegetables that are intended for sale fresh to the consumer.[63]

54 Article 9(1)(i) of the Food Information to Consumers Regulation.

55 See, in that regard, the definition in Article 2(2)(g) of the Food Information to Consumers Regulation, which defines the place of provenance as 'any place where a food is indicated to come from, and that is not the "country of origin" as determined in accordance with Articles 23 to 26 of [Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1)]'. Article 2(3) of the Food Information to Consumers Regulation also explains that 'for the purposes of this Regulation the country of origin of a food shall refer to the origin of a food as determined in accordance with Articles 23 to 26 of Regulation No 2913/92.' The rules that were previously laid down in Articles 23 to 26 of Regulation No 2913/92 are now found in Articles 59 to 63 of the Union Customs Code.

56 As provided for in Article 7 of the Food Information to Consumers Regulation.

57 See, to that effect, judgment of 12 November 2019, *Organisation juive européenne and Vignoble Psagot* (C-363/18, EU:C:2019:954, paragraph 25; '*Vignoble Psagot*').

58 Article 1(4) of the Food Information to Consumers Regulation explains that it applies 'without prejudice to labelling requirements provided for in specific Union provisions applicable to particular foods'.

59 Pursuant to Article 1(1) of the Agricultural Products Regulation, with the exception of certain fishery and aquaculture products, the Agricultural Products Regulation applies to all products listed in Annex I to the Treaties. The latter, in turn, contains a selected chapter overview of what has now evolved into the Combined Nomenclature (Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1987 L 256, p. 1)).

60 See Article 74 of the Agricultural Products Regulation.

61 Recital 64 of the Agricultural Products Regulation.

62 See Article 75(3)(j) and Article 76(1) of the Agricultural Products Regulation.

63 See Article 75(1)(b) of the Agricultural Products Regulation.

75. The requirement to indicate the origin of fruit and vegetables applies at all marketing stages, including the importation of fruit and vegetables.[64] A trader of fruit and vegetables cannot 'offer them for sale or deliver or market them in any manner within the Union other than in conformity with those standards'.[65]

76. The Agricultural Products Regulation is further implemented by the General Fruit and Vegetables Marketing Regulation,[66] which sets out the general and specific marketing standards applicable to fruit and vegetables in detail.[67]

77. Cherry tomatoes are subject to specific marketing standards.[68] Those include a mandatory country of origin label.[69] That label may be complemented by an optional specification of the 'district where [the tomatoes were] grown, or [a] national, regional or local place name.'[70]

78. Charentais melons are subject to the General Fruit and Vegetables Marketing Regulation's general marketing standards.[71] Those, too, require a mandatory country of origin label.[72] However, unlike for the case of cherry tomatoes, that regulation does not refer to the addition of a more detailed origin specification.

79. Those requirements are subject to conformity checks, which apply at all stages of marketing.[73]

80. As the Commission explained at the hearing, a finding of non-conformity leads to the prohibition on the moving of non-conforming products without authorisation from the competent inspection body. Those products must then be brought into conformity with the General Fruit and Vegetables Marketing Regulation. Should that not be possible, the relevant authorities may require that the products be sent to animal feed, industrial processing, any other non-food use, or even for destruction.[74]

81. It follows that the general and specific marketing standards applicable to the products at issue mandate the country of origin labelling of those products.

64 See Article 76(2) of the Agricultural Products Regulation.

65 See Article 76(3) of the Agricultural Products Regulation.

66 See Article 1(1) of the General Fruit and Vegetables Marketing Regulation.

67 See Article 1(1) and 3(1) of the General Fruit and Vegetables Marketing Regulation. Part A of Annex I to that regulation sets out the details of the general marketing standards for those products.

68 See Article 3(2)(j) of the General Fruit and Vegetables Marketing Regulation, which provides that the specific marketing standards contained in Part B of Annex I thereto apply to 'tomatoes'. Annex I, Part B, Part 10, Section I, then states that the concept of tomatoes also includes 'cherry' tomatoes.

69 See Annex I, Part B, Part 10, Section VI, Letter C, to the General Fruit and Vegetables Marketing Regulation. To that end, a footnote explains that 'the full or the commonly used name shall be indicated.'

70 Ibid.

71 See the second subparagraph of Article 3(1) of the General Fruit and Vegetables Marketing Regulation, which explains that 'fruit and vegetables not covered by a specific marketing standard shall comply with the general marketing standard'. The general marketing standard referred to in that provision is laid down in Part A of Annex I to the same regulation.

72 See Annex I, Part A, Part 4, to the General Fruit and Vegetables Marketing Regulation. Again, a footnote specifies that 'the full or commonly used name shall be indicated'.

73 See, in that regard, Articles 8 and 11 of the General Fruit and Vegetables Marketing Regulation. Article 11(3) of the same regulation also lays down that 'where checks reveal significant irregularities, Member States shall increase the frequency of checks in relation to traders, products, origins, or other parameters'. Conformity checks are necessary, inter alia, because the relevant 'country of origin' must be 'legibly' and 'indelibly' marked and be visible from the outside, printed either directly onto the package, a label which is an integral part of the package, or affixed to the latter.

74 See Article 17(3) of the General Fruit and Vegetables Marketing Regulation.

(b) Western Sahara as the country of origin for fruit and vegetables grown in that territory

82. The above explanation on the general and specific rules applicable to EU foodstuff labelling makes it clear that the EU legislature mandates that the products at issue indicate their country of origin.

83. For the purposes of the present case, that naturally raises the question whether the non-self-governing territory of Western Sahara constitutes a country of origin for the purposes of those rules.

84. In that regard, I observe that, as in the Food Information to Consumers Regulation and the Agricultural Products Regulation, the General Fruit and Vegetables Marketing Regulation does not lay down a definition of 'country of origin'. [75]

85. That being said, the Union Customs Code, which contains specific rules on the determination of the non-preferential origin of goods, expressly extends its rules on that aspect to other EU measures referring to the origin of goods. [76]

86. As the Court has explained in relation to the Agricultural Products Regulation, that includes the country of origin marketing requirement. [77]

87. I consider that the same applies to the Food Information to Consumers Regulation and the General Fruit and Vegetables Marketing Regulation. After all, that is what a uniform, effective, and consistent reading of the indication of the country of origin labelling requirement demands. [78]

88. It follows that the country of origin labelling in the various EU foodstuff regulations applicable in the present case must be interpreted by reference to the relevant rules and designations of the Union Customs Code.

89. Under Article 60 of the Union Customs Code, goods which have been wholly obtained in a particular 'country' or 'territory' are to be regarded as having their origin in that country or territory.

90. Vegetable products harvested in a 'country' or 'territory' are deemed to be wholly obtained therein. [79] They are accordingly considered to originate in that territory. [80]

75 For the Food Information to Consumers Regulation and the Agricultural Products Regulation, the Court has already recognised the lack of such a definition in judgment of 4 September 2019, *Zentrale zur Bekämpfung unlauteren Wettbewerbs Frankfurt am Main* (C-686/17, EU:C:2019:659, paragraph 46).

76 See Article 59(c) of the Union Customs Code, which states that the articles on the acquisition and proof of origin (Articles 60 and 61 thereof) 'shall lay down rules for the determination of the non-preferential origin of goods for the purposes of applying … other Union measures relating to the origin of goods'.

77 See judgment of 4 September 2019, *Zentrale zur Bekämpfung unlauteren Wettbewerbs Frankfurt am Main* (C-686/17, EU:C:2019:659, paragraph 46).

78 See, by analogy, judgment of 4 September 2019, *Zentrale zur Bekämpfung unlauteren Wettbewerbs Frankfurt am Main* (C-686/17, EU:C:2019:659, paragraph 50) (explaining that 'the mandatory indication of the country of origin must, in order to make the corresponding provisions fully effective and in the interest of consistency, be based on the same definitions, whether in the field of customs, agriculture or consumer protection').

79 See Article 31(b) of Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code (OJ 2015 L 343, p. 1).

80 In the present case, it is not contested that the products at issue are harvested in the territory of Western Sahara.

91. In *Vignoble Psagot*, the Court interpreted the concept of 'territory' to encompass any entity that does not fall within the category of 'country' or 'State',[81] such as 'geographic spaces which, whilst being under the jurisdiction or the international responsibility of a State, nevertheless have a separate and distinct status from that State under international law'.[82]

92. In its judgments in *Council* v *Front Polisario* and in *Western Sahara Campaign UK*, the Court recognised that the territory of Western Sahara constitutes a separate territory for the purposes of public international law, and is distinct from the territory of the Kingdom of Morocco.[83]

93. The territory of Western Sahara must thus be treated as a separate customs territory for the purposes of Article 60 of the Union Customs Code.

94. As the Commission explained at the hearing, that status is already recognised in the European Union's rules on foreign trade statistics by attributing the territory of Western Sahara its own country of origin code (EH).[84] It is that code which the EU's Customs Tariff (TARIC)[85] adopts, which importers of products originating in the territory of Western Sahara must list on their customs declaration, and in support of which they must provide an origin declaration.

95. It follows that the concept of country of origin, as it appears in EU foodstuff labelling law, also encompasses the territory of Western Sahara.

96. The products at issue in the present case, having been wholly obtained within the territory of Western Sahara, must therefore be labelled accordingly.

97. That conclusion is not impacted by the fact that, in practice, a third State – here, the Kingdom of Morocco – is regarded by the European Union as having taken on the (*de facto*) responsibility of administering the territory of Western Sahara (or at least the parts over which it holds control). For the purposes of imports into the European Union, it is therefore the Moroccan authorities that verify and certify the origin of products claiming to originate in the territory of Western Sahara.

81 *Vignoble Psagot*, paragraph 30. In the same judgment, the Court interpreted the concept of 'country' to be synonymous with the concept of 'State', which denotes 'a sovereign entity exercising, within its geographical boundaries, the full range of powers recognised by international law' (see paragraphs 28 and 29).

82 See *Vignoble Psagot*, paragraph 31. As the applicant submits, it is on that basis that the Court, in its judgment in *Vignoble Psagot* extended the requirement for correct origin labelling to a 'territory occupied by the State of Israel', that is to say, the West Bank, including East Jerusalem, and the Golan Heights.

83 *Council* v *Front Polisario*, paragraph 107, and *Western Sahara Campaign UK*, paragraphs 64 and 69.

84 See Annex I to Commission Implementing Regulation (EU) 2020/1470 of 12 October 2020 on the nomenclature of countries and territories for the European statistics on international trade in goods and on the geographical breakdown for other business statistics (OJ 2020 L 334, p. 2).

85 Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1987 L 256, p. 1).

98. As explained by both the Council and the Commission, that arrangement was put in place because the non-self-governing territory of Western Sahara has no (recognised) customs authorities of its own to control the status of the origin of products produced on or cultivated in that territory. [86]

99. As I explain in my Opinions of today in *Commission and Council* v *Front Polisario*, engaging with a non-self-governing territory respects both the current status of international law and the practical reality, without, however, entering into the (political) question of State recognition. [87] It does not, however, change anything in relation to the conclusion that Western Sahara constitutes a separate territory for customs purposes.

100. It must therefore be concluded that the products at issue grown in the territory of Western Sahara must, under applicable EU foodstuff legislation, be labelled as originating in that territory.

(c) The omission of a reference to the territory of Western Sahara would mislead the consumer

101. Having established that EU foodstuff labelling rules for fruit and vegetables mandate that the products at issue indicate their country of origin, and having confirmed that the concept of country of origin also includes the non-self-governing territory of Western Sahara, it may be concluded that those products must bear the indication of Western Sahara as the country of origin. The additional question to resolve is therefore whether the omission of a reference to that territory is likely to mislead the EU consumer.

102. As I have observed in point 69 of this Opinion, the objective of the information particulars on EU foodstuffs relating to country of origin labelling is to protect the consumer, so that the latter is not (at risk of being) 'misled' as to the true origin of the product. [88]

[86] That is also why the Council and the Commission submit that they cannot practically conclude a separate trade agreement with the territory of Western Sahara. Compare that with the EC-PLO Association Agreement (approved by Council Decision 97/430/EC of 2 June 1997 concerning the conclusion of the Euro-Mediterranean Interim Association Agreement on trade and cooperation between the European Community, of the one part, and the Palestine Liberation Organization (PLO) for the benefit of the Palestinian Authority of the West Bank and the Gaza Strip (OJ 1997 L 187, p. 1)), which, pursuant to Article 16(4) of the Protocol thereto, provides that a movement certificate EUR.1 is to be issued by the customs authorities of the West Bank and Gaza Strip if the products for exportation to the European Union can be considered to be products originating in the West Bank and Gaza Strip and if they fulfil the other requirements for exportation. See also judgment of 25 February 2010, *Brita* (C-386/08, EU:C:2010:91, paragraphs 50 to 52) (explaining that the customs authorities of the West Bank and Gaza Strip have the competence in respect of products originating in the West Bank and Gaza Strip, to the exclusion of the competence of the Israeli customs authorities).

[87] See, similarly and by analogy, evidencing that State recognition can be decoupled from certifying origin, Article 46 of, and Protocol III to, the Stabilisation and Association Agreement between the European Union and the European Atomic Energy Community, of the one part, and Kosovo *, of the other part (OJ 2016 L 71, p. 3), which provide for rules for the determination of origin for products originating in that territory. The asterisk in the name links to the following statement in the footnote of the agreement: 'This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.'

[88] See, to that effect, *Vignoble Psagot*, paragraph 25.

103. While not the main driver of consumer behaviour, [89] a product's country of origin label does influence purchase decisions. [90]

104. No two consumers are alike. Some may care deeply about the origin of their products. Some may not even glance at the provenance of their purchase.

105. As the Court has previously held, an assessment of the risk of misleading the consumer takes into consideration the average consumer, that is to say, someone 'who is reasonably well informed, and reasonably observant and circumspect, as to the origin, provenance, and quality associated with the foodstuff'. [91]

106. Article 3(1) of the Food Information to Consumers Regulation provides that the provision of food information to the consumer, including information about the origin of a product, should enable that consumer 'to make informed choices' influenced by, inter alia, 'ethical considerations'. [92]

107. It might be thought that a reasonably well informed and circumspect consumer might consider it important to know that a product originates in Western Sahara. However, the question of how information on the origin of a product from Western Sahara is likely to influence the purchasing decision of a consumer is subjective to that consumer alone. [93]

108. That decision is not necessarily related to the neutral position of the European Union regarding the resolution of the future status of the territory of Western Sahara.

109. At the same time, without the information that a product originates in Western Sahara, a reasonably well-informed and circumspect consumer might be misled as to the true origin of the product they decide to purchase.

110. How are those legal and political positions reconciled?

111. It is clear that, when considering whether there is a risk that a consumer might be misled by incorrect information particulars on the country of origin, the national court deciding on that issue does not need, as it indeed would not be able, to take into consideration the possible different ethical preferences of consumers.

112. To my mind, the test that the EU legislature sought to establish is far more objective.

89 A 2015 report from the European Commission found that, 'among aspects influencing consumer's behaviour[,] origin labelling ranks after factors like price, use by / best before dates, convenience and/or appearance'. See Report from the Commission to the European Parliament and the Council regarding the mandatory indication of the country of origin or place of provenance for unprocessed foods, single ingredient products and ingredients that represent more than 50% of a food (COM(2015) 204 final; 'the 2015 European Commission Report').

90 According to the European Commission's 2012 Special Eurobarometer No 389 on Europeans' attitude towards food security, food quality and the countryside (available at: https://europa.eu/eurobarometer/surveys/detail/1054), 'a substantial majority (71%) say that the origin of food is important' (p. 4), with origin being reported as one of three factors that a majority of EU citizens take into consideration when buying food (p. 16).

91 See, to that effect, judgment of 10 September 2009, *Severi* (C-446/07, EU:C:2009:530, paragraph 61).

92 That choice might also be a decision to 'vote with his or her trolley', by either buying or refusing to buy products from the parts of the world with which a consumer has political, environmental, cultural or any other issues. The expression 'voting with a trolley' is borrowed from an article in *The Economist* to explain the practice of consumers expressing their political opinions through their purchasing decisions. See 'Voting with your trolley: Can you really change the world just by buying certain foods?', *The Economist*, Special report, 7 December 2006.

93 See, in that respect, Opinion of Advocate General Hogan in *Organisation juive européenne and Vignoble Psagot* (C-363/18, EU:C:2019:494, points 47 to 49).

113. The question that a court must ask is simply: is there a risk that an incorrectly informed purchasing decision may result from a product featuring a country of origin label referring to Territory X, when, in fact, that product originates in Territory Y? [94]

114. The answer is yes: a label suggesting that food originates from a place other than its true place of origin is likely to mislead the consumer as to (what EU law considers) the objectively correct origin of that product. [95]

115. In the present case, a label suggesting that a product is of Moroccan origin, when that product instead originates in the territory of Western Sahara, is therefore misleading to the consumer.

116. A label of that sort would neither conform to the overarching requirement to assist the consumer to make 'an informed choice' about their purchase, which may relate to elements of an ethical nature, nor would it adequately reflect the current political position of the European Union.

117. On that basis, I propose that the Court's reply to the part of Question 4 relating to the positive obligation on labelling explain that the Food Information to Consumers Regulation, the Agricultural Products Regulation, and the General Fruit and Vegetables Marketing Regulation require that the products at issue must bear a country of origin label reflecting their provenance in the territory of Western Sahara.

(d) Is there scope for a reference to the Kingdom of Morocco?

118. Does the above conclusion leave any space for an additional reference to the Kingdom of Morocco?

119. In *Vignoble Psagot*, invoked in the present case, the Court was asked to explain whether the correct indication of the territory of origin (in that case either the Golan Heights or the West Bank) could be deemed insufficient in itself to provide correct information particulars to the consumer on the country of origin of products coming from that territory.

120. The question may therefore be asked whether the addition of the 'Kingdom of Morocco' to the country of origin label products originating in the territory of Western Sahara would also provide objectively correct information to the EU consumer.

121. The specific situation in the geographical area underlying the judgment in *Vignoble Psagot*, in which certain parts of the Syrian Arab Republic (the Golan Heights) or of the Palestinian territory (the West Bank, including East Jerusalem) from which the products at issue in that case originated were occupied by 'Israeli settlements', led the Court to conclude that the omission of additional place information is likely to mislead the consumer. [96]

[94] In fact, the assessment for a court to take is the same when the incorrect information particulars relate to the approximate weight or maturity of the fruit or vegetable at issue as when it concerns the indication of its provenance.

[95] See, to that effect, *Vignoble Psagot*, paragraph 51.

[96] See *Vignoble Psagot*, paragraph 51.

122. Accordingly, without an indication of the true place of provenance, consumers could be (mis)led to believe that a product would derive, in the case of the West Bank (including East Jerusalem), from a Palestinian producer or, in the case of the Golan Heights, from a Syrian producer. [97]

123. A simple reference to 'Israeli settlement' would be insufficient to prevent that type of misapprehension. [98]

124. The legal and factual circumstances, as well as the question with which the Court is faced, are different in the present case.

125. The territory of Western Sahara is a separate territory for the purposes of the indication of origin for customs and labelling purposes.

126. It is true that, at present, only the Moroccan authorities can – and are recognised by the European Union to hold the mandate to – verify the origin of a product as originating in the territory of Western Sahara (see points 97 and 98 of this Opinion).

127. That does not, however, mean that the origin of a product coming from Western Sahara changes when that type of certification occurs.

128. In *Vignoble Psagot*, the question before the Court was not whether *two countries or territories* could be indicated, but rather whether *the indication of the more detailed 'place of provenance'* may be added to the information about the country/territory of origin – notwithstanding the conjunction 'or' between the terms 'country of origin' and 'place of provenance' in the Food Information to Consumer Regulation.

129. Taking into consideration that the international community and the European Union objected to the Israeli settlements in those territories, the Court held that omitting the information of the real provenance of goods from such settlements would deprive consumers from making an informed purchase decision. [99]

130. In the present case, however, adding the indication 'Kingdom of Morocco' to the information on the country of origin of the products at issue would not more clearly explain their place of provenance.

131. First, that type of information is not objectively correct.

132. Second, a well-informed and circumspect consumer could deduce the necessary information about the origin of the products at issue if only Western Sahara is mentioned as the country of origin.

97 See *Vignoble Psagot*, paragraph 49.

98 See *Vignoble Psagot*, paragraph 50.

99 See, to that effect, *Vignoble Psagot*, paragraphs 48 to 51.

133. Whatever the subjective position of a consumer in relation to the presence of the Kingdom of Morocco on the territory of Western Sahara, adding the indication 'Kingdom of Morocco' to products not originating from there is therefore likely to mislead a consumer precisely 'because it does not reflect the entire truth'. [100]

134. Finally, as the Commission explained at the hearing, the concept of country of origin, as understood within the general and specific marketing standards applicable to the products at issue, [101] requires a *single* denomination of the country of origin. [102]

135. Firstly, I consider that to arise from the use of 'country' in the singular form in the text and recitals of the General Fruit and Vegetables Marketing Regulation. [103]

136. Secondly, that approach is grounded in the general logic underlying the determination of 'origin' under Article 60 of the Union Customs Code. Pursuant to that provision, 'goods wholly obtained in a single country or territory' [104] can originate only in one country or territory. [105]

137. With that in mind, the same reasons of consistent interpretation that support aligning the interpretation of 'origin' in EU foodstuff labelling law with the rules applicable to customs and foreign trade statistics should also weigh in favour of adopting a similar understanding as regards the *singularity* of origin for labelling purposes.

138. If those rules are followed, products originating in the territory of Western Sahara should be labelled as such, to the exclusion of any other provenance.

139. That line of reasoning is supported by the position taken by the Commission at the hearing, who agreed that the application of those rules leads to the conclusion that it is incorrect to label the products at issue as originating in the Kingdom of Morocco.

140. However, as the Commission also explained, under the ongoing process of self-determination of that territory, no outcome should be precluded, given that the European Union has adopted a neutral position on the future of the territory of Western Sahara. [106]

100 To use the words of Advocate General Mischo in his Opinion in *Gut Springenheide and Tusky* (C-210/96, EU:C:1998:102, point 78), in which he also drew a distinction between 'information that is objectively correct; information that is objectively incorrect; [and] information that is objectively correct but which could mislead the consumer because it does not reflect the entire truth'.

101 As discussed in points 66 to 81 of this Opinion.

102 For completeness, that rule also arises in the case of fruit and vegetables in a mix that originate in more than one third country, in which case either a general origin reference is added (such as 'mix of non-EU fruit and vegetables'; see Article 7(3) of the General Fruit and Vegetables Marketing Regulation) or each individual 'country of origin' must appear next to the name of the fruit or vegetable concerned (see, for instance, in the case of a mix of tomatoes of a different origin, Annex I, Part A, Point 4, and Annex I, Part B, Part 10, Section VI, point C, to the same regulation).

103 See, for instance, recitals 4 and 49 and Article 5(4) and 6(1) of the General Fruit and Vegetables Marketing Regulation. See also Annex I, Part A, Part 4, and Annex I, Part B, Part 10, Section VI, point C, thereto, which equally use the singular 'country' of origin.

104 Article 60(1) of the Union Customs Code.

105 That is, unless the fruit and vegetables in a mix originate in more than one third country. See Article 7(3) of the General Fruit and Vegetables Marketing Regulation.

106 The current position of the European Union appears to be that the political process on the issue of Western Sahara should aim to reach 'a just, realistic, pragmatic, lasting and mutually acceptable political solution …, based on 'compromise', as stated in point 13 of the joint declaration by the European Union and Morocco for the fourteenth meeting of the Association Council (27 June 2019), available at: https://www.consilium.europa.eu/en/press/press-releases/2019/06/27/joint-declaration-by-the-european-union-and-the-kingdom-of-morocco-for-the-fourteenth-meeting-of-the-association-council/.

141. Indicating the country of origin of a product originating in the territory of Western Sahara as 'Kingdom of Morocco' alongside a reference to 'Western Sahara' would therefore run counter to the European Union's stated position regarding the territory of Western Sahara, infringe the requirement to establish a 'correct, neutral and objective'[107] information particular on the country of origin of the products at issue, and infringe the EU legislature's decision to require a singular origin for labelling purposes.

142. In conclusion, the country of origin label for the products at issue must not contain any territorial designation other than that of Western Sahara.

IV. Conclusion

143. In light of the foregoing, I propose that the Court of Justice answer the questions referred by the Conseil d'État (Council of State, France) as follows:

(1) Article 207 TFEU and Article 134(1) of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code

must be interpreted as not authorising, in themselves, a Member State to adopt unilaterally a national measure prohibiting the import of fruit and vegetables from a third country into its territory for failure to display a correct 'country of origin' label.

(2) Articles 5(1) and 6(1) of Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors, Articles 9 and 26 of Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004, and Article 76 of Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and No 1234/2007, read in the light of Article 60 of Regulation No 952/2013 and Annex I to Commission Implementing Regulation (EU) 2020/1470 of 12 October 2020 on the nomenclature of countries and territories for the European statistics on international trade in goods and on the geographical breakdown for other business statistics,

must be interpreted as requiring that the packaging of cherry tomatoes and Charentais melons originating in the territory of Western Sahara must bear a 'country of origin' label reflecting their origin in that territory.

As European Union law and policy currently stand, that type of label must not refer to the Kingdom of Morocco.

[107] See judgment of 13 January 2022, *Tesco Stores ČR* (C-881/19, EU:C:2022:15, paragraphs 44 and 46 and the case-law cited).