

OPINION OF ADVOCATE GENERAL ALBER

delivered on 25 April 2002¹

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I — Introduction

II — Legal framework

(1) Community provisions

1. The present order for reference concerns the question of the extent of the protection afforded by industrial property in the form of protected designations of origin. Specifically, the issue is whether the protected designation of origin 'Prosciutto di Parma' ('Parma ham') may be used only if the slicing and packaging of the ham also take place in the region of production. The Italian plaintiffs in the main proceedings wish to prevent the defendants from placing ham on the market under the protected designation of origin 'Parma ham' if it is sliced and packaged in the United Kingdom.

(a) Council Regulation (EEC) No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs² ('Regulation No 2081/92')

2. Regulation No 2081/92 introduces Community rules to protect certain agri-

² — OJ 1992 L 208, p. 1.

cultural products and foodstuffs for which a link between product or foodstuff characteristics and geographical origin exists.

(b) geographical indication: means the name of a region, a specific place or, in exceptional cases, a country, used to describe an agricultural product or a foodstuff:

3. Article 2(2) provides:

— originating in that region, specific place or country, and

‘For the purposes of this Regulation:

(a) designation of origin: means the name of a region, a specific place or, in exceptional cases, a country, used to describe an agricultural product or a foodstuff:

— which possesses a specific quality, reputation or other characteristics attributable to that geographical origin and the production and/or processing and/or preparation of which take place in the defined geographical area.’

— originating in that region, specific place or country, and

— the quality or characteristics of which are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors, and the production, processing and preparation of which take place in the defined geographical area;

4. Under Article 4(1) of Regulation No 2081/92, to be eligible to use a protected designation of origin (‘PDO’)³ or a protected geographical indication (‘PGI’) an agricultural product or foodstuff must comply with a *specification*. Article 4(2) lists the particulars which must be included in the specification; they include a description of the agricultural product or foodstuff including the raw materials, the definition of the geographical

3 — This footnote concerns only the German version of the Opinion.

area, a description of the method of obtaining the agricultural product or foodstuff, details bearing out the link with the geographical environment or the geographical origin and any requirements laid down by Community and/or national provisions.

and, if necessary, the grounds for its conclusions. If no statement of objections is notified to the Commission in accordance with Article 7 by a Member State or a legitimately concerned natural or legal person, the Commission enters the name in the 'Register of protected designations of origin and protected geographical indications' and publishes it in the *Official Journal of the European Communities*.

5. Regulation No 2081/92 prescribes a normal procedure and a simplified procedure — which is relevant in the present case — for the entry of PDOs and PGIs in the 'Register of protected designations of origin and protected geographical indications' kept by the Commission. The fundamental difference between them is that the simplified procedure does not provide for the main points of the application and the references to national provisions to be published in the *Official Journal of the European Communities*. Articles 5, 6 and 7 govern the normal procedure. In brief, Article 5 provides that an application is initially submitted at national level and examined as to its content by the Member State. The Member State forwards the application to the Commission if it considers the application to be justified. Under Article 6, the Commission verifies, by means of a formal investigation, whether the application for registration includes all the particulars provided for in Article 4 and, if it considers that the name qualifies for protection, publishes in the *Official Journal of the European Communities* the name and address of the applicant, the name of the product, the main points of the application, the references to national provisions governing the preparation, production or manufacture of the product

6. In accordance with Article 8, the indications 'PDO' and 'PGI' may appear only on agricultural products and foodstuffs which comply with the regulation.

7. Article 13(1) provides:

'Registered names shall be protected against:

- (a) any direct or indirect commercial use of a name registered in respect of products not covered by the registration in so far as those products are comparable to the products registered under that name or in so far as using the name exploits the reputation of the protected name;

(b) any misuse, imitation or evocation, even if the true origin of the product is indicated or if the protected name is translated or accompanied by an expression such as “style”, “type”, “method”, “as produced in”, “imitation” or similar;

(c) any other false or misleading indication as to the provenance, origin, nature or essential qualities of the product, on the inner or outer packaging, advertising material or documents relating to the product concerned, and the packing of the product in a container liable to convey a false impression as to its origin;

(d) any other practice liable to mislead the public as to the true origin of the product.

...’

8. In accordance with Article 15, the Commission is assisted in the registration procedure by a committee composed of representatives of the Member States.

9. Article 17 governs the simplified procedure for registering a PDO or PGI. It applied to names, such as Parma ham, which already existed and enjoyed national protection before the regulation entered into force. Article 17 states:

‘1. Within six months of the entry into force of the Regulation,⁴ Member States shall inform the Commission which of their legally protected names or,..., which of their names established by usage they wish to register pursuant to this Regulation.

2. In accordance with the procedure laid down in Article 15, the Commission shall register the names referred to in paragraph 1 which comply with Articles 2 and 4. Article 7 shall not apply....

3. ...’

4 — Under Article 18 the regulation was to enter into force 12 months after the date of its publication. Since the regulation was published in the Official Journal on 24 July 1992, it entered into force on 24 July 1993. The simplified procedure was therefore applicable until 24 January 1994.

10. In contrast to the normal procedure, the simplified procedure therefore makes, or made, no provision for the main points of the application and the references to national provisions to be published in the Official Journal. Comparable information is made available solely to the committee set up under Article 15 of Regulation No 2081/92.

Consorzio del Prosciutto di Parma (the Parma Ham Producers' Association; 'the Consorzio'), including in relation to packaging. It sets out certain additional requirements as to labelling in Section H.

(2) Italian law

(b) 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 Regulation No 2081/92 ('Regulation No 1107/96')⁵

11. After receiving and formally examining the names notified by the Member States pursuant to Article 17 of Regulation No 2081/92, the Commission adopted Regulation No 1107/96. The annex to this regulation contains the list of names registered as PDOs or PGIs, including the PDO 'Prosciutto di Parma'.

12. The specification for the PDO 'Parma ham' refers, in sections B.4 and C.2, to the requirement that the packaging of sliced Parma ham is to be carried out in the region of production defined in section C.1. In section G it identifies the functions of the

13. The Consorzio was set up on 18 April 1963 by 23 producers of Parma ham and in the very same year — thus long before the Community regulations entered into force in 1992 and 1996 — the trademark 'Prosciutto di Parma' was registered by it. The production of Parma ham and protection of the denomination of origin were first regulated in Italian law by Law No 506 of 4 July 1970.⁶ By ministerial order of 3 July 1978, the Consorzio was entrusted with the task of supervising the production and marketing of Parma ham pursuant to Article 7 of Law No 506. Law No 26 of 13 February 1990 consolidated in Italian law the rules which are now in force.⁷ Ministerial Decree No 253 of 15 February 1993 and a ministerial decree of 12 April 1994 empowered the Consorzio to monitor and supervise observance of the provisions concerning the production and processing of Parma ham.⁸

6 — *Gazzetta Ufficiale della Repubblica Italiana* (GURI) No 179 of 17 July 1970, p. 4748.

7 — GURI No 42 of 20 February 1990.

8 — GURI No 173 of 26 July 1993.

5 — OJ 1996 L 148, p. 1.

14. Article 1 of Law No 26 reserves the name 'Prosciutto di Parma' exclusively for ham which bears a distinguishing mark permanently identifying it, is obtained by processing fresh legs of pigs bred and slaughtered in 'mainland Italy', is produced according to provisions laid down by the Law and is aged for a prescribed minimum period in the area of the province of Parma defined in Article 2.

15. Article 3 sets out the specific characteristics of Parma ham, including its weight, colour, aroma and flavour.

16. Article 6 of the Law provides:

'1. After the mark has been applied, Parma ham can be sold boned and in pieces of varying weight and shape, or it may be sliced and suitably packaged.

2. In cases provided for in paragraph 1, if it is not possible to keep the mark on the product, the former shall be indelibly stamped, so that it cannot be removed from the packaging, under the control of the competent body and according to methods determined by implementing regu-

lations. In these cases, packaging operations shall be carried out in the typical production area as referred to in Article 2.'

17. Article 11 of the Law empowers the competent ministries to make use of the assistance of a consortium of producers for the purposes of supervision and control. The Consorzio has exercised that function since 1978. According to the Consorzio's own submissions, the inspectors employed by it have very wide powers, similar to those of the police.

18. By Ministerial Decree No 253 of 15 February 1993, referred to above, it was laid down in addition that slicing and packaging of Parma ham must take place at plants in the region of production which are recognised by the Consorzio (Article 25). Furthermore, the decree requires the slicing and packaging of Parma ham to be carried out in the presence of representatives of the Consorzio (Article 26). Finally, rules on packaging and labelling were adopted (Article 29).

19. Accordingly, under Italian law, pre-sliced and pre-packaged Parma ham must be sliced and packaged in the Parma region of production and bear a label which specifies the name and mark of the producers or packer and seller, the location of the packaging plant, the date of production and details of the preservation. On the other hand, it is permissible, where the ham

is supplied whole or cut up, for it to be sliced in front of the purchaser in a shop or restaurant.

duced in Italy, packed in the UK for Asda Stores Limited'.¹⁰

III — Facts, main proceedings and question referred for a ruling

22. In 1997 the Consorzio complained of breach of the regulations to trading standards officers in Wiltshire and West Yorkshire. Those complaints were rejected.

20. Asda Stores Limited ('Asda') sells packets of ham described as 'Parma ham' in its supermarkets in England. It obtains those goods from Hygrade Foods Limited ('Hygrade'). Hygrade acquires the ham from Cesare Fiorucci SpA, a company resident in Italy. The ham is imported — boned but unsliced — into the United Kingdom and sliced and packaged by Hygrade at its premises in Corsham. After being sliced, it is packed and sealed in packets of five slices.

23. On 14 November 1997 the Consorzio commenced proceedings in the English courts against Asda and Hygrade, seeking various injunctions. The Consorzio's motion was dismissed by judgment of 30 January 1998.

21. The packets bear the following words: 'ASDA, A taste of Italy, PARMA HAM, Genuine Italian Parma Ham'.⁹ The back of the packets states: 'PARMA HAM, All authentic Asda continental meats are made by traditional methods to guarantee their authentic flavour and quality' and 'Pro-

24. The Consorzio appealed to the Court of Appeal against that judgment. In the course of those proceedings, leave was granted for Salumificio S. Rita SpA ('Salumificio Rita'), an undertaking which produces 'Parma ham' and is a member of the Consorzio, to be added as a plaintiff alongside the Consorzio. The appeal was dismissed on 1 December 1998.

⁹ — This footnote is unnecessary for the English version of the Opinion.

¹⁰ — This footnote is unnecessary for the English version of the Opinion.

25. The Consorzio and Salumificio Rita appealed to the House of Lords against the decision of the Court of Appeal. In those appeal proceedings the House of Lords has referred the following question to the Court of Justice for a preliminary ruling:

Council Regulation (EEC) No 2081/92 to label and sell as “Parma ham” ham from Parma which has not been sliced and packaged in the typical production area and under the supervision of the [Consorzio]?

‘As a matter of Community law, does Council Regulation (EEC) No 2081/92 read with Commission Regulation (EC) No 1107/96 and the specification for the PDO “prosciutto di Parma” create a valid Community right, directly enforceable in the court of a Member State, to restrain the retail sale as “Parma ham” of sliced and packaged ham derived from hams duly exported from Parma in compliance with the conditions of the PDO but which have not been thereafter sliced, packaged and labelled in accordance with the specification?’

This issue focuses on two matters. First, whether the regulations are capable of protecting slicing and packaging operations. Secondly, whether (assuming the regulations so permit) the application for registration included a claim for the protection of slicing and packaging operations.

26. The House of Lords elucidates the question which it has submitted by indicating, in question form, that it is interested above all in clarification of the following issues:

(2) If the answer to issue 1 is Yes, are the relevant provisions of Council Regulation (EEC) No 2081/92 and Commission Regulation (EC) No 1107/96 valid? (The validity issue.)

‘(1) On a true construction of Council Regulation (EEC) No 2081/92 and Commission Regulation (EC) No 1107/96, and the relevant specification for Parma ham, is it contrary to Articles 4 and/or 8 and/or 13 of

(3) Are the provisions of Council Regulation (EEC) No 2081/92 enforceable in civil proceedings in England by persons such as the Appellants...? (The direct effect issue.)’

IV — Arguments of the parties

(1) Consorzio del Prosciutto di Parma and Salumificio Rita ('the plaintiffs')

27. The plaintiffs submit that only ham sliced and packaged in the region of production may bear the PDO 'Parma ham' since this requirement forms part of the specification. That rule serves to protect the authenticity of the product. The only means of satisfying consumers that they are obtaining genuine Parma ham lies in the existence of methods of control and application of a certification mark which is allowed to be used only if the producers and packers comply with the strict requirements laid down by the Consorzio.

28. The condition requiring ham to be sliced and packaged in the region of production is fundamental to ensuring that the typical qualities of Parma ham are retained. When Parma ham is processed by being sliced and packaged, three factors are essential: selection of the ham to be processed, checks on the equipment of the business carrying out the processing, and the presence of Consorzio inspectors when the ham is sliced and packaged and the certification mark is affixed. Processing is a complex procedure which encompasses boning, preparation of the 'brick' (this

being the shape of the ham when it is sliced), the actual slicing and the subsequent packaging. A high quality of Parma ham is guaranteed only by simultaneously monitoring the processed ham and the staff carrying out the processing.

29. Some of the necessary checks cannot be carried out until the ham is sliced. 'Hidden defects' such as dots resulting from micro-haemorrhaging within the animal, light patches in the muscle or excessive intramuscular fat cannot be discovered until this stage. The detection of such defects and the carrying out of effective checks demand special experience and a thorough knowledge of the product with regard to the entire processing operation.

30. The plaintiffs consider that the permanent presence of an inspector during processing is necessary in order to ensure that the image of Parma ham is protected. The competence necessary for the checks is possessed only by those people who understand the marketing and the technical aspects of the product and of its processing, namely the Consorzio's inspectors and the producers' workers. This knowledge, displayed by the Consorzio's inspectors, is not possessed by people outside the region of production. Checks are, moreover, a statutory requirement under Article 6 of Law No 26 of 1990 and Articles 25 and 26 of Ministerial Decree No 253 of 1993.

31. The plaintiffs refer to the risk to the reputation of Parma ham which would arise from allowing slicing and packaging outside the region of production. Any consumer dissatisfaction with the quality of ham processed outside the region of production would, in the plaintiffs' view, automatically also affect the high regard in which ham processed in the region of production is held.

had, or was able to acquire, knowledge of the conditions for using the PDO 'Prosciutto di Parma'.

(2) Asda and Hygrade ('the defendants')

32. Relying on the judgment in the '*Rioja*' case,¹¹ the plaintiffs contend that the rules on the slicing and packaging of Parma ham are designed to protect the PDO's reputation which is essentially determined by the ham's quality. The particular abilities applied and the ethos prevailing when checks are carried out in the region of production together with the specialised knowledge concerning the handling of Parma ham are the best means of ensuring that quality.

34. The defendants dispute that the provisions concerning the slicing and packaging of ham in the region of production can be raised against them. Neither the specification nor the notification of the PDO 'Prosciutto di Parma' was published in the *Official Journal of the European Communities*. In their submission, the principles of transparency and legal certainty would be infringed if unpublished rules could be raised against them.

33. The concerns expressed in relation to the lack of publicity given to the specification, an absence which the defendants criticise, are, in the plaintiffs' view, irrelevant. The plaintiffs have merely demanded that Asda should refrain from future activity and have not claimed damages in respect of the past. Consequently, it does not matter to what extent in the past Asda

35. That is particularly the case where the rules have not been published in the official language of the country before whose courts they are pleaded. However, the specification exists only in Italian and is not available in English, at any rate not in an official translation.

36. It is true that the specification contains a reference to the Italian statutory provisions upon which the requirement that slicing and packaging take place in the

¹¹ — Case C-388/95 *Belgium v Spain* [2000] ECR I-3123.

region of production is founded. However, they are not attached to the specification, making it impossible for the defendants to become aware of them.

37. The defendants point out, furthermore, that the Consorzio is not under a legal obligation to send them a copy of the application for registration. Nor is the Commission obliged to, not even pursuant to Commission Decision 94/90/ECSC, EC, Euratom of 8 February 1994 on public access to Commission documents,¹² as the Commission is not the author of the specification, and therefore of the document.

38. The only details which were published were the fact that the PDO 'Prosciutto di Parma' had been registered and that the Consorzio was the competent body for inspections pursuant to Article 10 of Regulation No 2081/92. However, that is not sufficient for the rules concerning slicing and packaging in the region of production to be raised against them.

39. The defendants also submit that the rules requiring slicing and packaging to take place in the region of production and under the supervision of the Consorzio did not become part of the designation of

origin 'Prosciutto di Parma' which is protected by Regulations No 2081/92 and No 1107/96. In accordance with the judgment in *Pistre*,¹³ Regulation No 2081/92 protects only requirements which ensure that the product comes from a particular geographical area. It is accordingly necessary for a requirement laid down in a specification to protect that particular link. However, no link exists between the geographical origin of the ham and the slicing and packaging processes.

40. The defendants therefore propose that Regulations No 2081/92 and No 1107/96 should be interpreted as not protecting the PDO as regards rules on the slicing and packaging of ham. In the alternative they suggest that Regulation No 1107/96 should be declared invalid to the extent that it covers the rules concerning the slicing and packaging of Parma ham in the region of production since that falls outside the spirit and purpose of Regulation No 2081/92.

41. The defendants contend, furthermore, that to interpret Regulations No 2081/92 and No 1107/96 as also protecting the requirement that slicing and packaging take place in the region of production infringes the rules on the free movement of goods. The producer of the ham which the defendants marketed, Cesare Fiorucci SpA, put the ham into free circulation.

12 — OJ 1994 L 46, p. 58.

13 — Joined Cases C-321/94, C-322/94, C-323/94 and C-324/94 *Pistre and Others* [1997] ECR I-2343, paragraph 31.

42. Nor have the plaintiffs put forward any justification for that restriction. Nobody has ever questioned the quality of Parma ham produced by a member of the Consorzio in accordance with the applicable provisions. It has also not been submitted that the ham sold by the defendants has led to consumers being confused or misled or has ever harmed the reputation of Parma ham producers.

43. Finally, the defendants consider that the requirement that slicing and packaging take place in the region of production is disproportionate. Italian law also allows Parma ham to be exported whole or cut up and to be sliced in front of the consumer in another Member State. There is no reason for prohibiting the same slicing process outside the region of production when it does not take place in front of the consumer.

(3) The United Kingdom

44. The United Kingdom Government takes the view that the requirement for ham to be sliced and packaged in the region of production is a measure having an equivalent effect to a quantitative restriction on exports. That restriction on the free movement of goods is not justified. Articles 8 and 13 of Regulation No 2081/92 are intended to ensure that a product comes from a specified area and

displays certain characteristics. They therefore protect only such requirements as are necessary to guarantee those characteristics.

45. In the main proceedings, it is not in dispute between the parties that the whole hams imported by the defendants may bear the PDO 'Parma ham'. The quality of the ham is not adversely affected by being sliced and packaged. In this respect, the present case is not comparable with the decision in the *Rioja* case.

46. The United Kingdom Government shares the defendants' view with regard to the problem of publicity given to the specification. It is apparent from the 10th recital in the preamble to Regulation No 2081/92 that entry in the register should provide information to those involved in the trade and to consumers. Regulation No 1107/96 made public only that 'Parma ham' is protected as a PDO. When a trader purchases ham with the PDO 'Parma ham', he has the guarantee that the ham originates from the region of production laid down for Parma ham and satisfies certain quality requirements. The summary of the specification submitted in connection with registration under the Article 17 procedure does not contain the requirement that the ham must be sliced and packaged in the region of production. It is true that it refers to the Italian legislation which lays down that the ham is to be sliced and packaged in the region of

production. However, that prohibition on use of the PDO 'Parma ham' must be transparent and readily identifiable or accessible.

wide discretion in the context of agricultural policy. Regulation No 2081/82 strikes a balance between the interests of the free movement of goods, of consumer protection and of protection of industrial property. Since use of the PDO is protected in all Member States, the regulation assists the free movement of goods.

(4) The French Republic

47. The French Government points out that the requirement that slicing and packaging take place in the region of production formed part of the specification submitted with the application for registration of the PDO 'Parma ham'. That requirement is accordingly afforded protection under Community law and thus ham which is sliced and packaged outside the region of production may not bear the PDO 'Parma ham'.

(5) The Italian Republic

50. The Italian Government refers to the judgment in the *Rioja* case. As found in that judgment in relation to wine, it is true with regard to the ham under discussion here that the processing of quality products is to be left to specialists.

48. France considers that that requirement is also compatible with Regulation No 2081/92 since it is necessary in order to guarantee that the ham originates from a specific area. In contrast to whole hams, in the case of sliced ham consumers can be informed only by means of the details on the packaging which are provided under the supervision of the Consorzio.

49. Regulation No 2081/92 is compatible with the provisions concerning the free movement of goods. The legislature has a

51. The Italian Government refers to section B.4 of the specification and Article 12 of the 'directive' annexed thereto, according to which the PDO cannot be used unless the ham has been sliced and packaged in the region of production. All operations are subject to strict control by specially qualified staff who have great experience in handling Parma ham. Supervision also extends to the technical suitability of the machines used and the product's aesthetic appearance. If those controls were not undertaken, the loss of quality would damage the product's reputation.

52. The Italian Government submits with regard to the problem of transparency and of accessibility of the relevant provisions that, when it lodged the application for registration, it also submitted to the Commission the specification, including the 'directive', which contain the requirement that slicing and packaging take place in the region of production. In addition, the relevant legislation was submitted. The Member States were provided with information hereon, in the various official languages, in the committee set up under Article 15 of Regulation No 2081/92, and thus the relevant provisions are accessible. Businesses concerned are obliged to obtain that relevant information.

(6) The Kingdom of Spain

53. The Spanish Government likewise refers to the judgment in the *Rioja* case. The purpose of a designation of origin is to guarantee that the product comes from a specified area and displays certain characteristics. The slicing of the ham is a particularly important step in its processing. Even if it does not take place until after the actual production, it is fundamental for Parma ham in particular, as Parma ham is mainly sold sliced.

54. Supervision carried out outside the region of production affords fewer guaran-

tees of the product's quality and authenticity. It is therefore necessary, in the interests of better consumer protection, for slicing and packaging to take place in the region of production. That applies all the more because the certification mark affixed to whole hams is removed on slicing.

(7) The Commission

55. The Commission points out that the requirement for slicing and packaging to take place in the region of production is contained in the specification which accompanied the application for registration and that the specification, moreover, refers to the relevant Italian legislation.

56. With regard to the validity of the registration in so far as it relates to the requirement for slicing and packaging to take place in the region of production, the Commission refers to the decision in the *Rioja* case. The slicing and packaging of ham constitute a complex process requiring observance of certain rules and specialised knowledge. The process has an effect on the product's quality which in turn determines its reputation.

57. The protected designation of origin guarantees that the product comes from a specified area and displays certain characteristics. This guarantee is best secured by slicing and packaging in the region of production. Outside that region there are no equivalent checks carried out by staff with specialised knowledge. The checks provided for in the specification and in the Italian legislation are designed to preserve the quality of Parma ham and are therefore justified.

and packaged in the region of production, went too far.

V — Assessment

58. With regard to the question of the direct applicability of Regulation No 2081/92, the Commission points out first of all that, in accordance with Article 249 EC, regulations are directly applicable. It also deduces from the seventh and 12th recitals in the preamble and Articles 8 and 13 that the regulation grants rights which are directly enforceable before national courts. Finally, it relies in addition on the regulation's objective, which consists in henceforth protecting throughout the Community names previously protected only at national level.

(1) Interpretation of the question submitted

59. The Commission observes with regard to the publicity given to the provisions that even the Article 17 procedure ensures some publicity. It was conceived as a procedure between the Member States, which, in the committee provided for under Article 15, were informed about the applications for registration including the specifications. Thus, the United Kingdom Government voted in the committee against the draft regulation *inter alia* because it considered that certain restrictions, for example the obligation requiring Parma ham to be sliced

60. The House of Lords has referred to the Court of Justice the question whether Regulation No 2081/92 read with Regulation No 1107/96 and the specification for the PDO 'Prosciutto di Parma' creates a right which is directly enforceable before the courts of the Member States to restrain the retail sale of ham which has not been sliced and packaged in the region of production in accordance with the specification. It is apparent from the order for reference that the national court would like to ascertain, first, whether slicing and packaging operations in the region of production are capable of being protected at all by Regulations No 2081/92 and No 1107/96 and, secondly, whether the application for registration of the PDO 'Prosciutto di Parma' in fact included a claim seeking protection of slicing operations. Should both those questions be answered in the affirmative, the question of the validity of both regulations is raised. Finally, the House of Lords asks whether it is possible to enforce before national courts such protection as is granted under the regulations.

(2) Scope of protection provided by the PDO 'Prosciutto di Parma'

61. It is necessary to examine first of all to what extent the specification submitted with the application for registration of the PDO 'Parma ham' includes the requirement to slice and package the ham in the region of production. It is to be observed in this regard that, under Article 4(2)(i) of Regulation No 2081/92, a specification may include a reference to any requirements laid down by Community and/or national provisions. By virtue of Article 4(2)(i), it is sufficient for the relevant Italian statutory provisions to be referred to in the specification as appropriate.

62. The copy of the specification submitted by the Consorzio as an appendix to its observations contains, in section B.4, the requirement that ham is to be packaged in the region of production if the mark of origin cannot be affixed to the ham. That is the case with sliced ham. In addition, section C.2 provides that the plants entrusted with the slicing and packaging must be located in the region of production. Law No 26 of 13 February 1990, Article 6(2) of which requires slicing, packaging and labelling to take place in the region of production, and Decree No 253 of 15 February 1993, which repeats those requirements in Article 25, are expressly referred to in the lists at the end of sections B and C specifying the statutory provisions taken into account.

63. It is therefore to be concluded that the specification submitted with the application for registration includes the requirement that slicing and packaging take place in the region of production. The scope of the protection provided by the PDO 'Prosciutto di Parma' thus extends to slicing and packaging in that region.

(3) Compatibility of the rules with Regulation No 2081/92

64. This leads to the question whether it was open to the Commission to register the PDO 'Parma ham' with that protective scope, that is to say whether the registration under Regulation No 1107/96 is compatible with Regulation No 2081/92.

65. In accordance with Article 2(2)(a) of Regulation No 2081/92, a designation of origin is used to describe an agricultural product or a foodstuff originating in the region, specific place or country in question, the quality or characteristics of which are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors, and the production, processing and preparation of which take place in the defined geographical area. Slicing, packaging and labelling in the region of production under the supervision of the Consorzio are processing operations. Labelling of the packets

guarantees that the sliced ham consists of ham which is allowed to be placed on the market under the designation 'Parma ham'. Finally, the supervision by the Consorzio ensures that the provisions concerning the processing of Parma ham are observed.

examination of an application for registration requires, to a great extent, detailed knowledge of matters particular to the Member State concerned, matters which the national authorities are best placed to check.¹⁷

66. When reviewing the legality of a registration, regard is to be had to the division of powers between the Member States and the Commission introduced by Regulation No 2081/92. As the Court explained in its judgment in *Carl Kühne*, an application for registration under Article 5 of Regulation No 2081/92 is to be submitted through a Member State. The Member State has the task of checking whether the application is justified with regard to the conditions laid down by the regulation. It must forward the application to the Commission only if it concludes that that is the case. The Commission then undertakes merely a formal examination in accordance with Article 6(1) of Regulation No 2081/92. Its examination includes checking whether the specification contains the particulars required under Article 4 and whether, on the basis of the specification, the designation satisfies the requirements of Article 2(2)(a) or (b).¹⁴ In so doing, the Commission confines itself to examining whether the assessment made by the competent Member State is not manifestly incorrect.¹⁵ This applies to both the normal and the simplified procedure.¹⁶ The point of that division of powers is that

67. The foregoing division of powers also has an effect on review by the Community judicature of the Commission's registration decisions. Thus, the only matters to be examined are whether the Commission complied with its obligation of verification and whether the abovementioned requirements under Articles 2 and 4 of the regulation are met.¹⁸

68. The Commission examined the application and accompanying specification which the Italian Government forwarded under the simplified procedure. In accordance with the findings set out above, it is at any rate not manifest that the specification is incomplete or that the particulars contained in it, including the requirement for slicing, packaging and labelling to take place in the region of production under the supervision of the Consorzio, do not justify the registration as a PDO. Consequently, the registration under Regulation No 1107/96 does not infringe Regulation No 2081/92.

14 — Judgment in Case C-269/99 *Carl Kühne and Others* [2001] ECR I-9517, paragraphs 50 to 54.

15 — *Carl Kühne*, cited in footnote 14, paragraph 60.

16 — *Carl Kühne*, cited in footnote 14, paragraph 52.

17 — *Carl Kühne*, cited in footnote 14, paragraph 53.

18 — *Carl Kühne*, cited in footnote 14, paragraphs 49 and 57 to 60.

(4) Compatibility of the rules with Article 29 EC

69. This leads to the further question as to whether the registration of the PDO by means of Regulation No 1107/96 including the requirement that slicing and packaging take place in the region of production under the supervision of the Consorzio might be invalid because Article 29 EC is infringed.

(a) Existence of a measure having an equivalent effect to a quantitative restriction on exports

70. According to the settled case-law of the Court, Article 29 EC prohibits national measures which have as their specific object or effect the restriction of patterns of exports and thereby the establishment of 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 production or for the domestic market of the State in question.¹⁹ Community law measures too must be compatible with the provisions concerning the free movement of goods.²⁰

71. Support for the view that there is no measure having an equivalent effect to a quantitative restriction on exports is provided first of all by the fact that the requirement for slicing and packaging to take place in the region of production affects domestic and foreign economic operators in the same way. A business established in Rome cannot slice the ham in Rome and sell it there under the PDO 'Parma ham' any more than Asda and Hygrade can in the United Kingdom.

72. On the other hand, it must be taken into account that the requirement to slice and package the ham in the region of production in order to be allowed to place it on the market under the designation of origin 'Parma ham' confers a particular advantage on the undertakings operating in the region of production inasmuch as they alone are allowed to slice and package the ham. That activity remains reserved for the industry established in the region of production.

73. In addition, export of the ham to other Member States might well be made more expensive by the rules at issue. Prior to export, a further processing operation must be carried out. That increase in costs hinders the export of Parma ham. Those reasons point in favour of categorising the rules as a measure having an equivalent effect to a quantitative restriction on exports.

19 — Case C-209/98 *Sydhavns Sten & Grus* [2000] ECR I-3743, paragraph 34, Case 172/82 *Inter-Huiles and Others* [1983] ECR 555, paragraph 12, and Case 238/82 *Duphar* [1984] ECR 523, paragraph 25.

20 — Case C-51/93 *Meyhui* [1994] ECR I-3879, paragraph 11.

74. As mentioned above, the case-law concerning the interpretation of Article 29 EC focuses on whether the measure in question specifically restricts exports.²¹ In its judgments in *Delhaize* and the *Rioja* case, the Court held that measures under which the designation of origin for Rioja wine may be used only if the wine is bottled in the region of production specifically restrict patterns of exports for the purposes of Article 29 EC.²² In the judgment in the *Rioja* case, it based that finding on the fact that the wine may also be transported unbottled within the region of production, in contrast to exported wine.²³

75. The situation in the present case appears to be comparable. The rules in question lay down solely that the ham must be sliced and packaged in the region of production. That requirement is observed if the ham is transferred within the region of production from the slaughterhouse to another business which then slices and packages it in accordance with the applicable rules. Therefore, here too it may be concluded that there is a specific restriction on exports.

(b) Justification of the measure in order to protect industrial property

76. The question is thus raised of the extent to which the measure is justified on the grounds of protection of industrial property within the meaning of Article 30 EC. Designations of origin are industrial and commercial property within the meaning of Article 30 EC.²⁴ The restrictions on trade which they entail are justified in so far as they are necessary in order to ensure that the designation of origin fulfils its specific function, which is to guarantee that the product bearing it comes from a specified geographical area and displays certain particular characteristics.²⁵ Accordingly, the requirement that slicing and packaging take place in the region of production would be justified if it gave the ham from that region particular characteristics apt to distinguish it from other ham, or if slicing in the region of production were essential in order to preserve specific characteristics acquired by the ham during its production. However, only requirements observance of which is necessary in order to protect the reputation of the PDO are to be regarded as a restriction on the free movement of goods satisfying the principle of proportionality.²⁶

21 — Cf. the judgment in Case C-3/91 *Exportur* [1992] ECR I-5529, at paragraphs 16 to 22, where the two, differing, approaches to Articles 28 EC and 29 EC are discussed in the light of the law on designations of origin.

22 — Case C-47/90 *Delhaize et Le Lion* [1992] ECR I-3669, paragraphs 12, 13 and 14, and *Belgium v Spain*, cited in footnote 11, paragraphs 38 to 42.

23 — *Belgium v Spain*, cited in footnote 11, paragraphs 38 to 42.

24 — *Exportur*, cited in footnote 21, paragraph 37, and *Belgium v Spain*, cited in footnote 11, paragraph 54.

25 — *Delhaize et Le Lion*, cited in footnote 22, paragraph 16 et seq., and *Exportur*, cited in footnote 21, paragraph 24.

26 — See, with regard to this approach in the case-law, for example Case C-228/91 *Commission v Italy* [1993] ECR I-2701, paragraph 19.

(i) Rules to protect a particular characteristic

77. It must therefore be examined to what extent the slicing and packaging of Parma ham in the region of production confers on it or preserves a characteristic which influences the consumer's choice and is therefore commercially material.

78. Support for the view that a commercially material characteristic is involved is provided first of all by the fact that, according to the submissions of the Consorzio and Salumificio Rita and of Italy, Spain and the Commission, slicing demands special knowledge. The hams to be sliced are to be selected with care, using special expertise. In addition, regard is to be had during slicing to certain requirements, so that the quality of the ham, its appearance and its particular characteristics are safeguarded. The Consorzio and Salumificio Rita contend that this know-how is available only in the region of production.

79. A further argument in favour of a commercially material characteristic being involved is the fact, likewise put forward by the Consorzio and Salumificio Rita, Italy, Spain and the Commission, that the quality controls in respect of slicing and packaging are undertaken by the Consorzio only in the region of production. In their submission, this is the only means of guaranteeing that Parma ham put on the market is of a constant high quality.

80. It is to be noted, however, that none of the parties to the proceedings has put forward a convincing argument in support of the contention that the slicing of ham in the region of production is a process which confers particular characteristics on that ham or which is essential in order to preserve the specific characteristics acquired by the ham during production. The special knowledge which is required in order to select the hams for slicing and in order to slice them properly in accordance with the provisions applicable to the PDO can also be applied outside the region of production. It is entirely comprehensible that, historically, the special knowledge has developed in the region of production. However, the Consorzio has not put forward any reason why that knowledge should be available only in the region of production. People who assist in the production and processing of a product can — above all through training in the region of production — gain the requisite knowledge and necessary skills for producing and processing the product. Equally people who have acquired that knowledge and those skills can move away from the region of production. It is therefore necessary to proceed on the basis that the human influences on the product are fundamentally independent of the region of production.

81. Analogous considerations apply to observance of the other slicing requirements, including the technical equipment of the businesses entrusted with the slicing. No argument has been advanced to support the proposition that those requirements can

be complied with only in the region of production. With the technical possibilities available today, it is easy to imagine that the requirements can at any time be complied with anywhere so far as concerns, for example, refrigeration of the ham before slicing and the technical equipment of the slicing plants. In that case, however, there is no reason for allowing slicing only in the region of production.

consumers or by retailers or restaurateurs, it is to be noted that such checks could equally be carried out outside the Parma area by suitably trained staff.

82. Nor, in the final analysis, have the parties asserted that correct slicing as such outside the Parma area impairs the universally recognised quality of Parma ham. Otherwise, it would also make no sense that ham is sold whole or cut up for slicing by consumers, or slicing by retailers or restaurateurs who as a rule are not trained like processing personnel in the Parma area. In this respect, the present case also differs from that of Rioja, where transport of the wine in bulk and bottling elsewhere could indeed give rise to changes in quality. The plaintiffs' principal argument is also less concerned with an unlikely loss in quality than with the checks, without which ham containing defects might be sliced or the reputation of the product as such could be prejudiced. Apart from the fact that checks also fall away in the case of slicing by

83. Given those circumstances, and in the absence of statements to the contrary in the order for reference and the observations of the parties to the proceedings, it is at any rate not apparent that Parma ham will inevitably lose its particular characteristics which it acquires through its production if it is sliced outside the region of production — of course only if the slicing takes place in compliance with all other requirements, in particular the exclusive use of Parma ham and observance of the technical requirements set out in the specification. A ham is of course also allowed to be exported whole or cut up and to be sliced by the ultimate consumer himself. In addition, as the Consorzio confirms, a ham exported whole or cut up may also be sliced by a retailer or in a restaurant in front of the consumer, without losing its quality or particular characteristics, even if, once started, it is kept there for some time (a fact which incidentally points to the outstanding quality of Parma ham). I cannot be persuaded that this should be permissible but that industrial slicing followed by immediate packaging should not be.

84. The objection that a consumer can see the mark of origin on the ham sliced in front of him by a retailer or in a restaurant

and is therefore informed of the ham's origin would appear to be justified only to a limited extent. First, slicing machines are not as a rule placed on the shop counter, so that consumers would probably only rarely get to see the ham at sufficiently close quarters to be able to detect and recognise the certification mark at all. Secondly, the mark is not applied on every part of the ham, so that, depending on how much of the ham has already been sliced up, the part with the mark is perhaps there only partially or even no longer at all or at any rate can perhaps no longer be immediately recognised by the consumer when the ham is sliced in his presence. At the hearing, the Consorzio itself conceded that as a rule consumers do not in fact require the mark to be shown to them before the ham is sliced. The possibility of checking whether the ham in fact comes from the region of production is accordingly rather a theoretical one.

85. There is the following further reflection. In the *Rioja* case, the Court came to the view that the bottling of wine in the region of production was a justified restriction on the free movement of goods since that was the best means of guaranteeing the quality of the bottled wine. It may be evident that the bottling of the wine in the region of production constitutes a commercially material characteristic, since consumers purchase wine primarily in bottles. In the case of ham, however, the situation is different. It is purchased by consumers either sliced — whether freshly by the retailer or pre-packaged — or by the piece

or even as a whole ham. It is thus clear that the slicing of ham does not have a significance comparable to that of the bottling of wine. It is then even less the case that the place where slicing takes place can have a decisive influence on consumer choice. This supports the view that slicing in the region of production does not involve a commercially material characteristic.

86. By way of intermediate conclusion, therefore, slicing and packaging of Parma ham in the region of production are not to be regarded as measures which serve to protect particular characteristics of the ham. It been not been established either that they bestow a particular characteristic upon the ham or that slicing and packaging in the region of production are necessary in order to preserve the particular characteristics acquired by the ham in the production process. The parties too have placed less emphasis on that than on checks and on the reputation of the product linked thereto.

(ii) Carrying out of quality controls in the region of production

87. If this view is followed, it is strictly speaking superfluous to discuss the carrying out of checks in respect of slicing in order to safeguard the quality of Parma ham. If slicing in the region of production is not a commercially material characteristic,

the fact that checks are carried out there can no longer be a decisive factor.

provisions laid down for use of the PDO. It might be relevant in this context too how observance of those provisions can be ensured. At the same time, it should be made clear from the outset that only checks in respect of slicing are at issue here: ham sliced outside the region of production is of course subject, until it is sliced, to exactly the same controls as ham sliced within it.

88. This argument will accordingly be addressed below by way of supplement only. That approach appears, first, to be necessary in case the Court does not follow the analysis set out above. Second, discussion of this argument is appropriate because the parties which plead that the requirement is lawful have, referring to the judgment in the *Rioja* case, relied above all on this argument. The Consorzio, Salumificio Rita, Italy, Spain and the Commission contend that specialised knowledge is needed and the special requirements set out in the specification are to be observed in order for Parma ham to be sliced in such a way that its quality and its particular characteristics are preserved. In their submission, that is crucial for preserving the body of purchasers which has been built up and hence for the economic value of the PDO 'Prosciutto di Parma'. Only the checks systematically carried out in the region of production by the competent bodies ensure observance of the relevant criteria. They observe that there are no corresponding controls outside the region of production. Third and finally, it is necessary to discuss the issue of checks for the further reason that, as stated above, slicing outside the region of production has to take place in compliance with the

89. The carrying out of checks helps to maintain the quality and hence also the reputation of sliced Parma ham. It might accordingly be concluded that the requirement to slice and package the ham in the region of production under the supervision of the Consorzio is justified in order to protect industrial property.

90. However, that conclusion is precluded by the fact that checks can in principle be carried out not only in the region of production but also outside it. Inspectors could be sent by the Consorzio, or inspectors resident in the area in question could be trained by the Consorzio and instructed to carry out checks.

91. It is true that the Court held in the *Rioja* case that controls undertaken outside the region of production in accordance with Community law provided fewer guarantees as to the quality and authenticity of the wine than those carried out in the

region of production. However, it has already been pointed out above that the slicing of ham does not appear to be comparable with the bottling of wine. Consumers purchase 'Parma ham' either sliced (fresh or pre-packaged) or by the piece, whilst, as a rule, they buy wine in bottles. If only for that reason, checks in respect of slicing are probably not to be accorded the same status as checks in respect of bottling.

92. The problem addressed by the Consorzio and Salumificio Rita, Spain and the Commission that no or, at any rate, no equivalent quality controls are undertaken outside the region of production is a general problem concerning the enforcement of rules in foreign legal systems. If the rules on the use of the PDO provide for corresponding controls to be undertaken, an economic operator who intends to use the PDO is also required to undertake the controls if he slices the ham outside the region of production. Otherwise he infringes the provisions on the use of the PDO and may not use it.

93. It is moreover possible to enforce the rules on the use of the PDO 'Parma ham', including any checks, throughout the Community for the very reason that prohibitory injunctions may be applied for under Articles 8 and 13 of Regulation No 2081/92.

94. Nor do checks in the region of production appear necessary from the point of view of labelling. If slicing and packaging can also be checked outside the region of production, those checks can equally ensure that only ham allowed to bear the PDO 'Parma ham' is being sliced.

95. In this regard, the objection that consumers can be sure that they are obtaining Parma ham only if the ham is sliced and packaged in the region of production under the supervision of the Consorzio is also not persuasive. That is admittedly a means of guaranteeing that only hams bearing the PDO 'Parma ham' are used. The objection implies, however, that a business which processes Parma ham outside the region of production might use hams that are not allowed to bear the PDO and then nevertheless sell the sliced ham using the PDO 'Parma ham'. This constitutes an impermissible inference of unlawful conduct on the part of the competitor and the objection is to be rejected for that reason.

96. It must therefore be stated in conclusion that the requirement in the specification does not serve to protect a commercially material characteristic. Consequently, the restriction on the free movement of goods which has been found is not justified on grounds of the protection of industrial and commercial property under Article 30 EC.

(c) Justification of the measure on the basis of considerations of structural policy

97. Legislation displays a general tendency to bring out the quality of products within the framework of the common agricultural policy, in order to promote their reputation. The means used for this purpose include designations of origin.²⁷ That tendency is borne out by the second to sixth recitals in the preamble to Regulation No 2081/92. The legal basis for that regulation is, logically, Article 37 EC, which is in the agriculture chapter of the Treaty. The legislature is thereby concerned not only with protecting the quality of agricultural products but, as is shown by the second recital in the preamble to the regulation, above all also with matters of structural policy. The promotion of rural areas is sought by improving farmers' income and retaining the rural population in those areas. As stated in the discussion of Article 29 EC, the requirement for Parma ham to be sliced and packaged in the region of production confers an advantage on the businesses located there. That assessment might support the view that the requirement for slicing and packaging to take place in the region of production should be held compatible with Community law.

goods is supported first of all by the wording of Article 30 EC. The list of grounds upon which a restriction on the free movement of goods may be justified does not include a 'structural-policy considerations' or 'agricultural policy' category. According to the case-law, the list of exceptions in Article 30 EC is, however, definitive.²⁸

99. Furthermore, in accordance with general rules of interpretation Article 30 EC is, as an exception to the principle of the free movement of goods, to be construed narrowly.²⁹ This too provides support for the view that quantitative restrictions on exports and measures having equivalent effect should be accepted as justified within narrow limits only. With regard to designations of origin, it appears justified to accept restrictions arising from natural influences on the product in question, since they are tied to the region of production. On the other hand, this is not true of know-how, which in principle can also be applied outside the region of production.

100. It is also to be observed that a broad interpretation of Article 30 EC appears particularly uncalled for when examining

98. The view that regard is not to be had to structural-policy considerations in order to justify restrictions on the free movement of

28 — See the judgments in Case 113/80 *Commission v Ireland* [1981] ECR 1625, paragraph 7, in Case 95/81 *Commission v Italy* [1982] ECR 2187, paragraph 20 et seq., and in *Pistre*, cited in footnote 13, paragraph 52, and the Opinion of Advocate General Jacobs in Case C-312/98 *Warsteiner Brauerei* [2000] ECR I-9187, paragraph 36.

29 — Judgment in Case C-205/89 *Commission v Greece* [1991] ECR I-1361, paragraph 9, and Opinion of Advocate General Ruiz-Jarabo Colomer in Case C-358/95 *Morellato* [1997] ECR I-1431, point 21.

27 — See the findings in *Belgium v Spain*, cited in footnote 11, paragraph 53.

restrictions on exports within the meaning of Article 29 EC. As explained above, Article 29 EC has been defined by the case-law as meaning that not every restriction on exports, but only those measures which specifically prevent the export of goods, are prohibited under that provision. That case-law defines the field of application of the prohibition of restrictions on exports substantially more narrowly than the field of application for restrictions on imports under Article 28 EC. In accordance with the *Dassonville* formula, Article 28 EC prohibits any measure which is capable of directly or indirectly, actually or potentially, hindering intra-Community trade.³⁰ If, however, the field of application of Article 29 EC is narrower than that of Article 28 EC, there is, in the context of Article 29 EC in particular, even less reason to interpret the exception in Article 30 EC broadly. Therefore, when interpreting Article 30 EC, only those measures which are essential in order to guarantee the provenance and quality of the product protected by the PDO should be accepted as justified.

101. Finally, the matter should also be considered from the following angle. When the Court has interpreted the provisions on the free movement of goods, it has always endeavoured to help that fundamental freedom to assert itself over national measures which, like the measure under discussion

here, are intended *inter alia* to protect domestic industry. The disputes in this context have often concerned foodstuffs whose raw materials essentially consist of agricultural products. A well-known example is the judgment on the German ‘Reinheitsgebot’ (purity requirement) for beer³¹ which can be traced back to a Bavarian Purity Law adopted in 1516. Other cases have related to Italian pasta,³² the minimum fat content of Edam cheese³³ and the marketing of deep-frozen yoghurt.³⁴ Two cases on chocolate are currently pending.³⁵

102. The case-law on the interpretation of Article 28 EC may have prompted producers to seek refuge in industrial property rights, that is to say to endeavour to compensate for the lost national statutory protection from competition by creating new rights as protected designations of origin and protected geographical indications. Beer provides a striking demonstration of this tendency. After the Court declared that the Bavarian/German purity requirement, which reserved use of the designation ‘beer’ for beer having only certain ingredients, was incompatible with Article 28 EC, beer produced in other

30 — Case 8/74 *Dassonville* [1974] ECR 837, paragraph 5. See also Joined Cases C-267/91 and C-268/91 *Keck and Mithouard* [1993] ECR I-6097, paragraph 11.

31 — Case 178/84 *Commission v Germany* [1987] ECR 1227.

32 — Case 407/85 *3 Glocken and Another v USL Centro-Sud and Another* [1988] ECR 4233.

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

34 — Case 298/87 *Smanor* [1988] ECR 4489.

35 — They are Case C-12/00 *Commission v Spain* and Case C-14/00 *Commission v Italy*, in which Opinions were delivered on 6 December 2001.

Member States otherwise than in accordance with the purity requirement could also be sold in Germany under the designation 'beer'. Initially the German breweries tried to compensate for the economic loss which the opening up of the German market to competing products from other Member States entailed for them by advertising, for instance by including the words 'brewed in accordance with the German purity requirement' on the label. In the meantime 'Bayerisches Bier' (Bavarian beer) was entered in the register kept by the Commission as a protected geographical indication under the procedure laid down in Article 17 of Regulation No 2081/92.³⁶ If the Court therefore acts in a generous manner in the context of the recognition of industrial property rights and allows provisions which objectively are not essential in order to protect the origin of a product in a certain area and its particular characteristics, it runs the risk of again losing, within the framework of Article 29 EC, the freedom of movement of goods and opening up of national markets achieved in the course of interpreting Article 28 EC.

always favoured the free movement of goods, support in any event a narrow interpretation of the exceptions justified under Article 30 EC.

104. Consequently, in the context of the specification to be submitted under Article 4 of Regulation No 2081/92 with an application for registration, only those provisions which are indispensable for guaranteeing the provenance and particular characteristics of the product are to be accepted, and not also those provisions which are exclusively designed to grant the local undertakings resident in the region of production an exclusive right to the further processing of the product.

105. It must therefore be stated in conclusion that the structural-policy objectives in the field of agricultural policy pursued by means of Regulation No 2081/92 are likewise not capable of justifying under Article 30 EC the restriction on exports which has been found.

103. The connection between Articles 28 EC, 29 EC and 30 EC demonstrated in the last two arguments and the consequences of the case-law on Article 28 EC, which has

(d) Proportionality

106. As explained at the outset, the only restrictions on the free movement of goods that may be accepted under Article 30 EC

³⁶ — Council Regulation (EC) No 1347/2001 of 28 June 2001 supplementing the Annex to Commission Regulation (EC) No 1107/96 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 2001 L 182, p. 3).

are those which are necessary and required in order to protect the reputation of the PDO, that is to say which are proportionate.³⁷ In case the foregoing analysis is not followed and the restriction is regarded as justified under Article 30 EC, it is therefore necessary to discuss in addition to what extent the restriction is proportionate.

107. The requirement to slice Parma ham in the region of production can ensure, in particular having regard to the quality controls undertaken by the Consorzio, that the sliced ham consists only of Parma ham, comes from the region of production and is sliced, packaged and labelled in accordance with the rules laid down for using the PDO 'Prosciutto di Parma'. However, it is questionable whether those rules are the least restrictive means of achieving the objective of fair trade and of consumer information as to the provenance and particular characteristics of the product or whether other means having less effect on the free movement of goods are available which achieve that objective equally well.

108. Above all, appropriate product labelling must be considered. In the present case, a possibility is to label the goods as 'Prosciutto di Parma, sliced in Great

Britain' or in a similar non-discriminatory manner.

109. In the *Rioja* case, the Court did not pursue the solution called to mind here. It argued that the coexistence of two different bottling processes, inside or outside the region of production, with or without systematic monitoring by the group of producers, might reduce the degree of consumer confidence in the designation 'denominación de origen calificada' based on the conviction that the production of quality wines produced in specified regions must at every stage be carried out under the control and responsibility of the relevant group of producers.³⁸

110. The present case seems to be only partially comparable. First, as already stated, the slicing of ham out of view of the consumer is not closely linked to the product in a manner comparable to the bottling of wine. Second, in the present proceedings, unlike the *Rioja* case, the parties have put forward no arguments to the effect that consumers might not be able to distinguish between 'Prosciutto di Parma' sliced inside and outside the region of production or that there cannot possibly be two different markets, one for 'Prosciutto di Parma' sliced in the region of production and one for 'Prosciutto di Parma' sliced outside it.

³⁷ — See, with regard to this approach in the case-law, for example *Commission v Italy*, cited in footnote 26, paragraph 19.

³⁸ — *Belgium v Spain*, cited in footnote 11, paragraph 77.

111. Nor is it in any way evident that any adverse appraisal of 'Prosciutto di Parma' sliced outside the region of production would necessarily be passed on to the ham sliced inside it. Especially if provision is made here for appropriate labelling which distinguishes the two products from each other sufficiently clearly, mature and well-informed consumers, who are to be presumed not only in the context of Article 28 EC³⁹ but also that of Article 29 EC, could also become entirely convinced that ham sliced in the Parma area differs from ham sliced outside that area. Two different forms of marketing Parma ham are involved. If the consumer comes to the conclusion that the ham sliced outside the region of production does not satisfy his requirements as regards 'Prosciutto di Parma', he can purchase 'Prosciutto di Parma' sliced in the region of production instead. It is in no way established that if one of the forms of the product does not appeal to the consumer he will immediately choose a different type of sliced ham.

the PDO 'Prosciutto di Parma' just as well as the restriction of the use of the PDO to ham sliced and packaged in the region of production. For the reasons given above, slicing in front of the consumer can hardly ensure anyway that he is informed of the ham's provenance. Furthermore, here too there is no longer any guarantee that the ham is sliced in accordance with the Consorzio's rules and thereby acquires any particular characteristics or retains the particular characteristics acquired by it when it was produced.

113. The solution indicated here involving appropriate product labelling also finds support in Regulation No 2081/92. The fifth recital in the preamble to that regulation expressly points out that the rules concerning protected designations of origin and protected geographical indications merely supplement the general labelling provisions. They merely supplement the provisions 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.⁴⁰

112. In addition, it is of course permissible to slice the ham outside the region of production in front of the consumer and nevertheless to sell it using the PDO 'Prosciutto di Parma'. If that is permissible, it is not evident that appropriate labelling making it clear that the ham has been sliced outside the region of production cannot protect the quality and the reputation of

114. It is to be noted, furthermore, that Regulation No 2081/92 itself also seeks a solution through appropriate labelling in

39 — See Case C-3/99 *Ruwet* [2000] ECR I-8749, paragraph 53.

40 — OJ 1979 L 33, p. 1.

cases of conflict. Article 12(2) of the regulation provides that in cases where a name protected under Community law is identical to a name of a third country, the name may be used only if the country of origin of the product is clearly and visibly indicated on the label. If consumers can be expected, in such cases where names are identical, to distinguish one product from the other through the country of origin being specified on the label, it is not clear why they should not be able to do the same when the label states where processing took place.

115. It must therefore be concluded that less restrictive means exist than limiting use of the PDO ‘Prosciutto di Parma’ to Parma ham sliced and packaged in the region of production. Equally effective protection of the PDO ‘Prosciutto di Parma’, of the quality of the product and of its reputation with consumers can be achieved by labelling it appropriately. The specification therefore goes beyond what is necessary and is disproportionate in that respect.

(5) Compatibility of the measure with the principles of transparency and legal certainty

116. In the main proceedings it is in question whether the slicing and packaging

requirement contained in the specification can be raised against Asda and Hygrade because it was not published in the *Official Journal of the European Communities* and, at any rate officially, is available only in Italian.

(a) Publication of the specification

117. Asda and Hygrade complain that the specification is not accessible because it has not been published in the *Official Journal of the European Communities* and they have no right against the Commission or the Consorzio to access to it.

118. It is a fundamental principle of the Community legal order that a measure adopted by the public authorities cannot be applicable to those concerned before they have had the opportunity to make themselves acquainted with it.⁴¹ Articles 8 and 13 of Regulation No 2081/92 in conjunction with Regulation No 1107/96 establish a Community law prohibition on placing on the market under the PDO ‘Prosciutto di Parma’ ham which has not been sliced, packaged and labelled in the region of production. However, that pro-

⁴¹ — Judgment in Case 98/78 *Racke* [1979] ECR 69, paragraph 15; judgment in Case 99/78 *Decker* [1979] ECR 101, paragraph 3. See also the observations of Advocate General Geelhoed in his Opinion in Case C-228/99 *Silos e Mangimi Martini* [2001] ECR I-8401, at point 39.

hibition has been published in the Official Journal only in so far as it follows from Regulations No 2081/92 and No 1107/96 that there is a PDO 'Parma ham'. The detail of the conditions under which the PDO may be used is contained in the specification submitted with the notification, which was not published in the Official Journal.

119. It is true that the transmission of a summary of the specification to the committee under Article 15 of Regulation No 2081/92, a step invoked by the Commission, results in a certain level of publicity for the specification. However, only the Member States are thereby informed. This reflection therefore does not solve the problem of notifying citizens or businesses such as Asda and Hygrade.

120. Nor does the fact, relied on by the Commission, that in the normal procedure under Articles 5, 6 and 7 of Regulation No 2081/92 the specification is equally published in the Official Journal in summary form only appear capable of dispelling the concerns put forward by Asda and Hygrade. Under the normal procedure the national provisions to be observed are none the less indicated. In the case of the PDO 'Parma ham', where the restriction at issue is also embodied in national provisions, that indisputably did not occur.

121. The principle of legal certainty could be complied with by publishing the whole specification in the Official Journal. However, that approach seems practicable to a limited extent only in view of the very technical nature of that document and its length. Nor does that approach take account of the fact that, where designations of origin are registered under Article 17 of Regulation No 2081/92, names already protected under national law on the entry into force of the regulation are involved. The provisions conferring protection have therefore already been published once, in the case of Parma ham in the Italian Official Gazette. Account has thus been taken of publicity at national level. If fresh publication were now required at Community level, publication would take place twice. This proposition accordingly seems not to take sufficiently into account the particular nature of the registration procedure under Article 17 of Regulation No 2081/92.

122. Registration concludes an administrative procedure which begins with the submission to the relevant Member State of the application, including the specification to be lodged therewith. As the Court found in its judgment in *Carl Kühne*, under the division of powers laid down by Regulation No 2081/92 it is for the Member States to examine the material preconditions for registration of a PDO or PGI. It is accordingly also for the national courts to decide whether the substantive preconditions for

registration are met.⁴² As is apparent from the facts set out in that judgment, objections concerning the preconditions were indeed raised at national level.⁴³ It follows that the problem of the accessibility of the specification, from which the requirements imposed on the use of a PDO arise, is first of all an issue to be raised within the framework of national law. As *Carl Kühne*⁴⁴ also establishes, that also applies to the simplified procedure followed under Article 17 of Regulation No 2081/92.

protection for the PDO 'Parma ham' which previously existed only at national level was extended throughout the Community. Registration has the effect of creating the industrial property right established under Community law. The situation appears reconcilable with the principle of legal certainty only with difficulty if that new right is created without some publicity, which is also ensured at Community level, for the rules to be observed.

123. In the light of that case-law, the question can be raised of whether publication at Community level is still necessary at all. The registration procedure under Regulation No 2081/92 is a procedure which requires the participation of both national and Community authorities. Since the Member States are to examine whether the preconditions for registration are met and objections as to legality are to be raised at national level, publication of the specification at Community level does not seem absolutely necessary.

125. Community law indeed ensures some publicity for the specification. In accordance with the 12th recital in the preamble to Regulation No 2081/92, entry in the register of protected designations of origin and protected geographical indications kept by the Commission serves to provide information to those involved in the trade. Interested businesses such as Asda and Hygrade can see first of all from that entry that there is a PDO 'Prosciutto di Parma'.

124. It is, however, to be taken into account that entry in the register of protected designations of origin meant that the

126. In addition, it is apparent from Article 4 of Regulation No 2081/92 that a specification is to be annexed to the application for registration of a PDO or PGI. It is clear, furthermore, from Article 6 of the regulation that the application is to be sent to the Commission and that the Commission keeps the register of PDOs and PGIs. Businesses therefore know not

42 — *Carl Kühne*, cited in footnote 14, paragraphs 52 and 57 et seq.

43 — See paragraph 20 of the judgment.

44 — Paragraph 52 of the judgment.

only that there is a PDO 'Parma ham' but also, through that disclosure, that there is a specification for the PDO and that it is held by the Commission.

need arises businesses inform themselves about the specification of interest to them by making an appropriate request to the Commission.

127. In accordance with case-law, a person who has learnt of the existence of a legal measure which was not notified to him is obliged to obtain the full text of the legal measure affecting him from the relevant institution.⁴⁵ This also applies where a summary of the legal measure in question has been published.⁴⁶ That case-law clearly proceeds on the basis that there is, alongside the duty to notify under Article 254 EC, in addition an obligation on citizens of the Union to inform themselves where appropriate.

128. An economic operator is informed by publication of Regulation No 1107/96 that the PDO 'Parma ham' exists. It knows on the basis of Regulation No 2081/92, which was published, that registration occurs only if there is a corresponding specification. It also knows that applications for registration are to be sent via the Member State to the Commission and that the Commission keeps the register of protected designations of origin. It accordingly knows where it can inform itself about the specification. On the basis of the case-law cited, it may therefore be assumed that where the

129. The fact that the register is kept by the Commission and serves to provide information to those involved in the trade and that the Commission receives the application for registration together with the specification via the competent Member State provides justification, arguing from the converse, for the assumption that the Commission is obliged to make the specification held by it accessible to interested persons involved in the trade. It performs with regard to the basic elements of the registration the function as it were of a notary or depositary with whom the documents which have led to the registration are deposited. That assumption appears to be necessary not only for reasons of legal certainty but also in particular in the light of Article 255 EC which grants citizens of the Union a right of access to the Commission's documents. In addition, regard is to be had to the third paragraph of Article 21 EC. It too entitles every citizen to write to the Commission and seek information.

130. The fact that the specification was not drawn up by the Commission should not preclude the right of access to that document. The Commission is the author of the

45 — Case C-48/96 *P. Windpark Groothusen v Commission* [1998] ECR I-2873, paragraphs 25 and 26; Case C-309/95 *Commission v Council* [1998] ECR I-655, paragraph 18.

46 — Case T-188/95 *Waterleiding Maatschappij 'Noord-West Brabant' v Commission* [1998] ECR II-3713, paragraphs 110 and 111.

entry in the register of protected designations of origin. Since the protective effect of registration conferred by Articles 8 and 13 of Regulation No 2081/92 also relates to the conditions for use of the PDO or PGI which are contained in the specification, the Commission may be considered to have taken on the provisions in the specification. Finally the Commission is the author of the legal measure, Regulation No 1107/96, by which the PDO 'Parma ham' is protected under Community law to the extent defined by the specification. It is therefore either to be regarded as author or at any rate to be equated to the drafter.

publication of the specification in the Official Journal does not infringe the principles of transparency and legal certainty. A business must inform itself about the specification and the conditions contained in it for use of a PDO by making a request to the Commission.

(b) Existence of the specification in only one official language

131. As for the rest, it is to be noted that, in accordance with Article 2(3) of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents⁴⁷ which was adopted in implementation of Article 255 EC (see the fourth recital in its preamble), a right of access is granted to all documents held by an institution, that is to say to all documents drawn up or received by it and in its possession, in all areas of activity of the European Union. The specification concerns an entry in the register of PDOs and PGIs and thus an area of activity of the Union. It was received by the Commission and is in its possession. The Commission is therefore required to grant access to that document.

133. It thus remains to discuss to what extent the rules cannot be raised against Asda and Hygrade because they were submitted to the Commission in Italian only and at any rate no official English translation of the specification for the PDO 'Parma ham' is available.

134. The question is thus raised as to whether a prohibition under Community law, as declared here by means of Articles 8 and 13 of Regulation No 2081/92 in respect of use of the PDO 'Parma ham' for ham not sliced in the region of production, is effective only if it is published or accessible in all the official languages.

132. It must therefore be stated by way of intermediate conclusion that the absence of

135. The question of the extent to which a citizen's obligations under Community law must be accessible to him in his mother

⁴⁷ — OJ 2001 L 145, p. 43.

tongue, at least in so far as it is one of the official languages of the Community, is a fundamental question. Article 290 EC does not settle the language question but leaves it to the Council to settle. A right cannot at any rate be derived from that provision whereby all Community law measures must necessarily be available in every official language.⁴⁸

137. It could be argued to the same effect by referring to the third paragraph of Article 21 EC. Under that provision, every citizen may write to the Commission and expect an answer from it in the official language chosen for the request. If Asda and Hygrade therefore write to the Commission in English in accordance with the solution proposed above and seek information on the specification, the view could be taken, referring to that provision, that the Commission must produce the specification in English.

136. Under Articles 4 and 5 of Regulation No 1 of the Council of 15 April 1958 determining the languages to be used by the European Economic Community,⁴⁹ regulations and other documents of general application are to be drafted in the official languages and published in the Official Journal. As explained above, the specification at issue here forms part of the entry in the register of designations of origin which was effected on the basis of Regulation No 1107/96. It can thus be taken as part of the regulation. By virtue of the prohibitory effect of Articles 8 and 13 of Regulation No 2081/92, it is, however, in any event 'another document of general application' because it lays down in detail the conditions to be met for use of the PDO. This could indicate that the specification must be translated into all the official languages.

138. This solution perhaps comes closest to meeting the requirement of legal certainty. However, it fails to take account of the mixed national/Community nature of the registration procedure and imposes a substantial translation burden on the Commission.

139. As already stated, under the case-law judicial protection in respect of a registration is to be sought from the national courts.⁵⁰ Within that framework, a business interested in placing on the market a product protected by a PDO is nevertheless obliged to use the official language in which the application for registration was written, therefore Italian in the present case.

48 — Cf. Case T-120/99 *Kik v OHIM* [2001] ECR II-2235, paragraph 58.

49 — OJ, English Special Edition 1952-1958, p. 59.

50 — *Carl Kubne*, cited in footnote 14, paragraph 58.

140. Against that background, it does not seem unreasonable to expect a person who seeks information from the Commission on a specification to receive the specification in the official language in which it was submitted to the Commission with the application for registration.

translation is required.⁵¹ Here too, documents upon which the Commission bases its decision are involved. It could be argued in a similar fashion that, when the Commission decides on the registration of a designation of origin, it relies on the details in the application for registration and particularly in the specification and that the specification is therefore also to be made available only in the original language.

141. This outcome also seems justified in particular by the reflection that a business concerned with placing foreign goods on the market, such as Asda or Hygrade, will generally have the linguistic knowledge necessary for importing the goods or otherwise has available to it appropriate means of overcoming the associated language difficulties. It can therefore also be expected to overcome the obstacles resulting from the fact that the specification is available in the original language only.

143. On the basis of those reflections, it must be assumed that the fact that the specification does not exist in English does not prevent Articles 8 and 13 from being directly applicable in relation to the PDO 'Parma ham'.

142. In addition to those arguments, practice in competition law can be referred to. There the principle applies that, while the person to whom a decision on a cartel is addressed must be sent the statement of objections in his official language, the documents upon which the Commission's assessment is based and which are communicated as annexes or subject to the right of inspection are to be made available only in the original. No

144. It should be added that the problem discussed here concerns only registrations under the simplified procedure. For names registered under the normal procedure, a summary of the notification including the specification and reference to any national provisions to be observed is published in the Official Journal and therefore in all the official languages. The consequences of the interpretation put forward here are thus limited. The interpretation concerns only registrations of names already existing when Regulation No 2081/92 was adopted, and only in so far as the Commission was informed of them within six months of the entry into force of the regulation. In that respect, the interpretation put forward here appears appropriate to the particular fea-

⁵¹ — Case T-148/89 *Trefilunión v Commission* [1995] ECR II-1063, paragraph 21.

tures of the procedure under Article 17 of Regulation No 2081/92.

145. It is therefore to be concluded that the registration of the PDO 'Parma ham' is also consistent with the principles of legal certainty and transparency.

VI — Summary

146. It can thus be stated by way of summary that the condition contained in

the specification that the PDO 'Parma ham' may be used for sliced ham only if it is sliced, packaged and labelled in the region of production under the supervision of the Consorzio del Prosciutto di Parma is a measure having an equivalent effect to a quantitative restriction on exports within the meaning of Article 29 EC. The measure is not justified on grounds of protection of industrial and commercial property within the meaning of Article 30 EC. Nor can it be accepted as justified under Article 30 on the basis of structural-policy considerations. Moreover, it is disproportionate. Regulation No 1107/96 is therefore to be declared invalid in so far as it reserves the protected designation of origin 'Prosciutto di Parma' for sliced ham which is sliced, packaged and labelled in the region of production under the supervision of the Consorzio del Prosciutto di Parma.

VII — Conclusion

147. On the basis of the foregoing arguments, I propose the following answer to the question referred for a preliminary ruling:

(1) Council Regulation (EEC) No 2081/92 read with Commission Regulation (EC) No 1107/96 and the specification for the protected designation of origin

‘Prosciutto di Parma’ does not create a directly enforceable right to prevent the protected designation of origin ‘Prosciutto di Parma’ from being used for Parma ham which has not been sliced, packaged and labelled in the region of production.

- (2) 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 is invalid in so far as it reserves the protected designation of origin ‘Prosciutto di Parma’ for sliced ham which is sliced, packaged and labelled in the region of production under the supervision of the Consorzio del Prosciutto di Parma.