Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

4 October 2024*

(Reference for a preliminary ruling – Common commercial policy – International agreements – Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part – Amendment of Protocols 1 and 4 to the Euro-Mediterranean Agreement – Regulation (EU) No 1169/2011 – Article 9 – Article 26(2) – Implementing Regulation (EU) No 543/2011 – Article 3(1) and (2) – Article 5(1) and (2) – Article 8 – Article 15(1) and (4) – Annex I – Annex IV – Regulation (EU) No 1308/2013 – Article 76 – Provision of food information to consumers – Mandatory indication of the country of origin or place of provenance of foods – Fruit and vegetables harvested in Western Sahara – Request for a Member State unilaterally to ban imports of those goods in its territory – Mandatory indication of Western Sahara as the place of provenance of tomatoes and melons harvested in that territory)

In Case C-399/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Conseil d'État (France), made by decision of 9 June 2022, received at the Court on 15 June 2022, in the proceedings

**Confédération paysanne**

v

**Ministre de l'Agriculture et de la Souveraineté alimentaire,**

**Ministre de l'Économie, des Finances et de la Souveraineté industrielle et numérique,**

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, L. Bay Larsen, Vice-President, A. Arabadjiev, C. Lycourgos, E. Regan, Z. Csehi and O. Spineanu-Matei, Presidents of Chambers, S. Rodin, I. Jarukaitis, A. Kumin, N. Jääskinen (Rapporteur), M.L. Arastey Sahún and M. Gavalec, Judges,

Advocate General: T. Ćapeta,

Registrar: M. Krausenböck, Administrator,

having regard to the written procedure and further to the hearing on 24 October 2023,

* Language of the case: French.

after considering the observations submitted on behalf of:

– Confédération paysanne, by G. Devers, avocat,

– the French Government, by G. Bain, J.-L. Carré, B. Herbaut, T. Stéhelin and B. Travard, acting as Agents,

– the Council of the European Union, by F. Naert and V. Piessevaux, acting as Agents,

– the European Commission, by A. Bouquet, D. Calleja Crespo, F. Clotuche-Duvieusart and M. Konstantinidis, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 24 October 2023,

gives the following

## Judgment

1 This request for a preliminary ruling concerns the interpretation of Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004 (OJ 2011 L 304, p. 18), in particular Articles 9 and 26 thereof, of Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (OJ 2013 L 347, p. 671), in particular Article 76 thereof, of Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors (OJ 2011 L 157, p. 1), as amended by Commission Implementing Regulation (EU) No 594/2013 of 21 June 2013 (OJ 2013 L 170, p. 43) ('Implementing Regulation No 543/2011'), of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ 2013 L 269, p. 1) ('the Union Customs Code'), and of Council Decision (EU) 2019/217 of 28 January 2019 on the conclusion of the agreement in the form of an Exchange of Letters between the European Union and the Kingdom of Morocco on the amendment of Protocols 1 and 4 to the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part (OJ 2019 L 34, p. 1), as well as the validity of that decision in the light of Article 3(5) and Article 21 TEU and Article 1 of the Charter of the United Nations, signed in San Francisco on 26 June 1945.

2 The request has been made in proceedings between, on the one hand, the Confédération paysanne, a French agricultural union, and, on the other, the ministre de l'Agriculture et de la Souveraineté alimentaire (Minister for Agriculture and Food Sovereignty, France) and the ministre de l'Économie, des Finances et de la Souveraineté industrielle et numérique (Minister for Economic Affairs, Finance, and Industrial and Digital Sovereignty, France) concerning the

legality of an implicit decision made by those ministers rejecting the Confédération paysanne's request that they issue a decree banning the import of cherry tomatoes and Charentais melons harvested in the territory of Western Sahara ('the goods at issue in the main proceedings').

## Legal context

### *European Union law*

#### *Implementing Regulation No 543/2011*

3 Recitals 4, 8, 12 and 16 of Implementing Regulation No 543/2011 state:

'(4) Article 113(1)(b) and (c) of [Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) (OJ 2007 L 299, p. 1)] authorises the [European] Commission to provide for marketing standards for fruit and vegetables and processed fruit and vegetables, respectively. Pursuant to Article 113a(1) of that Regulation, fruit and vegetables which are intended to be sold fresh to the consumer, may only be marketed if they are of sound, fair and marketable quality and if the country of origin is indicated. To harmonise the implementation of that provision, it is appropriate to set out details of and provide for a general marketing standard for all fresh fruit and vegetables.

…

(8) The information particulars required by marketing standards should be clearly displayed on the packaging and/or label. To avoid fraud and cases of misleading consumers, the information particulars required by the standards should be available to consumers before purchase, especially in case of distance selling, where experience has shown the risks of fraud and avoidance of the consumer protection offered by the standards.

…

(12) Each Member State should designate the inspection bodies responsible for carrying out conformity checks at each stage of marketing. One of those bodies should be responsible for contacts with and coordination between all other designated bodies.

…

(16) Imports of fruit and vegetables from third countries should conform to the marketing standards or to standards equivalent to them. Conformity checks must therefore be carried out before those goods enter the customs territory of the [European] Union, except in the case of small lots which the inspection bodies consider to be low risk. In certain third countries which provide satisfactory guarantees of conformity, pre-export checks may be carried out by the inspection bodies of those third countries. Where this option is applied, Member States should regularly verify the effectiveness and quality of the pre-export checks carried out by third country inspection bodies.'

4 Under the heading ‘Marketing standards; holders’, Article 3 of that implementing regulation states:

‘1. The requirements of Article 113a(1) of [Regulation No 1234/2007] shall be the general marketing standard. The details of the general marketing standard are set out in Part A of Annex I to this Regulation.

Fruit and vegetables not covered by a specific marketing standard shall conform to the general marketing standard. …

2. The specific marketing standards referred to in Article 113(1)(b) of [Regulation No 1234/2007] are set out in Part B of Annex I to this Regulation as regards the following products:

…

(j) tomatoes.

…’

5 Article 5 of that implementing regulation, entitled ‘Information particulars’, provides, in paragraphs 1 and 2 thereof:

‘1. The information particulars required by this Chapter shall be shown legibly and obviously on one side of the packaging, either indelibly printed directly onto the package or on a label which is an integral part of the package or affixed to it.

2. For goods shipped in bulk and loaded directly onto a means of transport, the information particulars referred to in paragraph 1 shall be given in a document accompanying the goods or shown on a notice placed in an obvious position inside the means of transport.’

6 Title II of Implementing Regulation No 543/2011 includes a Chapter II, entitled ‘Checks on conformity to marketing standards’, which includes Article 8 of that implementing regulation, entitled ‘Scope’, which is worded as follows:

‘This Chapter lays down rules on conformity checks, which shall mean the checks carried out on fruit and vegetables at all marketing stages, in order to verify that they conform to the marketing standards and other provisions of this Title and of Articles 113 and 113a of [Regulation No 1234/2007].’

7 Article 15 of that implementing regulation, entitled ‘Approval of conformity checks carried out by third countries prior to import into the Union’, provides, in paragraphs 1 and 4 thereof:

‘1. At the request of a third country, the Commission may, in accordance with the procedure referred to in Article 195(2) of [Regulation No 1234/2007], approve checks on conformity to marketing standards carried out by that third country prior to import into the Union.

…

4. The third countries where the conformity checks have been approved under this Article, and the products concerned, shall be set out in Annex IV.

…’

8 Under the first and fifth subparagraphs of Article 17(3) of Implementing Regulation No 543/2011:

'Where the goods do not conform with the standards, the inspection body shall issue a finding of non-conformity for the attention of the trader or their representatives. Goods for which a finding of non-conformity has been issued may not be moved without the authorisation of the inspection body which issued that finding. That authorisation can be subject to the respect of conditions laid down by the inspection body.

…

Where the goods can neither be brought into conformity nor sent to animal feed, industrial processing or any other non-food use, the inspection body may, if necessary, request traders to take adequate measures in order to ensure that the products concerned are not marketed. Traders shall supply all information deemed necessary by Member States for the application of this paragraph.'

9 Article 18(2) of that implementing regulation states:

'A Member State where a lot of goods from a third country has been rejected from release into free circulation because of non-compliance with the marketing standards shall notify forthwith the Commission, the Member States likely to be concerned and the third country concerned and listed in Annex IV.'

10 Annex I to Implementing Regulation No 543/2011, relating to the marketing standards referred to in Article 3 of that implementing regulation, refers, in point 4 of Part A thereof, as a general marketing standard, to the marking of the origin of goods, specifically the full name of the country of origin of the goods. The marketing standard for tomatoes, which is set out in Part 10 of Part B of Annex I to Implementing Regulation No 543/2011, provides that each package must bear indications concerning the country of origin and, where appropriate, the district where grown, in letters grouped on the same side, legibly and indelibly marked and visible from the outside.

11 Morocco is included, in Annex IV to that implementing regulation, among the third countries where the conformity checks have been approved under Article 15 in respect of 'fresh fruit and vegetables'.

*Regulation No 1169/2011*

12 Article 1(4) of Regulation No 1169/2011 states:

'This Regulation shall apply without prejudice to labelling requirements provided for in specific Union provisions applicable to particular foods.'

13 Article 9 of that regulation, entitled 'List of mandatory particulars', provides, in point (i) of paragraph 1 thereof:

'In accordance with Articles 10 to 35 and subject to the exceptions contained in this Chapter, indication of the following particulars shall be mandatory:

…

(i) the country of origin or place of provenance where provided for in Article 26'.

14 Article 26 of Regulation No 1169/2011, entitled 'Country of origin or place of provenance', provides, in point (a) of paragraph 2 thereof:

'Indication of the country of origin or place of provenance shall be mandatory:

(a) where failure to indicate this might mislead the consumer as to the true country of origin or place of provenance of the food, in particular if the information accompanying the food or the label as a whole would otherwise imply that the food has a different country of origin or place of provenance'.

*The Union Customs Code*

15 Article 59 of the Union Customs Code provides:

'Articles 60 and 61 shall lay down rules for the determination of the non-preferential origin of goods for the purposes of applying the following:

…

(c) other Union measures relating to the origin of goods.'

16 Article 60 of that code, entitled 'Acquisition of origin', is worded as follows:

'1. Goods wholly obtained in a single country or territory shall be regarded as having their origin in that country or territory.

2. Goods the production of which involves more than one country or territory shall be deemed to originate in the country or territory where they underwent their last, substantial, economically justified processing or working, in an undertaking equipped for that purpose, resulting in the manufacture of a new product or representing an important stage of manufacture.'

17 Article 134 of the Union Customs Code, entitled 'Customs supervision', provides, in paragraph 1 thereof:

'Goods brought into the customs territory of the Union shall, from the time of their entry, be subject to customs supervision and may be subject to customs controls. Where applicable, they shall be subject to such prohibitions and restrictions as are justified on grounds of, inter alia, public morality, public policy or public security, the protection of the health and life of humans, animals or plants, the protection of the environment, the protection of national treasures possessing artistic, historic or archaeological value and the protection of industrial or commercial property, including controls on drug precursors, goods infringing certain intellectual property rights and cash, as well as to the implementation of fishery conservation and management measures and of commercial policy measures.

They shall remain under such supervision for as long as is necessary to determine their customs status and shall not be removed therefrom without the permission of the customs authorities.

Without prejudice to Article 254, Union goods shall not be subject to customs supervision once their customs status is established.

Non-Union goods shall remain under customs supervision until their customs status is changed, or they are taken out of the customs territory of the Union or destroyed.'

*Regulation No 1308/2013*

18 Article 74 of Regulation No 1308/2013, entitled 'General principle', states:

'The products for which marketing standards by sectors or products have been laid down in accordance with this Section may be marketed in the Union only if they conform to those standards.'

19 Article 75 of that regulation provides:

'1. Marketing standards may apply to one or more of the following sectors and products:

…

(b) fruit and vegetables;

…

3. Without prejudice to Article 26 of [Regulation No 1169/2011], the marketing standards referred to in paragraph 1 may cover one or more of the following, to be determined on a sectoral or product basis and based on the characteristics of each sector, the need to regulate the placing on the market and the conditions defined in paragraph 5 of this Article:

…

(j) the place of farming and/or origin, excluding poultrymeat and spreadable fats;

…'

20 Article 76 of Regulation No 1308/2013, entitled 'Additional requirements for marketing of products in the fruit and vegetables sector', provides:

'1. In addition, where relevant, to the applicable marketing standards referred to in Article 75, products of the fruit and vegetables sector which are intended to be sold fresh to the consumer may only be marketed if they are sound, fair and of marketable quality and if the country of origin is indicated.

2. The marketing standards referred to in paragraph 1, as well as any marketing standard applicable to the fruit and vegetables sector laid down in accordance with this subsection, shall apply at all marketing stages including import and export, and may cover quality, categorisation, weight, size, packing, packaging, storage, transport, presentation and marketing.

3. The holder of products of the fruit and vegetables sector covered by marketing standards shall not display such products, offer them for sale or deliver or market them in any manner within the Union other than in conformity with those standards and shall be responsible for ensuring such conformity.

…'

21 Part III of that regulation, entitled 'Trade with third countries', includes Article 194, entitled 'Safeguard measures', which provides:

'1. Safeguard measures against imports into the Union shall be taken by the Commission, subject to paragraph 3 of this Article, in accordance with [Council Regulation (EC) No 260/2009 of 26 February 2009 on the common rules for imports (OJ 2009 L 84, p. 1)] and [Council Regulation (EC) No 625/2009 of 7 July 2009 on common rules for imports from certain third countries (OJ 2009 L 185, p. 1)].

2. Save as otherwise provided for in any other act of the European Parliament and the Council [of the European Union] and any other act of the Council, safeguard measures against imports into the Union provided for in international agreements concluded in accordance with the [Treaty on the Functioning of the European Union] shall be taken by the Commission in accordance with paragraph 3 of this Article.

3. The Commission may adopt implementing acts establishing the measures referred to in paragraphs 1 and 2 of this Article at the request of a Member State or on its own initiative. …

Where the Commission receives a request from a Member State, it shall, by means of implementing acts, take a decision thereon within five working days following the receipt of the request. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 229(2).

On duly justified imperative grounds of urgency, the Commission shall adopt immediately applicable implementing acts in accordance with the procedure referred to in Article 229(3).

The measures adopted shall be communicated to the [Member] States and shall take effect immediately.

4. The Commission may adopt implementing acts revoking or amending Union safeguard measures adopted pursuant to paragraph 3 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 229(2).

On duly justified imperative grounds of urgency, the Commission shall adopt immediately applicable implementing acts in accordance with the procedure referred to in Article 229(3).'

*Regulation (EU) 2015/478*

22 Article 1 of Regulation (EU) 2015/478 of the European Parliament and of the Council of 11 March 2015 on common rules for imports (OJ 2015 L 83, p. 16) ('the Basic Safeguard Regulation') provides:

'1. This Regulation applies to imports of products originating in third countries, except for:

(a) textile products subject to specific import rules under [Council Regulation (EC) No 517/94 of 7 March 1994 on common rules for imports of textile products from certain third countries not covered by bilateral agreements, protocols or other arrangements, or by other specific Community import rules (OJ 1994 L 67, p. 1)];

(b) products originating in certain third countries listed in [Regulation No 625/2009].

2. The products referred to in paragraph 1 shall be freely imported into the Union and accordingly, without prejudice to the safeguard measures which may be taken under Chapter V, shall not be subject to any quantitative restrictions.'

23 Article 15 of the Basic Safeguard Regulation provides:

'1. Where a product is imported into the Union in such greatly increased quantities and/or on such terms or conditions as to cause, or threaten to cause, serious injury to Union producers, the Commission, in order to safeguard the interests of the Union, may, acting at the request of a Member State or on its own initiative:

(a) limit the period of validity of surveillance documents within the meaning of Article 11 to be issued after the entry into force of this measure;

(b) alter the import rules for the product in question by making its release for free circulation conditional on production of an import authorisation, the granting of which shall be governed by such provisions and subject to such limits as the Commission shall lay down.

The measures referred to in points (a) and (b) shall take effect immediately.

2. As regards members of the [World Trade Organisation (WTO)], the measures referred to in paragraph 1 shall be taken only when the two conditions indicated in the first subparagraph of that paragraph are met.

…

5. The measures referred to in this Article shall apply to every product which is put into free circulation after their entry into force. In accordance with Article 17 they may be confined to one or more regions of the Union.

However, such measures shall not prevent the release for free circulation of products already on their way to the Union provided that the destination of such products cannot be changed and that those products which, pursuant to Articles 10 and 11, may be put into free circulation only on production of a surveillance document are in fact accompanied by such a document.

6. Where intervention by the Commission has been requested by a Member State, the Commission, acting in accordance with the examination procedure referred to in Article 3(3), or, in cases of urgency, in accordance with Article 3(4), shall take a decision within a maximum of 5 working days of the date of receipt of such a request.'

24 Article 24(2)(a) of that regulation provides:

'Without prejudice to other Union provisions, this Regulation shall not preclude the adoption or application by Member States of:

(a) prohibitions, quantitative restrictions or surveillance measures on grounds of public morality, public policy or public security, the protection of health and life of humans, animals or plants, the protection of national treasures possessing artistic, historic or archaeological value, or the protection of industrial and commercial property'.

*Decision 2019/217*

25 Article 1 of Decision 2019/217 provides that the Agreement in the form of an Exchange of Letters between the European Union and the Kingdom of Morocco on the amendment of Protocols 1 and 4 to the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part (OJ 2019 L 34, p. 4) ('the Agreement in the form of an Exchange of Letters'), is thereby approved on behalf of the Union.

26 The Agreement in the form of an Exchange of Letters states:

'The European Union and the Kingdom of Morocco agreed to insert the joint declaration below, after Protocol 4 to [the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part, which was signed in Brussels on 26 February 1996 (OJ 2000 L 70, p. 2) ("the Association Agreement")].

"Joint declaration concerning the application of Protocols 1 and 4 to [the Association Agreement]

1. Products originating in Western Sahara subject to controls by customs authorities of the Kingdom of Morocco shall benefit from the same trade preferences as those granted by the European Union to products covered by the Association Agreement.

2. Protocol 4 shall apply *mutatis mutandis* for the purposes of defining the originating status of the products referred to in paragraph 1, including with regard to proof of origin.

3. The customs authorities of the Member States of the European Union and of the Kingdom of Morocco shall be responsible for ensuring that Protocol 4 is applied to those products."'

***French law***

27 Under Article 23*bis* of the French Customs Code:

'Subject to the application of international agreements, the importation of food, materials and products, of all types and of any origin, that do not meet the legislative or regulatory requirements laid down in terms of the marketing or sale of national food, materials or similar products, may be prohibited or regulated by joint decrees issued by the ministre de l'Économie et des Finances (Minister for Economic Affairs and Finance), the ministre responsable de la Ressource (Minister responsible for resources) and the ministre de l'Agriculture chargé de la répression des fraudes (Minister for Agriculture responsible for combating fraud).'

**The dispute in the main proceedings and the questions referred for a preliminary ruling**

28 On 2 October 2020, the Confédération paysanne brought an action before the referring court, the Conseil d'État (Council of State, France), seeking, first, annulment of the implicit decision of the Minister for Agriculture and Food Sovereignty and the Minister for Economic Affairs, Finance, and Industrial and Digital Sovereignty to reject its request that they issue a decree banning the import of the goods at issue in the main proceedings pursuant to Article 23*bis* of the French Customs Code and, second, an order that those ministers issue that decree. It argues, in essence,

that the territory of Western Sahara is not part of the territory of the Kingdom of Morocco and that, consequently, the labelling indicating that the goods at issue in the main proceedings originate from Morocco is in breach of the provisions of EU law relating to the provision of information to consumers regarding the origin of fruit and vegetables offered for sale.

29 The referring court recalls, in the first place, that it is apparent from the relevant rules of EU law that the requirement to indicate a product's country or territory of origin must, in principle, be complied with from the stage of the import of that product. It also observes that those rules do not expressly give Member States the competence to adopt measures banning imports of goods which do not comply with that requirement. However, it considers that such a measure could be justified, in particular, in the event that disregard for those rules is 'significant', making it difficult to carry out checks once the goods concerned are released into the territory of the Union.

30 Consequently, that court questions whether it is possible to interpret those rules as authorising a Member State to adopt a national measure banning imports, originating in a third country, of goods the labelling of which does not correctly indicate the country or territory from which the goods originate, where that practice is 'significant', making it difficult to carry out checks in respect of those goods once they are in the territory of the Union.

31 In the second place, the referring court recalls that, by the judgments of 21 December 2016, *Council* v *Front Polisario* (C-104/16 P, EU:C:2016:973), and of 27 February 2018, *Western Sahara Campaign UK* (C-266/16, EU:C:2018:118), the Court of Justice held that it followed from the principle of self-determination and from the principle of the relative effect of treaties that the territory of Western Sahara could not be regarded as forming part of the territory of the Kingdom of Morocco within the meaning of the Association Agreement and the agreements subordinate to that agreement. However, it observes that, following those judgments, the Kingdom of Morocco and the European Union concluded the Agreement in the form of an Exchange of Letters, which was approved by Decision 2019/217. That agreement extends to goods originating in Western Sahara the tariff preferences granted to goods of Moroccan origin exported to the Union.

32 The referring court adds that, although Decision 2019/217 was annulled by the judgment of the General Court of the European Union of 29 September 2021, *Front Polisario* v *Council* (T-279/19, EU:T:2021:639), the effects of that decision were nonetheless maintained until the delivery of the judgment of the Court of Justice ruling on the appeal brought by the Commission against that judgment. Consequently, it indicates that, in the event that a Member State may be authorised to adopt a national measure banning the import of goods the labelling of which does not correctly indicate the country or territory from which those goods originate, the question arises, first, as to whether the Agreement in the form of an Exchange of Letters is to be interpreted as meaning that the goods at issue in the main proceedings have the Kingdom of Morocco as their country of origin, and, second, as to whether the Moroccan authorities are competent to issue the certificates of conformity provided for by Implementing Regulation No 543/2011.

33 In the third place, the referring court considers that, in the event that that question is answered in the affirmative, it is also necessary to question whether Decision 2019/217 is consistent with Article 3(5) and Article 21 TEU, as well as with the customary principle of self-determination recalled in, inter alia, Article 1 of the Charter of the United Nations.

34 In the fourth and last place, the referring court questions whether, in view of the findings concerning the situation of the territory of Western Sahara which are set out in the judgments of 21 December 2016, *Council* v *Front Polisario* (C-104/16 P, EU:C:2016:973), and of 27 February 2018, *Western Sahara Campaign UK* (C-266/16, EU:C:2018:118), the relevant rules of EU law are to be interpreted as meaning that, at the stage of the import of the goods at issue in the main proceedings and the stage of the sale of those goods to consumers, the labelling of the goods may refer to the Kingdom of Morocco as the country of origin or whether it must refer only to the territory of Western Sahara.

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

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

(2) If the first question is answered in the affirmative, must the Agreement in the form of an Exchange of Letters, approved by [Decision 2019/217], be interpreted as meaning that, for the purpose of applying Articles 9 and 26 of [Regulation No 1169/2011] and Article 76 of [Regulation No 1308/2013], on the one hand, fruit and vegetables harvested in Western Sahara have Morocco as the country of origin and, on the other, the Moroccan authorities have the power to issue the certificates of conformity provided for by [Implementing Regulation No 543/2011] to fruit and vegetables harvested in Western Sahara?

(3) If the second question is answered in the affirmative, does [Decision 2019/217] comply with [Article 3(5) and Article 21 TEU] and the customary international law principle of self-determination set out, in particular, in Article 1 of the [Charter of the United Nations]?

(4) Must Articles 9 and 26 of [Regulation No 1169/2011] and Article 76 of [Regulation No 1308/2013] be interpreted as meaning that, at the stages of importation and sale to the consumer, the packaging of fruit and vegetables harvested in Western Sahara cannot indicate Morocco as the country of origin but must indicate the territory of Western Sahara?'

## Consideration of the questions referred

### *Preliminary observations*

36 Decision 2019/217 was annulled by the judgment of the General Court of 29 September 2021, *Front Polisario* v *Council* (T-279/19, EU:T:2021:639).

37 By judgment delivered today, *Commission and Council* v *Front Polisario* (C-779/21 P and C-799/21 P), the Court of Justice has dismissed the appeals brought against that judgment of the General Court.

38 As is apparent from today's judgment, *Commission and Council* v *Front Polisario* (C-779/21 P and C-799/21 P), the effects of that decision are maintained until 4 October 2025. It follows that Protocols 1 and 4 to the Association Agreement, as amended by the Agreement in the form of an Exchange of Letters, may continue, until that date, to govern imports into the Union of the goods at issue in the main proceedings.

39 Accordingly, imports of those goods have been and remain at this stage, unaffected by the declaration that Decision 2019/217 is invalid. It is therefore still necessary to determine, in response to the first and fourth questions, what indication of origin must accompany those goods and what type of safeguard measure may be taken by a Member State when it is found that those goods are systematically accompanied by an incorrect indication of origin.

### *The first question*

40 According to settled case-law, in the procedure laid down by Article 267 TFEU providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the national court with an answer which will be of use to it and enable it to decide the case before it. To that end, the Court should, where necessary, reformulate the questions referred to it. The Court may also find it necessary to consider provisions of EU law which the national court has not referred to in its questions. The fact that a national court has, formally speaking, worded a question referred for a preliminary ruling with reference to certain provisions of EU law does not prevent the Court from providing the national court with all the points of interpretation which may be of assistance in adjudicating on the case pending before it, whether or not that court has referred to them in its questions. In that regard, it is for the Court to extract from all the information provided by the national court, in particular from the grounds of the decision referring the questions, the points of EU law which require interpretation, having regard to the subject matter of the dispute (judgment of 22 December 2022, *Ministre de la Transition écologique and Premier ministre (Liability of the State for air pollution)*, C-61/21, EU:C:2022:1015, paragraph 34 and the case-law cited).

41 In the present case, it is apparent from the explanations provided by the referring court that the Confédération paysanne, in essence, asked the Minister for Agriculture and Food Sovereignty and the Minister for Economic Affairs, Finance, and Industrial and Digital Sovereignty to issue a decree banning the import, from the territory of Western Sahara, of the goods at issue in the main proceedings on the ground that the indication of the country of origin on the labelling of those goods was incorrect. By its first question, the referring court asks whether EU law, and, more specifically, Regulation No 1169/2011, Regulation No 1308/2013, Implementing Regulation No 543/2011 and the Union Customs Code, authorises the adoption of such a measure by a Member State.

42 As was noted by the Advocate General in point 21 of her Opinion, the import of goods into the Union falls within the sphere of trade relations between the Union and third countries or international organisations; relations which are governed by the common commercial policy in accordance with Article 207(1) TFEU.

43 It follows from that provision – and in particular from the second sentence thereof, which states that the common commercial policy forms part of 'the Union's external action' – that that policy relates to trade with non-member countries (see, to that effect, judgments of 18 July 2013, *Daiichi Sankyo and Sanofi-Aventis Deutschland*, C-414/11, EU:C:2013:520, paragraph 50, and of 22 October 2013, *Commission* v *Council*, C-137/12, EU:C:2013:675, paragraph 56).

44 Given that the first question raised by the referring court concerns the import of the goods at issue in the main proceedings into a Member State and not to the conditions for their sale, it is in light of the acts of EU law governing the common commercial policy, or the provisions relating to trade policy instruments which appear in other acts of EU law, that that question must be examined.

45 In those circumstances, it must be held that, by that question, the referring court asks the Court of Justice, in essence, whether Article 207 TFEU, the Basic Safeguard Regulation and Regulation No 1308/2013 are to be interpreted as permitting a Member State unilaterally to adopt a measure banning the import of agricultural goods the labelling of which systematically fails to comply with the EU legislation concerning the indication of the country or territory of origin.

46 In that regard, it should be borne in mind, first, that Article 3(1)(e) TFEU confers exclusive competence on the Union in the area of common commercial policy. According to Article 207(1) TFEU, that policy is to be based on uniform principles and conducted in the context of the principles and objectives of the Union's external action.

47 Second, under Article 2(1) TFEU, when the Treaties confer on the Union exclusive competence in a specific area, only the Union may legislate and adopt legally binding acts, the Member States being able to legislate and adopt legally binding acts themselves in such an area only if so empowered by the Union or for the implementation of Union acts.

48 It follows that the Member States may not unilaterally adopt a measure banning the import of a category of goods originating in a third territory or country, such import being, moreover, permitted and regulated by a trade agreement concluded by the European Union, unless they are expressly empowered to do so by EU law.

49 In that regard, it should be noted that Article 1 of the Basic Safeguard Regulation provides, in essence, that, with the exception of textile products and products originating in certain third countries – which do not include either the Kingdom of Morocco or Western Sahara – products originating in third countries are to be freely imported into the Union and are thus not to be subject to any quantitative restrictions, although it adds that this is without prejudice to the safeguard measures which may be taken under Chapter V of that regulation. It is apparent from Article 15(1) of the Basic Safeguard Regulation that, in the event that there is a risk of serious injury to Union producers, safeguard measures are to be adopted by the Commission at the request of a Member State or on its own initiative.

50 In addition, Article 194 of Regulation No 1308/2013, which is included in Part III of that regulation, which is dedicated to trade with third countries, establishes a safeguard system similar to that derived from Article 15 of the Basic Safeguard Regulation, inasmuch as it is also based on measures taken by the Commission with regard to imports into the Union of goods falling within the scope of Regulation No 1308/2013.

51 Consequently, the provisions relating to safeguard measures which may be adopted in accordance with the two regulations referred to in paragraphs 49 and 50 of the present judgment do not permit a Member State unilaterally to adopt a measure banning certain imports of goods into the Union.

52 It is true that Article 24(2)(a) of the Basic Safeguard Regulation provides that that regulation does not preclude the adoption or application by Member States of 'prohibitions, quantitative restrictions or surveillance measures on grounds of public morality, public policy or public

security, the protection of health and life of humans, animals or plants, the protection of national treasures possessing artistic, historic or archaeological value, or the protection of industrial and commercial property'. As was noted, in essence, by the Advocate General in point 40 of her Opinion, that provision enables, for reasons comparable to those set out in Article 36 TFEU concerning the internal aspect of the single market (see, to that effect and by analogy, judgment of 30 May 2002, *Expo Casa Manta*, C-296/00, EU:C:2002:316, paragraph 34), interference with the freedom to import into the Union provided for in Article 1(2) of the Basic Safeguard Regulation.

53 However, as can be seen from the very wording of Article 24(2)(a) of that regulation, that provision is without prejudice to other relevant provisions of EU law. In a case such as that in the main proceedings, which concerns the import of agricultural goods, those other relevant provisions include, inter alia, Article 194 of Regulation No 1308/2013, which, as has been noted in paragraph 50 of the present judgment, reserves to the Commission the competence to take safeguard measures with regard to imports into the Union of goods falling within the scope of Regulation No 1308/2013. Article 24(2)(a) of the Basic Safeguard Regulation cannot, consequently, be understood as enabling the Member States unilaterally to adopt safeguard measures with regard to the import of agricultural goods.

54 Moreover, the general measure of banning the import of the goods at issue in the main proceedings, the adoption of which by the French Republic is sought, in the present case, by the Confédération paysanne, is intended, according to the latter, to guarantee compliance with the provisions of EU law relating to the provision of information to consumers regarding the origin of fruit and vegetables offered for sale. However, in the event of widespread disregard for those provisions by exporters, it would in that case be not for a Member State but for the Commission to intervene, within the framework set by the cooperation mechanisms provided for by the Association Agreement.

55 Having regard to all the foregoing considerations, the answer to the first question is that Article 207 TFEU, the Basic Safeguard Regulation and Regulation No 1308/2013 must be interpreted as not permitting a Member State unilaterally to adopt a measure banning the import of agricultural goods the labelling of which systematically fails to comply with the EU legislation concerning the indication of the country or territory of origin.

### *The second and third questions*

56 It is apparent from the request for a preliminary ruling that the referring court raises the second and third questions only in the event that the Court of Justice considers that the first question must be answered in the affirmative.

57 However, as has been concluded in paragraph 55 of the present judgment, that first question calls for a negative response.

58 Consequently, there is no need to answer either the second or the third question.

### *The fourth question*

#### *Admissibility*

59 The French Government and the Commission are of the view, in essence, that, if it were to follow from the answer to the first question that the adoption of a measure such as that which has been requested by the applicant in the main proceedings cannot be compatible with EU law, the question whether the goods at issue in the main proceedings actually comply with the EU legislation on the indication of the origin of food would not be relevant for deciding the dispute which has been brought before the referring court.

60 In that regard, it should be borne in mind that, according to settled case-law, in the context of the cooperation between the Court and the national courts provided for in Article 267 TFEU, it is solely for the national court before which a dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine, in the light of the particular circumstances of the case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted by the national court concern the interpretation of EU law, the Court is, in principle, bound to give a ruling (judgment of 21 March 2023, *Mercedes-Benz Group (Liability of manufacturers of vehicles fitted with defeat devices)*, C-100/21, EU:C:2023:229, paragraph 52 and the case-law cited).

61 It follows that questions relating to EU law enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court for a preliminary ruling only where it is quite obvious that the interpretation of a rule of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 21 March 2023, *Mercedes-Benz Group (Liability of manufacturers of vehicles fitted with defeat devices)*, C-100/21, EU:C:2023:229, paragraph 53 and the case-law cited).

62 In the present case, while the first question concerns only the import of the goods at issue in the main proceedings, the fourth question, by contrast, concerns both the stage of the import of those goods and the stage of their sale to consumers. In its written observations, the Confédération paysanne moreover refers, on several occasions, to the need for a correct indication of the origin of the goods at issue in the main proceedings for the purpose of marketing those goods.

63 Thus, the referring court indicates that the response to the pleas in law raised in the action in the main proceedings involves determining whether, both at the stage of the import of the goods at issue in the main proceedings and at the stage of the marketing of those goods, the packaging of those goods must indicate the territory of Western Sahara and not that of the Kingdom of Morocco as the country of origin.

64 It follows from the foregoing that the fourth question concerns the interpretation of provisions of EU law which have a bearing on the purpose of the main action. In that context, that question must be regarded as being relevant for the purposes of the case-law cited in paragraph 60 of the present judgment.

65 It follows that the fourth question is admissible.

*Substance*

66 It is apparent, in essence, from the case-law recalled in paragraph 40 of the present judgment that, in order to provide an answer which will be of use to the referring court and will enable it to decide the case before it, the Court of Justice should, where necessary, reformulate the questions referred to it and, where appropriate, consider provisions of EU law which the national court has not referred to in its questions.

67 In the present case, the fourth question concerns the interpretation of Articles 9 and 26 of Regulation No 1169/2011, as well as Article 76 of Regulation No 1308/2013, which lay down, inter alia, obligations concerning the indication of the origin of the foods concerned.

68 In that regard, it is apparent from the order for reference that the goods at issue in the main proceedings are fruit and vegetables. It follows from Article 1(4) of Regulation No 1169/2011 that that regulation is to apply without prejudice to labelling requirements provided for in specific Union provisions applicable to particular foods, which is confirmed, in essence, by Article 26(1) of that regulation. In addition, Article 75(1)(b) of Regulation No 1308/2013, read in conjunction with Article 75(3)(j) thereof, states that marketing standards for fruit and vegetables may cover the place of origin of those fruit and vegetables, while Article 76 of that regulation specifies that fresh fruit and vegetables which are intended for end consumers may be marketed only if the country of origin is indicated. Those standards apply at all marketing stages, including import and export.

69 In parallel, Article 1(1) of Implementing Regulation No 543/2011 lays down the implementing rules for Regulation No 1234/2007, which was repealed by Regulation No 1308/2013. Recital 4 of that implementing regulation states that fruit and vegetables which are intended to be sold fresh to the consumer may only be marketed if the country of origin of those fruit and vegetables is indicated. More specifically, Charentais melons are subject to the general marketing standards laid down in Part A of Annex I to Implementing Regulation No 543/2011, while cherry tomatoes are subject to the specific marketing standards laid down in Part 10 of Part B of Annex I to that implementing regulation, with those two types of marketing standard also including requirements concerning the indication of the origin of the goods to which they apply. Thus, it follows from the foregoing that, as Regulation No 1308/2013 and Implementing Regulation No 543/2011 lay down specific requirements concerning the indication of the origin of the goods at issue in the main proceedings, Regulation No 1169/2011 is not relevant for the purpose of answering the fourth question.

70 In those circumstances, it must be held that, by its fourth question, the referring court asks, in essence, whether Article 76 of Regulation No 1308/2013, read in conjunction with Article 3(1) of Implementing Regulation No 543/2011, is to be interpreted as meaning that, at the stages of import and sale to the consumer, the labelling of the goods at issue in the main proceedings must indicate Western Sahara – and may not refer to the Kingdom of Morocco – as the country of origin of those goods.

71 In the first place, as can be seen from paragraphs 68 and 69 of the present judgment, the relevant marketing standards for the goods at issue in the main proceedings provide that, at all marketing stages, including import and export, the indication of the country of origin of those goods is mandatory.

72 Recital 8 of Implementing Regulation No 543/2011, in the light of which the requirements laid down in Article 3(1) of that implementing regulation are to be read, states, in essence, that the information particulars required by marketing standards must be clearly displayed on the packaging and/or label of the goods concerned, in particular to avoid cases of misleading consumers.

73 It follows from the foregoing that the indication of the country of origin which must necessarily appear on goods such as the goods at issue in the main proceedings must not be deceptive (see, by analogy, judgment of 12 November 2019, *Organisation juive européenne and Vignoble Psagot*, C-363/18, EU:C:2019:954, paragraph 25).

74 In the second place, it should be observed that the Court has already held, with regard to Regulation No 1308/2013, that the concept of 'country of origin' referred to in Article 76 of that regulation must also be defined by reference to the Union Customs Code (see, to that effect, judgment of 4 September 2019, *Zentrale zur Bekämpfung unlauteren Wettbewerbs Frankfurt am Main*, C-686/17, EU:C:2019:659, paragraph 46).

75 According to Article 59(c) of that code, the rules laid down in Articles 60 and 61 thereof concerning the determination of the non-preferential origin of goods are applicable to other Union measures relating to the origin of goods, such as Article 76 of Regulation No 1308/2013 and Article 3(1) of Implementing Regulation No 543/2011.

76 It follows that the concept of 'country of origin' which appears both in point 4 of Part A of Annex I to Implementing Regulation No 543/2011, which concerns, inter alia, Charentais melons, and in Section VI of Part 10 of Part B of that annex, which concerns, inter alia, cherry tomatoes, must be defined by reference to the Union Customs Code (see, by analogy, judgment of 4 September 2019, *Zentrale zur Bekämpfung unlauteren Wettbewerbs Frankfurt am Main*, C-686/17, EU:C:2019:659, paragraph 50).

77 In that regard, under Article 60 of the Union Customs Code, goods which are wholly obtained in a given 'country' or 'territory' or which underwent their last substantial processing or working in that country or territory are to be deemed to originate in the country or territory concerned.

78 Consequently, the country of origin of the goods at issue in the main proceedings is the country or territory where they were harvested.

79 As regards, first of all, the term 'country', it should be noted that it is used numerous times in the EU Treaty and the FEU Treaty as a synonym for the term 'State'. Therefore, in order to ensure the consistent interpretation of EU law, the same meaning should be given to that term in the Union Customs Code, in Regulation No 1308/2013, and in Implementing Regulation No 543/2011 (see, by analogy, judgment of 12 November 2019, *Organisation juive européenne and Vignoble Psagot*, C-363/18, EU:C:2019:954, paragraph 28).

80 As regards, next, the concept of a 'State', that concept must be understood as referring to a sovereign entity exercising, within its geographical boundaries, the full range of powers recognised by international law (judgment of 12 November 2019, *Organisation juive européenne and Vignoble Psagot*, C-363/18, EU:C:2019:954, paragraph 29 and the case-law cited).

81 As regards, lastly, the term 'territory', it follows from the alternative nature of the wording in Article 60 of the Union Customs Code that that term refers to entities other than 'countries' and, therefore, other than 'States' (judgment of 12 November 2019, *Organisation juive européenne and Vignoble Psagot*, C-363/18, EU:C:2019:954, paragraph 30).

82 As the Court has already held, such entities include, inter alia, geographical areas which, whilst being under the jurisdiction or the international responsibility of a State, nevertheless have a separate and distinct status from that State under international law (see, to that effect, judgments of 27 February 2018, *Western Sahara Campaign UK*, C-266/16, EU:C:2018:118, paragraphs 62 to 64, and of 12 November 2019, *Organisation juive européenne and Vignoble Psagot*, C-363/18, EU:C:2019:954, paragraph 31 and the case-law cited).

83 It follows from the foregoing that, having regard to Article 60 of the Union Customs Code, the obligation to indicate the country of origin of the goods at issue in the main proceedings which stems, first, from the general marketing standards laid down in Part A of Annex I to Implementing Regulation No 543/2011 and the specific marketing standards set out in Part 10 of Part B of that annex, and, second, from Article 76(1) of Regulation No 1308/2013, is applicable not only to goods which originate from 'countries', as understood in paragraphs 79 and 80 of the present judgment, but also to those which originate from 'territories', as referred to in paragraphs 81 and 82 thereof.

84 In the third place, in the present case, it is apparent from the order for reference that the goods at issue in the main proceedings were harvested in the territory of Western Sahara.

85 The territory of Western Sahara constitutes a territory distinct from that of the Kingdom of Morocco (judgments of 21 December 2016, *Council* v *Front Polisario*, C-104/16 P, EU:C:2016:973, paragraph 92, and of 27 February 2018, *Western Sahara Campaign UK*, C-266/16, EU:C:2018:118, paragraph 62).

86 Furthermore, Annex I to Commission Implementing Regulation (EU) 2020/1470 of 12 October 2020 on the nomenclature of countries and territories for the European statistics on international trade in goods and on the geographical breakdown for other business statistics (OJ 2020 L 334, p. 2), applicable to the sphere of Union customs legislation, lays down separate codes and texts for Western Sahara and the Kingdom of Morocco.

87 In those circumstances, the territory of Western Sahara must be regarded as a customs territory for the purposes of Article 60 of the Union Customs Code and, consequently, of Regulation No 1308/2013 and Implementing Regulation No 543/2011. Accordingly, the indication of the country of origin which must appear on the goods at issue in the main proceedings may designate only Western Sahara as such, because those goods are harvested in that territory.

88 Any other indication would be deceptive for the purposes of the case-law referred to in paragraph 73 of the present judgment. It could mislead consumers as to the true origin of the goods at issue in the main proceedings, inasmuch as it would be likely to suggest that those goods originate from a place other than the territory in which they were harvested (see, to that effect, judgment of 12 November 2019, *Organisation juive européenne and Vignoble Psagot*, C-363/18, EU:C:2019:954, paragraph 51).

89 Having regard to all the foregoing considerations, the answer to the fourth question is that Article 76 of Regulation No 1308/2013, read in conjunction with Article 3(1) of Implementing Regulation No 543/2011, must be interpreted as meaning that, at the stages of import and sale to the consumer, the labelling of the goods at issue in the main proceedings must indicate Western Sahara alone as the country of origin of those goods.

## Costs

90 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

1. **Article 207 TFEU, Regulation (EU) 2015/478 of the European Parliament and of the Council of 11 March 2015 on common rules for imports, and Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007**

   **must be interpreted as not permitting a Member State unilaterally to adopt a measure banning the import of agricultural goods the labelling of which systematically fails to comply with the EU legislation concerning the indication of the country or territory of origin.**

2. **Article 76 of Regulation No 1308/2013, read in conjunction with Article 3(1) of Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors, as amended by Commission Implementing Regulation (EU) No 594/2013 of 21 June 2013,**

   **must be interpreted as meaning that, at the stages of import and sale to the consumer, the labelling of Charentais melons and cherry tomatoes harvested in the territory of Western Sahara must indicate Western Sahara alone as the country of origin of those goods.**

[Signatures]