Reference for a preliminary ruling by the Sø- og Handelsret by order of that court of 31 October 1997 in the case of Upjohn SA, Danmark v. Paranova A/S

(Case C-379/97)

(97/C 387/19)

Reference has been made to the Court of Justice of the European Communities by order of the Sø- og Handelsret (Maritime and Commercial Court) of 31 October 1997, which was received at the Court Registry on 6 November 1997, for a preliminary ruling in the case of Upjohn SA, Danmark v. Paranova A/S on the following questions:

1. Do Article 7 of Council Directive 89/104/EEC [1] of 21 December 1988 to approximate the laws of the Member States relating to trade marks and/or Articles 30 and 36 of the EC Treaty preclude the proprietor of a trade mark from relying on its right under national trade-mark law as the basis for opposing a third party's purchasing a pharmaceutical product in a Member State, repackaging it in that third party's own packaging, to which it affixes trade mark X belonging to the trade-mark proprietor, and marketing the product in another Member State, in the case where the pharmaceutical product in question is marketed by the trade-mark proprietor or with its consent in the Member State of purchase under trade mark Y and an identical pharmaceutical product is marketed by the trade-mark proprietor or with its consent in the abovementioned second Member State under trade mark X?

2. Does it have any bearing on the reply to Question 1 whether the trade-mark proprietor's use of different trade marks in the country in which the importer purchases the product and in that in which the importer sells the product is attributable to subjective circumstances particular to the trade-mark proprietor? If the answer is yes, is the importer required to adduce evidence that the use of different trade marks is or was intended artificially to partition the markets (reference is made in this connection to the Court's judgment of 10 October 1978 in Case 3/78 Centrafarm v. American Home Products Corporation [2])?

3. Does it have any bearing on the reply to question 1 whether the trade-mark proprietor's use of different trade marks in the country in which the importer purchases the product and in that in which the importer sells the product is attributable to objective circumstances outwith the control of the trade-mark proprietor, including, in particular, requirements of national health authorities or the trade-mark rights of third parties?

[1] OJ L 40, 11. 2. 1989, p. 1.
[2] [1978] ECR 1823.

Reference for a preliminary ruling by the President of the Arrondissementsrechtbank, The Hague, by order of 4 November 1997 in the case of Emesa Sugar (Free Zone) NV and 1. Kingdom of the Netherlands, 2. The Netherlands State, 3. The Netherlands Antilles and 4. Aruba

(Case C-380/97)

(97/C 387/20)

Reference has been made to the Court of Justice of the European Communities by interlocutory judgment of the President of the Arrondissementsrechtbank, The Hague, of 4 November 1997, received at the Court Registry on 6 November 1997, for a preliminary ruling in the case of Emesa Sugar (Free Zone) NV and 1. Kingdom of the Netherlands, 2. The Netherlands State, 3. The Netherlands Antilles and 4. Aruba on the following questions:

1. Is it compatible with the EC Treaty, in particular Part IV thereof, for provisions such as those referred to in the second paragraph of Article 136 of the Treaty to include quantitative restrictions on imports or measures having equivalent effect?

2. Is the answer to that question different

   a. if those restrictions or measures are in the form of tariff quotas or limitations to the provisions relating to origin or a combination of the two; or

   b. if the provisions in question comprise safeguard measures or not?

3. Does it follow from the EC Treaty, in particular Part IV thereof, that for the purposes of the second paragraph of Article 136, the experience acquired — in the form of measures favourable to the OCT — may not subsequently be reviewed or annulled to the detriment of the OCT?

   If that is indeed the case, can individuals then rely on it in proceedings before the national court?

4. To what extent must the 1991 OCT Decision (91/482/EEC, OJ L 263, 19. 9. 1991, p. 1; corrigendum in OJ L 15, 23. 1. 1993, p. 33) be deemed to apply without amendment during the 10 year period referred to in Article 240 (1) thereof, given that the Council did not amend that decision before the expiry of the first (period of) 5 years referred to in Article 240 (3) thereof?