European Court of Justice, 18 November 2003, Budvar v Ammersin

v

DESIGNATIONS OF ORIGIN

Geographical origin

- **Bilateral convention between a Member State and a non-member country protecting indications of geographical origin from that non-member country.**

That that regulation does not preclude the application of a provision of a bilateral agreement between a Member State and a non-member country under which a simple and indirect indication of geographical origin from that non-member country is accorded protection in the importing Member State, whether or not there is any risk of consumers being misled, and the import of a product lawfully marketed in another Member State may be prevented.

Geographical source

- **Bilateral convention between a Member State and a non-member country protecting indications of geographical source from that non-member country.**

That Article 28 EC precludes the application of a provision of a bilateral agreement between a Member State and a non-member country under which a name which in that country does not directly or indirectly refer to the geographical source of the product that it designates is accorded protection in the importing Member State, whether or not there is any risk of consumers being misled, and the import of a product lawfully marketed in another Member State may be prevented.

Older bilateral agreements

- **Permitting a court of a Member State to apply the provisions of bilateral agreements, concluded between that State and a non-member country and according protection to a name from the non-member country, even where those provisions prove to be contrary to the Treaty rules.**

That the first paragraph of Article 307 EC is to be interpreted as permitting a court of a Member State, subject to the findings to be made by that court having regard inter alia to the criteria set out in this judgment, to apply the provisions of bilateral agreements such as those at issue in the main proceedings, concluded between that State and a non-member country and according protection to a name from the non-member country, even where those provisions prove to be contrary to the Treaty rules, on the ground that they concern an obligation resulting from agreements concluded before the date of the accession of the Member State concerned to the European Union. Pending the success of one of the methods referred to in the second paragraph of Article 307 EC in eliminating any incompatibilities between an agreement predating that accession and the Treaty, the first paragraph of that article permits that State to continue to apply such an agreement in so far as it contains obligations which remain binding on that State under international law.

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European Court of Justice, 18 November 2003

(V. Skouris, P. Jann, C.W.A. Timmermans, C. Gulmann, .N. Cunha Rodrigues, A.O. Edward, A. La Pergola, J.-P. Puissochet, R. Schintgen, N. Colneric and S. von Bahr)

JUDGMENT OF THE COURT

18 November 2003 (1)

(Protection of geographical indications and designations of origin - Bilateral convention between a Member State and a non-member country protecting indications of geographical source from that non-member country - Articles 28 EC and 30 EC - Regulation (EEC) No 2081/92 - Article 307 EC - Succession of States in respect of treaties)

In Case C-216/01,

REFERENCE to the Court under Article 234 EC by the Handelsgericht Wien (Austria) for a preliminary ruling in the proceedings pending before that court between

Budejovický Budvar, národní podnik

and

Rudolf Ammersin GmbH,

on the interpretation of Articles 28 EC, 30 EC and 307 EC, and Council Regulation (EEC) No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJ 1992 L 208, p. 1), as amended by Council Regulation (EC) No 535/97 of 17 March 1997 (OJ 1997 L 83, p. 3),

THE COURT,

composed of: V. Skouris, President, P. Jann, C.W.A. Timmermans (Rapporteur), C. Gulmann and J.N. Cunha Rodrigues (Presidents of Chambers), D.A.O. Edward, A. La Pergola, J.-P. Puissochet, R. Schintgen, N. Colneric and S. von Bahr, Judges,

Advocate General: A. Tizzano,

Registrar: H. von Holstein, Deputy Registrar,
after considering the written observations submitted on behalf of:
- Budejovický Budvar, národní podnik, by S. Kommar, Rechtsanwalt,
- Rudolf Ammersin GmbH, by C. Hauer, Rechtsanwalt,
- the Austrian Government, by C. Pesendorfer, acting as Agent,
- the German Government, by W.-D. Plessing and A. Dittrich, acting as Agents,
- the French Government, by G. de Bergues and L. Bernheim, acting as Agents,
- the Commission of the European Communities, by A.-M. Rouchaud, acting as Agent, and B. Wägenbaur, Rechtsanwalt,
having regard to the Report for the Hearing,
after hearing the oral observations of Budejovický Budvar, národní podnik, represented by S. Kommar; Rudolf Ammersin GmbH, represented by C. Hauer, D. Ohlgart and B. Goebel, Rechtsanwälte; and the Commission, represented by A.-M. Rouchaud and B. Wägenbaur, at the hearing on 19 November 2002,
after hearing the **Opinion of the Advocate General at the sitting on 22 May 2003**,
gives the following

Judgment

1. By order of 26 February 2001, received at the Court on 25 May 2001, the Handelsgericht Wien (Commercial Court, Vienna) referred to the Court for a preliminary ruling under Article 234 EC four questions on the interpretation of Articles 28 EC, 30 EC and 307 EC, and Council Regulation (EEC) No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJ 1992 L 208, p. 1), as amended by Council Regulation (EC) No 535/97 of 17 March 1997 (OJ 1997 L 83, p. 3) ('Regulation No 2081/92').

2. Those questions were raised in proceedings between Budejovický Budvar, národní podnik ('Budvar'), a brewery established in the town of Ceské Budejovice (Czech Republic), and Rudolf Ammersin GmbH ('Ammersin'), a company established in Vienna (Austria) which runs a drink distribution business, concerning Budvar's application for an injunction prohibiting Ammersin from marketing beer produced by the brewery Anheuser-Busch Inc. ('Anheuser-Busch'), established in Saint Louis (United States), under the name American Bud on the ground that, pursuant to various bilateral agreements between the Czech Republic and the Republic of Austria, in that Member State the name 'Bud' is reserved for beer produced in the Czech Republic.

Legal background

International law

3. Article 34(1) of the Vienna Convention on Succession of States in respect of Treaties of 23 August 1978 provides:
'When a part or parts of the territory of a State separate to form one or more States, whether or not the predecessor State continues to exist:
(a) any treaty in force at the date of the succession of States in respect of the entire territory of the predecessor State continues in force in respect of each successor State so formed;
(b) any treaty in force at the date of the succession of States in respect only of that part of the territory of the predecessor State which has become a successor State continues in force in respect of that successor State alone.'

Community law

4. The first and second paragraphs of Article 307 EC state:
'The rights and obligations arising from agreements concluded before 1 January 1958 or, for acceding States, before the date of their accession, between one or more Member States on the one hand, and one or more third countries on the other, shall not be affected by the provisions of this Treaty.
To the extent that such agreements are not compatible with this Treaty, the Member State or States concerned shall take all appropriate steps to eliminate the incompatibilities established. Member States shall, where necessary, assist each other to this end and shall, where appropriate, adopt a common attitude.'

5. The seventh recital in the preamble to Regulation No 2081/92 states that 'there is diversity in the national practices for implementing registered designations o[f] origin and geographical indications; ... a Community approach should be envisaged; ... a framework of Community rules on protection will permit the development of geographical indications and designations of origin since, by providing a more uniform approach, such a framework will ensure fair competition between the producers of products bearing such indications and enhance the credibility of the products in the consumers' eyes'.

6. Article 1(1) and (2) of Regulation No 2081/92 provides:
'1. This Regulation lays down rules on the protection of designations of origin and geographical indications of agricultural products intended for human consumption referred to in Annex II to the Treaty and of the foodstuffs referred to in Annex I to this Regulation and agricultural products listed in Annex II to this Regulation.
...
2. This Regulation shall apply without prejudice to other specific Community provisions.'

7. Annex I to that regulation, headed 'Foodstuffs referred to in Article 1(1)', mentions 'Beer' in its first indent.

8. Article 2(1) and (2) of Regulation No 2081/92 provides:
'1. Community protection of designations of origin and of geographical indications of agricultural products and foodstuffs shall be obtained in accordance with this Regulation.
2. 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:

- 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;

(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:

- originating in that region, specific place or country, and
- 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.'

9. Articles 5 to 7 of Regulation No 2081/92 lay down the procedure, known as the 'normal procedure', for the registration of geographical indications and designations of origin referred to in Article 2 of the regulation. According to Article 5(4) of that regulation, the application for registration is to be sent to the Member State in which the geographical area is located. In accordance with the first subparagraph of Article 5(5) of the regulation, the Member State is to check that the application is justified and forward it to the Commission of the European Communities.

10. Since examination of an application for registration by the Commission takes a certain amount of time and since, pending a decision on the registration of a name, a Member State must be allowed to confer transitional national protection, Regulation No 535/97 inserted the following text after the first subparagraph of Article 5(5) of Regulation No 2081/92:

'That Member State may, on a transitional basis only, grant on the national level a protection in the sense of the present Regulation to the name forwarded in the manner prescribed, and, where appropriate, an adjustment period, as from the date of such forwarding; ...

Such transitional national protection shall cease on the date on which a decision on registration under this Regulation is taken. ...

The consequences of such national protection, where a name is not registered under this Regulation, shall be the sole responsibility of the Member State concerned.

The measures taken by Member States under the second subparagraph shall produce effects at national level only; they shall have no effect on intra-Community trade.'

11. Article 12 of Regulation No 2081/92 provides:

'1. Without prejudice to international agreements, this Regulation may apply to an agricultural product or foodstuff from a third country provided that:

- the third country is able to give guarantees identical or equivalent to those referred to in Article 4,
- the third country concerned has inspection arrangements equivalent to those laid down in Article 10,
- the third country concerned is prepared to provide protection equivalent to that available in the Community to corresponding agricultural products [or] foodstuffs coming from the Community.

2. If a protected name of a third country is identical to a Community protected name, registration shall be granted with due regard for local and traditional usage and the practical risks of confusion.

Use of such names shall be authorised only if the country of origin of the product is clearly and visibly indicated on the label.'

12. Article 17 of Regulation No 2081/92 sets up a registration procedure, known as the 'simplified procedure', applicable to the registration of names already in existence on the date of entry into force of that regulation. It provides, inter alia, that within six months of the entry into force of Regulation No 2081/92, Member States are to inform the Commission of the names they wish to register under that procedure.

13. In order to take account inter alia of the fact that the first proposal for registration of geographical indications and designations of origin which the Commission was to draw up pursuant to Article 17(2) of Regulation No 2081/92 was not submitted to the Council of the European Union until March 1996, when most of the transitional period of five years provided for by Article 13(2) of that regulation had already elapsed, Regulation No 535/97, which entered into force on 28 March 1997, replaced Article 13(2) with the following:

'By way of derogation from paragraph 1(a) and (b), Member States may maintain national systems that permit the use of names registered under Article 17 for a period of not more than five years after the date of publication of registration, provided that:

- the products have been marketed legally using such names for at least five years before the date of publication of this Regulation,
- the undertakings have legally marketed the products concerned using those names continuously during the period referred to in the first indent,
- the labelling clearly indicates the true origin of the product.

However, this derogation may not lead to the marketing of products freely within the territory of a Member State where such names were prohibited.'

National law

14. On 11 June 1976, the Republic of Austria and the Czechoslovak Socialist Republic concluded an agreement on the protection of indications of source, designations of origin and other designations referring to the source of agricultural and industrial products ('the bilateral convention').

15. Following approval and ratification, the bilateral convention was published in the Bundesgesetzblatt für die Republik Österreich of 19 February 1981 (BGBl. No 1981/75). Pursuant to Article 16(2) thereof, the bilateral convention came into force on 26 February 1981 for an indefinite period.

16. Article 1 of the bilateral convention provides:

'Each of the contracting States undertakes to take all the necessary measures to ensure effective protection against unfair competition in the course of trade for in-

dications of source, designations of origin and other designations referring to the source of the agricultural and industrial products in the categories referred to in Article 5 and listed in the agreement provided for in Article 6, and the names and illustrations referred to in Articles 3, 4 and 8(2)'.

17. Under Article 2 of the bilateral convention,

'Indications of source, designations of origin and other designations referring to the source within the meaning of this agreement mean all indications which relate directly or indirectly to the source of a product. Such an indication generally consists of a geographical designation. However, it may also consist of other information, if in the relevant consumer circles of the country of origin this is perceived, in connection with the product thus designated, as a reference to the country of production. In addition to the indication of source from a particular geographical area, the abovementioned designations may also contain information on the quality of the product concerned. These particular features of the product shall be determined solely or predominantly by geographical or human influences.'

18. Article 3(1) of the bilateral convention provides:

'... the Czechoslovak designations listed in the agreement provided for in Article 6 shall in the Republic of Austria be reserved exclusively for Czechoslovak products.'

19. Point 2 of Article 5(1)B of the bilateral convention refers to beers as one of the categories of Czech products concerned by the protection established by that convention.

20. Article 6 of the bilateral convention states:

'Designations of the individual products meeting the conditions laid down in Articles 2 and 5 which enjoy protection under the agreement and which are therefore not generic names will be listed in an agreement to be concluded between the Governments of the two contracting States.'

21. Article 7 of the bilateral convention is worded as follows:

'1. If the names and designations protected under Articles 3, 4, 6, and 8(2) of this agreement are used contrary to those provisions commercially for products, in particular for their presentation or packaging, or on invoices, waybills or other business documents or in advertisements, then all judicial and administrative measures for acting against unfair competition or otherwise suppressing prohibited designations which are available under the legislation of the contracting State in which protection is claimed shall be applied in accordance with the conditions laid down in that legislation and with Article 9.

2. Where a risk of confusion in commerce exists, paragraph 1 is also to be applied if the designations protected under the agreement are used in modified form or for products other than those to which they are allocated in the agreement referred to in Article 6.

3. Paragraph 1 is also to be applied if the designations protected under the agreement are used in translation or with a reference to the actual source or with additions such as "style", "type", "as produced in", "imitation" or the like.

4. Paragraph 1 does not apply to translations of designations from one of the contracting States where the translation is a colloquial word in the language of the other contracting State.'

22. Article 16(3) of the bilateral convention provides that the two contracting parties may denounce the convention by giving notice of at least one year, issued in writing and through diplomatic channels.

23. In accordance with Article 6 of the bilateral convention, an agreement on its application ('the bilateral agreement') was concluded on 7 June 1979. Pursuant to Article 2(1) thereof, that agreement came into force at the same time as the bilateral convention, namely 26 February 1981. It was published in the Bundesgesetzblatt für die Republik Österreich of 19 February 1981 (BGBl. No 1981/76).

24. Annex B to the bilateral agreement states:

'Czechoslovak designations for agricultural and industrial products

...

B. Food and agriculture (except wine)

...

2. Beer

Czech Socialist Republic

...

Bud

Budejovické pivo

Budejovické pivo Budvar

Budejovický Budvar

...'

25. On 17 December 1992, the Czech National Council declared that, in accordance with the prevailing principles of, and to the extent provided for by, international law, the Czech Republic considered itself bound, as of 1 January 1993, by the multilateral and bilateral agreements to which the Czech and Slovak Federative Republic was party on that date.

26. By Constitutional Law No 4/1993 of 15 December 1992, the Czech Republic confirmed that it assumed the rights and obligations of the Czech and Slovak Federative Republic which existed under international law on the date of its dissolution.

27. The communication of the Federal Chancellor concerning the bilateral agreements in force between the Republic of Austria and the Czech Republic (BGBl. III No 1997/123; 'the Federal Chancellor's communication') states:

'On the basis of a joint examination of the bilateral agreements between the Republic of Austria and the Czech Republic by the competent authorities of the two States it was established that, under the generally recognised rules of international law, the following bilateral agreements were in force between the Republic of Austria and the Czech Republic on 1 January 1993, the date on which the Czech Republic succeeded the former Czech and Slovak Federative Republic in the relevant territory, and have since been applied by the competent authorities within the framework of the legal systems of the two countries:

...

19. Agreement between the Republic of Austria and the Czechoslovak Socialist Republic on the protection of indications of source, designations of origin and other designations referring to the source of agricultural and industrial products, and the protocol of 30 November 1977

Vienna, 11 June 1976 (BGBl. No 75/1981)

...

26. Agreement implementing the Agreement between the Republic of Austria and the Czechoslovak Socialist Republic on the protection of indications of source, designations of origin and other designations referring to the source of agricultural and industrial products

Prague, 7 June 1979 (BGBl No 76/1981).

...'

The dispute in the main proceedings and the questions referred

28. Budvar markets beer, in particular under the names Budejovický Budvar and Budweiser Budvar, and exports a beer called 'Budweiser Budvar' in particular to Austria.

29. Ammersin markets inter alia a beer called American Bud, produced by the brewery Anheuser-Busch, which it buys from Josef Sigl KG ('Josef Sigl'), a company established in Obertrum (Austria) which is the sole Austrian importer of that beer.

30. By act of 22 July 1999, Budvar brought proceedings before the national court requesting that Ammersin be ordered to refrain from using on Austrian territory, in the course of its commercial activities, the name Bud, or similar designations likely to cause confusion, for beer or similar goods or in connection with such goods, save where Budvar products were concerned. In addition, Budvar also sought the suppression of all designations conflicting with that prohibition, the rendering of accounts and publication of the judgment. The action was accompanied by an application for interim measures.

31. Budvar's action in the main proceedings is essentially based on two different pleas in law.

32. First of all, Budvar submits that the name American Bud, which is registered as a trade mark in favour of Anheuser-Busch, bears a similarity, likely to cause confusion within the meaning of the legislation on unfair competition, to its own priority trade marks protected in Austria, namely Budweiser, Budweiser Budvar and Bud.

33. Second, Budvar asserts that the use of the designation American Bud for a beer from a State other than the Czech Republic is contrary to the provisions of the bilateral convention because, pursuant to Article 6 of that convention, the designation Bud, referred to in Annex B to the bilateral agreement, is a protected designation and is therefore reserved exclusively for Czech products.

34. On 15 October 1999, the national court granted the interim measures sought by Budvar.

35. The appeal brought by Ammersin before the Oberlandesgericht Wien (Higher Regional Court, Vienna) (Austria) against those measures was not successful and leave to appeal to the Oberster Gerichtshof (Supreme Court) (Austria) was refused. Now that the interlocutory proceedings have ended, the Handelsgericht Wien is hearing the main application.

36. The national court observes that before bringing the action in the main proceedings, Budvar had already brought an action before the Landesgericht Salzburg (Regional Court, Salzburg) (Austria) which was identical with regard to both its purpose and its legal basis, but which was directed against Josef Sigl.

37. In that parallel case, the Landesgericht Salzburg ordered the interim measures sought by the claimant, and the Oberlandesgericht Linz (Higher Regional Court, Linz) (Austria) dismissed the appeal brought against that order. By order of 1 February 2000, the Oberster Gerichtshof dismissed the appeal brought on a point of law against the order made in the initial appeal proceedings, and upheld the interim measures.

38. The national court states that the order of the Oberster Gerichtshof is essentially based on the following considerations.

39. The Oberster Gerichtshof, which confined its examination to the plea related to the bilateral convention, held that the injunction sought against Josef Sigl, the defendant, could constitute an obstacle to the free movement of goods for the purposes of Article 28 EC.

40. However, it held that that obstacle is compatible with Article 28 EC because the protection of the designation Bud provided for in the bilateral convention constitutes protection of industrial and commercial property within the meaning of Article 30 EC.

41. According to the national court, the Oberster Gerichtshof held that the designation Bud is 'a simple geographical indication or ... an indirect reference to source', in other words an indication for which it is not necessary to respect the guarantees associated with designations of origin - such as production in compliance with the quality or manufacturing standards adopted and monitored by the authorities, or the specific product characteristics. Moreover, the designation Bud enjoys 'absolute protection', that is to say, irrespective of whether there is any risk of confusion or of consumers being misled.

42. In the light of the arguments submitted to it, the national court considers that there is reasonable doubt as to the correct answers to the questions of Community law raised in the main proceedings, in particular because it is not possible to ascertain from the Court's case-law whether 'simple' indications of geographical source, which do not carry any risk of consumers being misled, also come within the scope of the protection of industrial and commercial property within the meaning of Article 30 EC.

43. In those circumstances, the Handelsgericht Wien decided to stay proceedings and refer the following questions to the Court for a preliminary ruling:

'(1) Is the application of a provision of a bilateral agreement concluded between a Member State and a non-member country, under which a simple/indirect geographical indication which in the country of origin is the name neither of a region nor a place nor a country

is accorded the absolute protection, regardless of any misleading, of a qualified geographical indication within the meaning of Regulation No 2081/92 compatible with Article 28 EC and/or Regulation No 2081/92, if on application of that provision the import of a product which is lawfully put on the market in another Member State may be prevented?

(2) Does this apply also where the geographical indication which in the country of origin is the name neither of a region nor a place nor a country is not understood in the country of origin as a geographical designation for a specific product, and also not as a simple or indirect geographical indication?

(3) Do the answers to Questions 1 and 2 apply also where the bilateral agreement is an agreement which the Member State concluded before its accession to the European Union and continued after its accession to the European Union with a successor State to the original other State party to the agreement by means of a declaration of the Federal Government?

(4) Does the second paragraph of Article 307 EC oblige the Member State to interpret such a bilateral agreement, concluded between that Member State and a non-member country before the Member State's accession to the EU, in conformity with Community law as stated in Article 28 EC and/or Regulation No 2081/92, so that the protection laid down therein for a simple/indirect geographical indication which in the country of origin is the name neither of a region nor a place nor a country comprises merely protection against misleading and not the absolute protection of a qualified geographical indication within the meaning of Regulation No 2081/92?'

The questions referred by the national court

Admissibility of the reference for a preliminary ruling

Observations submitted to the Court

44. Budvar claims that the case at issue in the main proceedings concerns provisions of a bilateral agreement concluded by a Member State and a non-member country to which, pursuant to the first paragraph of Article 307 EC, Community law does not apply. The interpretation of such provisions comes under the exclusive jurisdiction of the national court. In those circumstances, it is neither necessary nor permissible for the Court to give a ruling on the questions referred by the national court.

45. According to the Austrian Government, the part of the first question relating to the compatibility with Regulation No 2081/92 of the protection enjoyed under the bilateral convention is inadmissible. The issue is hypothetical inasmuch as the order for reference contains no evidence that any of the products concerned has been registered or is intended to be registered within the meaning of that regulation.

46. The Commission submits that the question arises whether the questions referred by the national court are hypothetical and, as such, inadmissible, given in particular that, first, the national court clearly does not concur with the interpretation of the bilateral convention given by the Oberster Gerichtshof in its interim order of 1 February 2000 as to the absolute nature of the protection enjoyed under that convention, second, the national court does not state what type of protection is, in its view, enjoyed by the name at issue in the main proceedings and, third, it also does not explain whether it is bound by the interpretation referred to above.

Findings of the Court

47. It is settled law that in the context of the cooperation between the Court of Justice and the national courts provided for by Article 234 EC, it is solely for the national court before which the 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 Community law, the Court of Justice is, in principle, bound to give a ruling. The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of Community 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 (see, inter alia, Case C-379/98 PreussenElektra [2001] ECR I-2099, paragraphs 38 and 39).

48. According to Budvar, the national court's questions are not admissible because, given the applicability of the first paragraph of Article 307 EC, the case at issue in the main proceedings concerns only the interpretation of rules of national law, namely the bilateral convention and agreement ('the bilateral instruments at issue'), since Community law does not apply to that case.

49. In that regard, it need only be noted, first, that the third and fourth questions specifically concern the correct interpretation of Article 307 EC in the light of the circumstances of the case at issue in the main proceedings, while the first and second questions concern the interpretation of provisions of Community law, namely those of Articles 28 EC and 30 EC and of Regulation No 2081/92, in order to enable the national court to determine the compatibility of the national rules at issue with Community law. There can be no doubt as to the relevance of such an examination given the possible application of Article 307 EC to the case in question.

50. As regards, next, the Austrian Government's assertion that the part of the first question which relates to Regulation No 2081/92 is hypothetical, it must be observed that the case at issue in the main proceedings concerns Budvar's claim to a right which would result in Ammersin being prohibited from marketing certain goods under a protected designation and whose compatibility with the system established by Regulation No 2081/92 has been called into question, irrespective of whether there has been any registration under the system instituted by that regulation. That question is therefore in no way hypothetical.

51. Finally, as regards the Commission's arguments, suffice it to say that the various possibilities posited by the national court as to the nature of the name at issue in the main proceedings are merely the premisses on which the questions referred are based, the correctness of which it is not for the Court to examine.
52. It follows from all the foregoing that the reference for a preliminary ruling is admissible.

Substance

The first question

53. By its first question, the national court is asking essentially whether Regulation No 2081/92 or Article 28 EC precludes the application of a provision of a bilateral agreement between a Member State and a non-member country, under which a simple and indirect indication of geographical source from that non-member country is accorded protection in the importing Member State, irrespective of whether there is any risk of consumers being misled, and the import of a product lawfully marketed in another Member State may be prevented.
54. That question deals with the hypothesis that the name Bud constitutes a simple and indirect indication of geographical source, that is to say, a name in respect of which there is no direct link between a specific quality, reputation or other characteristic of the product and its specific geographical origin, so that it does not come within the scope of Article 2(2)(b) of Regulation No 2081/92 (see **Case C-312/98 Warsteiner Brauerei [2000] ECR I-9187, paragraphs 43 and 44**), and which, moreover, is not in itself a geographical name but is at least capable of informing the consumer that the product bearing that indication comes from a particular place, region or country (see **Case C-3/91 Exportur [1992] ECR I-5529**, paragraph 11).

- Regulation No 2081/92

Observations submitted to the Court

55. Budvar submits that Bud is an abbreviation of the name of the town of Budweis - the Czech name for which is Ceské Budejovice -, which is the place of origin of its beer, and thus includes a geographical reference which establishes a relationship with the brewing tradition of that town and reflects, in particular, the worldwide reputation of beer from Budweis, which is attributable to its excellent quality.
56. According to Budvar, the name Bud - which is protected in Austria under the bilateral convention - is therefore a qualified geographical indication or designation of origin, that is to say, an indication or a designation which is eligible for registration under Regulation No 2081/92.
57. Budvar submits that it is clear from the Court's case-law (Warsteiner Brauerei, paragraph 47) that Regulation No 2081/92 does not preclude a national system of protection, similar to that established by the bilateral convention, of a qualified geographical indication or designation of origin such as Bud.
58. In addition, Budvar submits that if the name Bud, as protected under the bilateral convention, is merely a simple indication of geographic source - that is, an indication of geographic source in respect of which there is no link between the characteristics of the product and its geographical source -, the judgment in Warsteiner Brauerei, in particular paragraph 54, a fortiori indicates that Regulation No 2081/92 does not preclude the application of that national protection, since such indications are clearly beyond the scope of that regulation.
59. According to Budvar, Regulation No 2081/92 governs only Community protection of the designations to which it refers. It follows that the national court's distinction between simple indications of geographic source and qualified indications is of no relevance when considering the purely national protection accorded by the bilateral convention. In the light of the judgment in Warsteiner Brauerei, in particular paragraphs 43 and 44, that conclusion holds true even where there is no risk of consumers being misled.
60. Ammersin claims that Warsteiner Brauerei does not provide any answer to the question underlying the dispute in the main proceedings, namely the question whether the absolute protection which Regulation No 2081/92 reserves to qualified geographic indications and designations of origin can be granted at the level of the Member States, in parallel to the system established by that regulation.
61. That question must be answered in the negative since it is clear from the object, intention and scheme of Regulation No 2081/92 that that regulation is exhaustive to the extent that it grants absolute protection. Ammersin submits, first, that the regulation subjects the protection of a name to strict conditions, according to which the name must be the name of a place and there must be a direct link between the quality of the product concerned and the place where it originates (Article 2(2) of Regulation No 2081/92), and, second, that that protection is granted only after a compulsory notification, verification and registration procedure involving, in particular, a detailed assessment of compliance with the product specifications (Article 4 et seq. of that regulation).
62. According to Ammersin, it follows that Regulation No 2081/92 precludes national systems of protection from granting absolute protection to geographical indications and designations of origin where it is not ensured that those indications and designations also meet the strict requirements laid down by that regulation.
63. That interpretation is lent support by Article 17 of Regulation No 2081/92, from which it follows that national systems of protection of qualified indications of geographical source, including those founded on bilateral conventions, may be maintained beyond the six-month period provided for in that provision only if they have been notified to the Commission within that period.
64. The indications of source protected under the bilateral convention, in particular the name Bud, were not however notified to the Commission within that period, which, for the Republic of Austria, expired on 30 June 1999. They can thus no longer enjoy protection.

65. The Austrian Government argues that if one starts from the assumption that the name at issue in the main proceedings is merely a simple indication of geographical source, it follows from the case-law of the Court that the protection accorded under the bilateral convention is compatible with Regulation No 2081/92.
66. That Government further submits that it is likewise clear from the case-law of the Court that Regulation No 2081/92 also does not preclude the application of national rules protecting names which are eligible for registration under that regulation.
67. The German Government submits that if the case concerns a simple indication of geographical source, then protection of the name Bud, as provided for in the bilateral convention, is compatible with Regulation No 2081/92 because that regulation applies only to qualified indications of geographical source, that is, indications which are intrinsically linked to the characteristics or the quality of the product in question.
68. On the other hand, if the case in the main proceedings concerns a qualified indication of source, that Government considers that it is necessary to bear in mind the fact that Regulation No 2081/92 provides only for the registration of indications of source from Member States (see Article 5(4) and (5) of that regulation). It is clear from the recitals in its preamble that the regulation is based on the premiss that the system it establishes will be supplemented by cooperation with non-member countries. However, at present there is no agreement between the European Union and the Czech Republic.
69. Therefore, no objections can be raised to the protection accorded under the bilateral convention, provided that, in terms of their content, the qualified indications of source referred to therein meet the requirements of Regulation No 2081/92.
70. The French Government submits that Article 12(1) of Regulation No 2081/92 authorises the maintenance of international agreements concluded prior to the entry into force of that regulation.
71. It is thus beyond doubt that the protection accorded by the bilateral convention to the name Bud cannot be incompatible with Regulation No 2081/92, particularly since that name has been classified as a protected designation of origin inter alia in the framework of the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration of 31 October 1958, and was registered as such by the World Intellectual Property Organisation in 1975.
72. The Commission submits that it is clear from the case-law that Regulation No 2081/92 does not preclude a bilateral convention from according, possibly in conjunction with other national legal provisions, absolute protection, that is, irrespective of whether there is any use creating a risk of consumers being misled, to a geographical indication such as the one at issue in the main proceedings where there is no link between the characteristics of the product concerned and its geographical source.

The Court's reply

73. The Court has already held that there is nothing in Regulation No 2081/92 to imply that simple indications of geographical source cannot be protected under the national legislation of a Member State (see Warsteiner Brauerei, paragraph 45).
74. The aim of Regulation No 2081/92 is to ensure uniform protection within the Community of the geographical designations which it covers; it introduced a requirement of Community registration in respect of those designations so that they could enjoy protection in every Member State, whereas the national protection which a Member State accords to geographical designations that do not meet the conditions for registration under Regulation No 2081/92 is governed by the national law of that Member State and is confined to its territory (see Warsteiner Brauerei, paragraph 50).
75. No doubt is cast on that interpretation by the fact that the national system of protection of indications of geographical source at issue in the main proceedings provides for absolute protection, that is to say, irrespective of whether there is any risk of consumers being misled.
76. The scope of Regulation No 2081/92 is not determined by reference to such factors, but depends essentially on the nature of the designation, in that it covers only designations of products for which there is a specific link between their characteristics and their geographic origin, and by the fact that the protection conferred extends to the Community.
77. It is common ground that, for the purposes of the hypothesis to which the first question refers, the name at issue in the main proceedings is not a designation which comes within the scope of Regulation No 2081/92. Moreover, the protection which it enjoys under the bilateral instruments at issue is limited to Austrian territory.
78. In the light of the foregoing, the answer to the first question, in so far as it concerns Regulation No 2081/92, must be that that regulation does not preclude the application of a provision of a bilateral agreement between a Member State and a non-member country under which a simple and indirect indication of geographical origin from that non-member country is accorded protection in the importing Member State, whether or not there is any risk of consumers being misled, and the import of a product lawfully marketed in another Member State may be prevented.

- Articles 28 EC and 30 EC

Observations submitted to the Court

79. As a preliminary point, Budvar submits that the case at issue in the main proceedings concerns only direct imports to Austria from a non-member country, namely the United States, and thus does not involve a barrier to intra-Community trade. Hence, it has no bearing on the internal market and does not come within the scope of Article 28 EC.
80. In addition, Budvar asserts that, according to the case-law of the Court, Articles 28 EC and 30 EC do not preclude the application of rules, laid down in an international agreement between Member States, on the protection of indications of source and designations of

origin, provided that at, or after, the date on which that agreement comes into force the protected names have not become generic in the State of origin.

81. According to Budvar, that case-law applies a fortiori to a situation which, as in the main proceedings, concerns an agreement between a Member State and a non-member country according such protection, especially as it is indisputable - in particular since it is expressly stated in Article 6 of the bilateral convention - that the designation Bud is not, and has never been, a generic term.

82. Ammersin submits that it does not follow from the Court's case-law that absolute protection of a name such as Bud is justified under Article 30 EC. Only simple indications of geographical source - essentially, place-names - with a strong reputation, which constitute for producers established in the places to which they refer an essential means of attracting custom, are justified. The designation Bud is not the name of a place, nor does it have a reputation among consumers.

83. Ammersin also submits that protection of the name Bud likewise cannot be justified under Article 28 EC, that is to say, by an overriding reason in the general interest, such as consumer protection or fairness in commercial transactions. Those objectives can be adequately attained by granting protection against the risk of consumers being misled. In those circumstances, absolute protection is clearly disproportionate.

84. The Austrian Government submits that according to the settled case-law of the Court, Article 28 EC does not preclude restrictions on imports and exports where those restrictions are justified on the grounds of protection of industrial and commercial property within the meaning of Article 30 EC, to the extent that such restrictions are necessary to safeguard the rights which constitute the specific subject-matter of that property.

85. That justification applies equally both to simple indications of geographical source and to indirect indications of geographical source.

86. That Government submits that the names protected by the bilateral convention - even though they are not qualified geographical indications or designations of origin capable of coming within the scope of Regulation No 2081/92 - enjoy a special reputation capable of justifying restrictions on the free movement of goods.

87. Those names were listed in the annexes to the bilateral agreement at the suggestion of interested national circles, on the basis of consumer expectations and in close concertation with the competent interest groups and administrations.

88. The aim of the bilateral convention was to prevent the protected designations from being improperly used and from becoming generic.

89. The German Government submits that the protection which the bilateral convention accords to simple indications of geographical source is a measure having equivalent effect to a quantitative restriction within the meaning of Article 28 EC, but is justified under Article 30 EC on the grounds of protection of industrial and commercial property or, alternatively, under Article 28 EC as an overriding reason in the public interest, relating in particular to fairness in commercial transactions or consumer protection.

90. As regards Article 30 EC, the German Government submits that it is clear from the case-law of the Court that the prohibition on the use of the name Bud under the bilateral convention protects the commercial property in the indications of source within the meaning of that article and can, therefore, justify a barrier to trade which is prohibited by Article 28 EC.

91. If it were found that the name at issue in the main proceedings is a simple indication of source, that indication would be protected against the risk of its reputation being exploited. It would, moreover, be irrelevant whether that indication does in fact have a reputation or whether a person not entitled to do so had in fact exploited the reputation of that indication of source in the marketing of his products.

92. The German Government submits, in the alternative, that where there are overriding reasons in the general interest, in particular relating to fairness in commercial transactions and consumer protection, Member States are permitted to adopt national provisions concerning the use of misleading indications which do not require consumers actually to have been misled. That principle is confirmed by various directives.

93. The Commission submits that the prohibition on marketing beer in Austria under the name of American Bud which follows from the bilateral convention constitutes a measure having equivalent effect to a quantitative restriction on imports within the meaning of Article 28 EC, which is justified because it relates to the protection of industrial and commercial property within the meaning of Article 30 EC.

94. In that regard, the Commission asserts that according to the case-law of the Court, geographical names such as Bud which are accorded absolute protection by an international agreement even though there is no link between the characteristics of the products concerned and their geographical source are covered by the justification relating to industrial and commercial property set out in Article 30 EC.

The Court's reply

95. Articles 28 EC and 30 EC apply without distinction to products originating in the Community and to those admitted into free circulation in any of the Member States, whatever the real origin of such products. It is therefore subject to those reservations that those articles apply to the American Bud beer at issue in the main proceedings (see, to that effect, Case 125/88 Nijman [1989] ECR 3533, paragraph 11).

96. In the case at issue in the main proceedings, the prohibition on marketing beer from countries other than the Czech Republic under the name of Bud in Austria, which follows from the bilateral convention, is capable of affecting imports of that product under that name from other Member States and thus of constituting a barrier to intra-Community trade. Such a rule is therefore a measure having an effect equivalent to a quantitative restriction within the meaning of Article 28

EC (see, to that effect, Nijman, paragraph 12, and **Exportur**, paragraphs 19 and 20).

97. National legislation prohibiting the use of a geographical name for goods originating in a non-member country which are admitted into free circulation in other Member States where they are lawfully marketed does not, it is true, absolutely preclude the importation of those products into the Member State concerned. It is, however, likely to make their marketing more difficult and thus to impede trade between Member States (see, to that effect, Case C-448/98 Guimont [2000] ECR I-10663, paragraph 26).

98. It is therefore necessary to examine whether that restriction on the free movement of goods can be justified under Community law.

99. The Court has already held, in relation to the absolute protection of an indication of source granted under a bilateral agreement of essentially the same kind as the one at issue in the main proceedings, that the aim of such an agreement, which is to prevent the producers of a contracting State from using the geographical names of another State and thereby taking advantage of the reputation of the products of undertakings established in the regions or places indicated by those names, is to ensure fair competition. Such an objective may be regarded as falling within the sphere of the protection of industrial and commercial property within the meaning of Article 30 EC, provided that the names in question have not, either at the time of the entry into force of that agreement or subsequently, become generic in the country of origin (see **Exportur**, paragraph 37, and **Case C-87/97 Consorzio per la tutela del formaggio Gorgonzola [1999] ECR I-1301**, paragraph 20).

100. As is clear from, in particular, Articles 1, 2 and 6 of the bilateral convention, that objective forms the basis of the system of protection established by the bilateral instruments at issue.

101. Therefore, if the findings of the national court show that according to factual circumstances and perceptions in the Czech Republic the name Bud designates a region or a place located on the territory of that State and its protection is justified there on the basis of the criteria laid down in Article 30 EC, that does not preclude such protection from being extended to the territory of a Member State such as, in this case, the Republic of Austria (see, to that effect, Exportur, paragraph 38).

102. In the light of the foregoing, the answer to the first question, in so far as it concerns Articles 28 EC and 30 EC, must be that those articles do not preclude the application of a provision of a bilateral agreement between a Member State and a non-member country, under which a simple and indirect indication of geographical origin from that non-member country is accorded protection in the Member State concerned, whether or not there is any risk of consumers being misled, and the import of a product lawfully marketed in another Member State may be prevented, provided that the protected name has not, either at the date of the entry into force of that agreement or subsequently, become generic in the State of origin (see **Exportur**, paragraph 39).

103. The answer to the first question must therefore be that Article 28 EC and Regulation No 2081/92 do not preclude the application of a provision of a bilateral agreement between a Member State and a non-member country under which a simple and indirect indication of geographical origin from that non-member country is accorded protection in the importing Member State, whether or not there is any risk of consumers being misled, and the import of a product lawfully marketed in another Member State may be prevented.

The second question

104. By its second question, the national court is asking essentially whether Regulation No 2081/92 or Article 28 EC precludes the application of a provision of a bilateral agreement between a Member State and a non-member country under which a name which in that country does not directly or indirectly refer to the geographical source of the product is accorded protection in the Member State concerned, whether or not there is any risk of consumers being misled, and the import of a product lawfully marketed in another Member State may be prevented.

Observations submitted to the Court

105. Budvar claims that the protection accorded to the name Bud under the bilateral convention would be incompatible with Article 28 EC only if there were absolutely no association in either the Member State concerned or the non-member country between the protected indication, which is a modified form of the full name of the place where the protected product is produced, on the one hand, and the product protected by that indication and bearing that particular name and its place of production, on the other. Such protection would be compatible with Regulation No 2081/92 even if such an association were completely ruled out.

106. Ammersin and the German Government submit that if the name Bud is not regarded in the country of origin as the geographical name of a specific product or as a simple or indirect geographical indication, protection of that name cannot be justified on the grounds of protection of industrial or commercial property within the meaning of Article 30 EC.

The Court's reply

107. If the findings of the national court show that according to factual circumstances and perceptions prevailing in the Czech Republic, the name Bud does not directly or indirectly identify any region or place in the territory of that State, the question then arises whether the absolute protection of that name, as provided for by the bilateral convention, which constitutes an obstacle to the free movement of goods (see paragraphs 96 and 97 above) can be justified under Community law by reference to Article 30 EC or on some other ground.

108. In that case, and without prejudice to any protection under specific rights such as trade mark rights, the protection of that name cannot be justified on the grounds of protection of industrial and commercial property within the meaning of Article 30 EC (see, to

that effect, Exportur, paragraph 37, and Joined Cases C-321/94 to C-324/94 Pistre and Others [1997] ECR I-2343, paragraph 53).

109. In those circumstances, the Court must examine whether such an obstacle can be justified by an imperative requirement in the general interest such as fairness in commercial transactions or consumer protection.

110. If it were established that the name Bud does not contain any reference to the geographical source of the products that it designates, the Court would have to hold that none of the information supplied to it by the national court shows that protection of that name is susceptible of preventing economic operators from obtaining an unfair advantage or consumers from being misled as to any of the characteristics of those products.

111. The answer to the second question must therefore be that Article 28 EC precludes the application of a provision of a bilateral agreement between a Member State and a non-member country under which a name which in that country does not directly or indirectly refer to the geographical source of the product that it designates is accorded protection in the importing Member State, whether or not there is any risk of consumers being misled, and the import of a product lawfully marketed in another Member State may be prevented.

The third and fourth questions

112. By its third and fourth questions, which should be examined together, the national court is asking essentially whether the first paragraph of Article 307 EC is to be interpreted as permitting a court of a Member State to apply the provisions of bilateral agreements such as those at issue in the main proceedings, concluded between that State and a non-member country and according protection to a name from the non-member country, even where those provisions prove to be contrary to the Treaty rules, on the ground that they concern an obligation resulting from agreements concluded before the date of the accession of the Member State concerned to the European Union, and whether the second paragraph of that article requires that national court to interpret those provisions in such a way that they are consistent with Community law.

Observations submitted to the Court

113. Budvar observes that the bilateral agreement was concluded by the Republic of Austria before its accession to the European Union, which took place on 1 January 1995, and that the Federal Chancellor's communication, issued in 1997, in other words after that accession, is, according to its very wording, of purely declaratory value. According to Budvar, the bilateral convention was not maintained in force by that declaration, but remained in force after the break-up of the Czech and Slovak Federative Republic on 1 January 1993 by virtue of the rules of public international law on the succession of States.

114. In those circumstances, Budvar claims that the Republic of Austria was entitled under the first paragraph of Article 307 EC, as interpreted by the Court, or even required under public international law, to take all the measures necessary to ensure the protection of the name Bud provided for in the bilateral convention, notwithstanding any provision of Community law.

115. Budvar submits that even assuming that in relation to the protection provided for by the bilateral convention there is a conflict between that convention and Community law, the Community institutions are prevented, under the first paragraph of Article 307 EC, from applying all primary and secondary Community law until that conflict is resolved, possibly by denunciation of the bilateral convention.

116. According to Budvar, the only appropriate methods of eliminating any incompatibilities between an agreement which predates the accession of a Member State to the European Union and the Treaty are the methods permitted under public international law, such as renegotiation of the agreement, or its interpretation in such a way that it is consistent with Community law.

117. There are no plans to renegotiate the bilateral convention. Moreover, it follows from the wording of Article 7(1) of that convention - a provision which is utterly unambiguous in that regard - that the protection accorded by the convention to the name concerned is independent of any risk of confusion or of consumers being misled.

118. Ammersin claims that the first paragraph of Article 307 EC is not applicable to the case at issue in the main proceedings because, on the date of its accession to the European Union, the Republic of Austria did not have any obligations under the bilateral convention.

119. The Republic of Austria did not have any obligation under international law in the period prior to the Federal Chancellor's communication, which includes the date of its accession to the European Union. Furthermore, there is no custom of international law relating to the succession of States on the basis of which the bilateral agreements would have remained in force following the break-up of the Czech and Slovak Federative Republic.

120. Therefore, it was only by way of the Federal Chancellor's communication that the Republic of Austria assumed the obligations to the Czech Republic under the bilateral convention. Contrary to its wording, that communication is therefore constitutive in nature.

121. bilateral convention can be interpreted in such a way that it is consistent with Community law if it is taken to mean that, under that convention, the name Bud is protected only where consumers are in fact misled. Article 7(1) of the convention does not lay down a requirement of absolute protection but instead provides for the application of ‘judicial and administrative measures for acting against unfair competition or otherwise suppressing prohibited designations’.

122. Under Austrian law and, more specifically, its provisions on unfair competition, all applications for orders prohibiting the use of names are subject to the condition that those names are used in a misleading manner.

123. Moreover, according to Ammersin, it is Article 7(2) of the bilateral convention which is applicable to the case in the main proceedings, since the name American Bud, used as a registered trade mark, consti-

tutes a modified form of the protected designation for the purposes of that provision. There are significant differences between that mark and the protected designation Bud - specifically in the form used as a bottle label - and it is perceived by consumers as an independent mark.

124. In that regard, Ammersin submits that the second paragraph of Article 307 EC clarifies Article 10 EC, which imposes on Member States the general obligation to act in a way favourable to the Community. In particular, it follows from the case-law relating to Article 10 EC that when applying domestic law the national court called upon to interpret that law must do so as far as possible in the light of the wording and the purpose of higher-ranking provisions of Community law, in order to attain the results intended by the Treaty and thus to comply with Regulation No 2081/92 and Article 28 EC.

125. The Austrian Government submits that the Republic of Austria and the Czech Republic both share the dominant opinion that States are bound by treaties concluded by their predecessor States. The principle of continuity in situations such as the one at issue in the main proceedings is expressed in Article 34(1) of the Vienna Convention on Succession of States in respect of Treaties. Moreover, that principle is consistent with customary international law. After the dissolution of the State which was succeeded by the Czech Republic, the validity of the bilateral instruments at issue was in no way affected by their application to bilateral relations between the Republic of Austria and the Czech Republic.

126. According to that Government, the Federal Chancellor's communication therefore has purely declaratory value.

127. In addition, the Austrian Government points out that in accordance with Article 31(1) of the Vienna Convention on the Law of Treaties of 23 May 1969 '[a] treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose'.

128. According to that Government, having regard to the meaning to be given to the relevant terms of the bilateral convention in their context, and in the light of the object and the purpose of that convention, those terms cannot be interpreted as meaning that, as a simple or indirect indication of geographical source, the name Bud only has protection against the risk of consumers being misled and not absolute protection. Such an interpretation is thus a priori excluded.

129. According to the German Government, the bilateral convention contains rights and obligations assumed by the Republic of Austria prior to its accession to the European Union. Pursuant to the first paragraph of Article 307 EC, such a convention is not affected by Community law and its application therefore has priority over Community law.

130. The fact that the non-member country which entered into the bilateral convention, namely the Czechoslovak Socialist Republic, no longer exists does not call that interpretation into question. The Republic of Austria - like the Federal Republic of Germany and, to the best of the German Government's knowledge, a number of other Member States - has recognised the continuity of most international treaties and has therefore acted in accordance with customary practice between States.

131. According to the German Government, an interpretation favourable to Community law would have to take the form of an amendment to the bilateral convention following bilateral negotiations to that end, and, where such negotiations fail, denunciation or suspension of that convention. However, in the meantime, the national courts are entitled to protect the rights concerned even where they are contrary to Community law. That Government submits that the national court has not indicated whether the convention in question can be denounced.

132. The French Government submits that it follows from the Federal Chancellor's communication that the bilateral instruments at issue have remained in force between the Republic of Austria and the Czech Republic, without interruption, since 1 January 1993 - a date prior to the Republic of Austria's accession to the European Union. That communication did not decide the continued validity of the bilateral convention from 1997 onwards, but merely noted that fact and informed individuals thereof. Therefore, those agreements are clearly international acts concluded prior to the accession of the Republic of Austria and to which Article 307 EC applies.

133. Moreover, it follows from the case-law of the Court that, in accordance with the principles of international law, Community rules - in this case Article 28 EC and the relevant provisions of Regulation No 2081/92 - can be deprived of effect by an earlier international agreement - in this case the bilateral convention - where that agreement imposes on the Member State concerned obligations whose performance can still be required by the non-member country which is party to that agreement.

134. According to that Government, it is clear from that case-law that the applicability of such a convention must be verified by the national court, which is also responsible for identifying the obligations in question in order to determine the extent to which they preclude application of Article 28 EC or Regulation No 2081/92.

135. The French Government submits that the interpretation proposed by the national court would result, in the case at issue in the main proceedings, in an infringement of the bilateral convention and thus does not constitute a permissible method under international law for resolving an incompatibility between that convention and Community law within the meaning of the second paragraph of Article 307 EC, as interpreted by the Court of Justice.

136. According to that Government, it follows from the wording of Article 7(1) of the bilateral convention, which is utterly unambiguous, that it excludes a priori an interpretation of that provision as meaning that the name Bud is protected as a simple and indirect geo-

graphical indication only against the risk of consumers being misled and consequently does not enjoy absolute protection. Therefore, that interpretation cannot be entertained as an interpretation which meets the requirement of compatibility with Community law.

137. The Commission submits that Article 307 EC applies to the bilateral convention since that convention has an effect on the application of the Treaty and, moreover, was concluded between the Republic of Austria and a non-member country well before that Member State's accession to the European Union.

138. However, the question arises whether the first paragraph of Article 307 EC also applies to an agreement which, as in the case at issue in the main proceedings, has been maintained in force to the benefit of the State which succeeded the original non-member country by virtue of a declaration made by the authorities of a Member State after its accession to the European Union.

139. That question also prompts the question whether the declaration concerned is constitutive in nature.

140. The Commission submits that under international law the Federal Chancellor's communication has only a declaratory effect, since a treaty remains in force if the parties' consent to its continuation can be inferred from their actions.

141. That is a question of fact, whose appraisal comes within the jurisdiction of the national court. The Commission submits that there is no information in the case-file to indicate that the parties did not wish to maintain the bilateral instruments at issue.

142. The Commission concludes that the first paragraph of Article 307 EC applies to the case at issue in the main proceedings and, accordingly, that the Treaty does not affect either the rights or the obligations under the bilateral convention.

The Court's reply

143. The Court must answer this question because it is clear from the answer to the second question that, in the event that the name Bud cannot be regarded as directly or indirectly referring to the geographical source of the products that it designates, Article 28 EC precludes the protection accorded to that name by the bilateral instruments at issue.

144. It follows from the first paragraph of Article 307 EC that rights and obligations under an agreement concluded between a Member State and a non-member country before the date of accession of that Member State are not affected by the Treaty provisions.

145. The purpose of that provision is to make clear, in accordance with the principles of international law, that application of the EC Treaty does not affect the duty of the Member State concerned to respect the rights of non-member countries under an earlier agreement and to perform its obligations thereunder (see, inter alia, Case C-84/98 Commission v Portugal [2000] ECR I-5215, paragraph 53).

146. Consequently, in order to determine whether a Community rule may be deprived of effect by an earlier international agreement, it is necessary to examine whether that agreement imposes on the Member State concerned obligations whose performance may still be required by the non-member country which is party to it (see, to that effect, inter alia, Joined Cases C-364/95 and C-365/95 T. Port [1998] ECR I-1023, paragraph 60).

147. In the present case, it is common ground that protection of the name Bud is provided for by the bilateral instruments at issue, which were concluded between the Czechoslovak Socialist Republic and the Republic of Austria well before the latter's accession to the European Union.

148. It also appears from the bilateral instruments at issue, in particular Article 7(1) of the bilateral convention, that they impose on the Republic of Austria obligations whose performance could have been required by the Czechoslovak Socialist Republic.

149. However, the question arises whether under those instruments the Czech Republic has acquired rights which it can still require the Republic of Austria to respect.

150. It should be recalled that following its break-up on 1 January 1993, the Czech and Slovak Federative Republic, which had itself replaced the Czechoslovak Socialist Republic, ceased to exist and that two new independent States, namely the Czech Republic and the Slovak Republic, succeeded it on the respective parts of its territory.

151. The question therefore arises whether, in the context of such a succession of States, the bilateral instruments at issue concluded by the Czechoslovak Socialist Republic remained in force following the break-up of the Czech and Slovak Federative Republic, in particular with respect to rights inuring to the benefit of the Czech Republic, such as the ones at issue in the main proceedings, with the effect that those rights and the corresponding obligations on the Republic of Austria remained in force after that break-up and were consequently still in force at the date of the Republic of Austria's accession to the European Union.

152. It is common ground that at the date of the break-up, there was a widely accepted international practice based on the principle of the continuity of treaties. According to that practice, unless one of the State parties to a bilateral agreement indicates its intention to renegotiate or denounce the agreement, the agreement is considered in principle to remain in force in relation to the States succeeding the State which has broken up.

153. At least as far as concerns the specific case of the complete break-up of States, and notwithstanding the possibility of denouncing or renegotiating agreements, it is apparent that the principle of the continuity of treaties, thus understood, constitutes a reference principle which was widely accepted at the time of the break-up in question.

154. In any event, and without there being any need for the Court to decide the question whether at the time of the break-up of the Czech and Slovak Federative Republic that principle of the continuity of treaties was a customary rule of international law, it cannot be denied that application of that principle in the

international practice of the law of treaties was, at that time, fully consistent with international law.

155. In those circumstances, it must be ascertained whether both the Republic of Austria and the Czech Republic actually intended to apply the principle of the continuity of treaties to the bilateral instruments at issue and whether there is any evidence of their intentions in that regard during the period between the date of the break-up and that of the Republic of Austria's accession to the European Union.

156. As is clear from, in particular, the resolution of the Czech National Council of 17 December 1992 and from Article 5 of Constitutional Law No 4/1993 (see paragraphs 25 and 26 above), the Czech Republic expressly accepted the principle of the automatic continuity of treaties.

157. As to the Republic of Austria's position, it appears traditionally to have advocated what is known as the 'tabula rasa' principle, whereby, with the exception of treaties relating to territory or cases where there is an express agreement to the contrary, the succession of a new State to a contracting State automatically results in the expiry of the treaties concluded by the latter.

158. However, the question arises whether in a situation of succession of States such as that resulting from the complete break-up of the former State and, in particular, in relation to the bilateral instruments at issue, the Republic of Austria intended to apply the principle referred to in the preceding paragraph of this judgment.

159. As the Advocate General points out in points 141 and 142 of his Opinion, it seems clear from both the case-law of the Austrian courts and the fact that, in particular in relation to the Czech Republic, the Republic of Austria denounced certain agreements concluded with the Czechoslovak Socialist Republic, but solely with regard to the future, that there are indications in the approach of that Member State, also during the period between the break-up of the Czech and Slovak Federative Republic and the Republic of Austria's accession to the European Union, to show that it had moved away from applying the 'tabula rasa' principle.

160. The Austrian practice as regards the States succeeding the Czech and Slovak Federative Republic seems to be based on a pragmatic approach, according to which bilateral agreements remain in force unless they have been denounced by one or other of the parties. Such an approach leads to results which are very similar to those resulting from application of the principle of the continuity of treaties.

161. In that regard, it is for the national court to ascertain whether, at any time between the break-up of the Czech and Slovak Federative Republic, which took place on 1 January 1993, and the Federal Chancellor's communication in 1997, the Republic of Austria indicated its intention to renegotiate or denounce the bilateral instruments at issue.

162. If confirmed by the national court, that would be particularly significant because, as has been pointed out in paragraph 156 above, at the time of the break-up of its predecessor State, the Czech Republic clearly expressed the point of view that agreements concluded with that predecessor State remained in force. The Czech Republic thus expressly reserved the right to enforce against the Republic of Austria the rights accorded to it under the bilateral instruments at issue in its capacity as the successor State.

163. The importance of such a circumstance is, moreover, corroborated by the purpose of the first paragraph of Article 307 EC, the aim of which is to allow a Member State to respect the rights which can be asserted against it by non-member countries on the basis of an agreement which predates that State's accession to the European Union in cases such as the one at issue in the main proceedings (see paragraph 145 above).

164. It is for the national court to ascertain whether, in the case at issue in the main proceedings, both the Republic of Austria and the Czech Republic actually intended to apply the principle of the continuity of treaties to the bilateral instruments at issue.

165. As regards the Republic of Austria, it should again be made clear that it cannot be ruled out a priori that a declaration of intention in that regard, even where made after a certain delay (that is, not until 1997), can nevertheless be taken into account for the purpose of definitively establishing the intention of that Member State to accept the Czech Republic as contracting party to the bilateral instruments at issue and to find that, in the present case, application of those instruments comes within the scope of the first paragraph of Article 307 EC.

166. It would be otherwise if, at any time prior to the Federal Chancellor's communication, the Republic of Austria had already clearly expressed the contrary intention.

167. If, having carried out the checks that are necessary having regard, in particular, to the criteria set out in this judgment, the national court were to reach the conclusion that at the date of the Republic of Austria's accession to the European Union that Member State was bound to the Czech Republic by the bilateral instruments at issue, it would follow that those instruments can be regarded as acts concluded before the date of the Republic of Austria's accession to the European Union for the purposes of the first paragraph of Article 307 EC.

168. It should be added that, in accordance with the second paragraph of that provision, the Member States are required to take all appropriate steps to eliminate the incompatibilities between an agreement concluded before a Member State's accession and the Treaty.

169. It follows that the national court must ascertain whether a possible incompatibility between the Treaty and the bilateral convention can be avoided by interpreting that convention, to the extent possible and in compliance with international law, in such a way that it is consistent with Community law.

170. If it proves impracticable to interpret an agreement concluded prior to a Member State's accession to the European Union in such a way that it is consistent with Community law then, within the framework of Article 307 EC, it is open to that State to take the appropriate steps, while, however, remaining obliged to

eliminate any incompatibilities existing between the earlier agreement and the Treaty. If that Member State encounters difficulties which make adjustment of an agreement impossible, an obligation to denounce that agreement cannot therefore be excluded (see Commission v Portugal, paragraph 58).

171. In that regard, its should be noted that Article 16(3) of the bilateral convention provides that the two contracting parties may denounce the convention by giving notice of at least one year, issued in writing and through diplomatic channels.

172. Pending the success of one of the methods referred to in the second paragraph of Article 307 EC in eliminating any incompatibilities between an agreement predating the accession of the Member State concerned to the European Union and the Treaty, the first paragraph of that article permits that State to continue to apply such an agreement in so far as it contains obligations which remain binding on that State under international law.

173. In the light of the foregoing, the answer to the third and fourth questions must be that the first paragraph of Article 307 EC is to be interpreted as permitting a court of a Member State, subject to the findings to be made by that court having regard inter alia to the criteria set out in this judgment, to apply the provisions of bilateral agreements such as those at issue in the main proceedings, concluded between that State and a non-member country and according protection to a name from the non-member country, even where those provisions prove to be contrary to the Treaty rules, on the ground that they concern an obligation resulting from agreements concluded before the date of the accession of the Member State concerned to the European Union. Pending the success of one of the methods referred to in the second paragraph of Article 307 EC in eliminating any incompatibilities between an agreement predating that accession and the Treaty, the first paragraph of that article permits that State to continue to apply such an agreement in so far as it contains obligations which remain binding on that State under international law.

Costs

174. The costs incurred by the Austrian, German and French Governments and by the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the questions referred to it by the Handelsgericht Wien by order of 26 February 2001, hereby rules:

1. Article 28 EC and Council Regulation (EEC) No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs, as amended by Council Regulation (EC) No 535/97 of 17 March 1997, do not preclude the application of a provision of a bilateral agreement between a Member State and a non-member country under which a simple and indirect indication of geographical origin from that non-member country is accorded protection in the importing Member State, whether or not there is any risk of consumers being misled, and the import of a product lawfully marketed in another Member State may be prevented.

2. Article 28 EC precludes the application of a provision of a bilateral agreement between a Member State and a non-member country under which a name which in that country does not directly or indirectly refer to the geographical source of the product that it designates is accorded protection in the importing Member State, whether or not there is any risk of consumers being misled, and the import of a product lawfully marketed in another Member State may be prevented.

3. The first paragraph of Article 307 EC is to be interpreted as permitting a court of a Member State, subject to the findings to be made by that court having regard inter alia to the criteria set out in this judgment, to apply the provisions of bilateral agreements such as those at issue in the main proceedings, concluded between that State and a non-member country and according protection to a name from the non-member country, even where those provisions prove to be contrary to the EC Treaty rules, on the ground that they concern an obligation resulting from agreements concluded before the date of the accession of the Member State concerned to the European Union. Pending the success of one of the methods referred to in the second paragraph of Article 307 EC in eliminating any incompatibilities between an agreement predating that accession and the Treaty, the first paragraph of that article permits that State to continue to apply such an agreement in so far as it contains obligations which remain binding on that State under international law.

OPINION OF ADVOCATE GENERAL TIZZANO

delivered on 22 May 2003 (1)

Case C-216/01

Budejovický Budvar, národní podnik

v

Rudolf Ammersin GmbH

(Reference for a preliminary ruling from the Handelsgericht Wien)

(Geographical indications - Agreements concluded between a Member State and a non-member country - Succession of States in respect of treaties - Agreements concluded prior to accession - Free movement of goods - Protection of intellectual property)

I - Preliminary remarks

1. In the present case the Court is called upon to answer certain questions relating to the protection of geographical indications of source for foodstuffs. In this context it is also necessary to decide whether an international agreement on the protection of geographical indications concluded between a Member State and a non-member country constitutes an agreement con-

cluded before the date of accession of the Member State to the Community for the purposes of Article 307 EC, also as regards the effects which that agreement has between the Member State in question and one of the States which succeeded the original contracting third State after it was dissolved.

2. The questions have arisen in connection with a dispute between a brewery established in the Czech Republic and an Austrian commercial company selling beer concerning the use by the latter of the designation 'Bud' in respect of beer from the United States of America even though a number of agreements concluded between 1976 and 1981 between the Republic of Austria and the Czechoslovak Socialist Republic (subsequently the Czech and Slovak Federative Republic) (hereinafter also referred to as 'Czechoslovakia') reserve that designation for persons established in Czechoslovakia.

II - Legal background

Community law

Provisions of the Treaty

3. As we know, Article 28 EC prohibits quantitative restrictions and measures having equivalent effect between Member States. Article 30 EC exempts prohibitions and restrictions justified on grounds of inter alia the protection of industrial and commercial property.

4. The first and second paragraphs of Article 307 EC provide that:

'The rights and obligations arising from agreements concluded before 1 January 1958 or, for acceding States, before the date of their accession, between one or more Member States on the one hand, and one or more third countries on the other, shall not be affected by the provisions of this Treaty.

To the extent that such agreements are not compatible with this Treaty, the Member State or States concerned shall take all appropriate steps to eliminate the incompatibilities established. Member States shall, where necessary, assist each other to this end and shall, where appropriate, adopt a common attitude.'

Regulation (EEC) No 2081/92

5. For the purposes of this case, Council Regulation (EEC) No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (hereinafter: 'Regulation No 2081/92' or 'the Regulation') (2) is also of importance. It laid down a system of uniform protection, at Community level, of 'protected geographical indications' and 'protected designations of origin'.

6. This regulation was adopted in view of the importance of agricultural production and distribution to the Community economy (first recital) and in particular to encourage the diversification of production and the promotion of quality products (second recital). To that end, it establishes a framework of Community rules for protected indications relating to the origin of foodstuffs which replaces pre-existing national rules, provides a more uniform approach and ensures fair competition (seventh recital). The scope of these rules is limited 'to certain agricultural products and foodstuffs for which a link between product or foodstuff characteristics and geographical origin exists' (ninth recital).

7. As stated in the preamble, the rules introduced by the regulation provide for the registration of two types of protected indications, that is to say protected designations of origin and protected geographical indications (10th recital). In that respect Article 2(2) states that:

'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:

- 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;

(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:

- originating in that region, specific place or country, and
- 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.'

8. Registration is granted by the Commission (Article 6) where the products for which registration is sought meet the conditions set out in a specification (Articles 4 and 5).

9. Under Article 12, the regulation may, on certain conditions, apply to an agricultural product or foodstuff from a third country. (3) In any event, this is 'without prejudice to international agreements' (Article 12(1)).

Austro-Czechoslovak agreements

10. For the purposes of this case, an agreement concluded in Vienna on 11 June 1976 between the Republic of Austria and the Czechoslovak Socialist Republic on the protection of designations referring to the source of agricultural and industrial products (hereinafter: 'the Austro-Czechoslovak agreement') is also of importance. (4)

11. On the one hand, the agreement reserves for Austrian products the use of certain Austrian designations of source specified in Annex A to the implementing agreement done at Prague on 7 June 1979 (hereinafter: 'the implementing agreement') (5) and, on the other, it guarantees for Czech and Slovak products the exclusive use of certain Czech and Slovak designations of source specified in Annex B to the implementing agreement.

12. In particular, under Article 1 of the agreement the contracting parties undertake to take all the necessary measures to ensure effective protection against unfair competition for indications of source, designations of origin and other designations referring to the source of the agricultural and industrial products listed in the agreement itself and in the implementing agreement.

13. Under Article 2 of the abovementioned agreement, 'Indications of source, designations of origin and other designations referring to the source within the meaning of this agreement mean all indications which relate directly or indirectly to the source of a product. Such an indication generally consists of a geographical designation. However, it may also consist of other information, if in the relevant consumer circles of the country of origin this is perceived, in connection with the product thus designated, as a reference to the country of production. In addition to the indication of source from a particular geographical area, the abovementioned designations may also contain information on the quality of the product concerned. These particular features of the product shall be determined solely or predominantly by geographical or human influences.' (6)

14. Article 3(1) provides that:

- '... the Czechoslovak designations listed in the agreement provided for in Article 6 shall in the Republic of Austria be reserved exclusively for Czechoslovak products.'

15. Article 5 lists the types of agricultural and industrial products to whose designation of source the agreement affords protection. These products include beer.

16. For the purpose of defining the protected designations of source, Article 6 refers to the implementing agreement whose Annex B lists the following designations, in so far as they are relevant here, among the designations reserved exclusively for Czech beers:

'- Bud
- Bud ejovické pivo
- Bud ejovické pivo - Budvar
- Bud ejovický Budvar'.

17. Finally, as regards the specific rules governing protection, Article 7 of the Austro-Czechoslovak agreement provides as follows:

'(1) If the names and designations protected under ... this agreement are used contrary to those provisions commercially for products, in particular for their presentation or packaging, or on invoices, waybills or other business documents or in advertisements, then all judicial and administrative measures for acting against unfair competition or otherwise suppressing prohibited designations which are available under the legislation of the contracting State in which protection is claimed shall be applied in accordance with the conditions laid down in that legislation and with Article 9.

(2) Where a risk of confusion in commerce exists, paragraph 1 is also to be applied if the designations protected under the agreement are used in modified form or for products other than those to which they are allocated in the agreement referred to in Article 6.

(3) Paragraph 1 is also to be applied if the designations protected under the agreement are used in translation or with a reference to the actual source or with additions such as "style", "type", "as produced in", "imitation" or the like.' (7)

Acts following the breakup of Czechoslovakia

18. As we know, on 1 January 1993 Czechoslovakia was dissolved and two new States emerged in its territory, namely the Czech Republic and the Slovak Republic.

19. A few days prior to formal independence, on 17 December 1992, the Czech National Council had adopted a declaration under which 'in conformity with the valid principles of international law and to the extent defined by it, the Czech Republic will consider itself bound, as of 1 January 1993, by the multilateral and bilateral agreements to which the Czech and Slovak Federative Republic was party on that date.' (8)

20. In keeping with that declaration, Constitutional Law No 4/1993 of the Czech Republic subsequently confirmed that '[t]he Czech Republic assumes the rights and obligations ... under international law of the Czech and Slovak Federative Republic on the date of its dissolution ... .' (9)

21. The Communication of the Bundeskanzler concerning bilateral agreements in force between the Republic of Austria and the Czech Republic (BGBl. 1997, III, 123, of 31 July 1997) stated, in so far as it is relevant here:

'On the basis of a joint examination of the bilateral agreements between the Republic of Austria and the Czech Republic ... it was established that, under the generally recognised rules of international law, the following bilateral agreements were in force between the Republic of Austria and the Czech Republic on 1 January 1993, the date on which the Czech Republic succeeded the former Czech and Slovak Federative Republic in the relevant territory, and have since been applied by the competent authorities within the framework of the legal systems of the two countries:

...

19. Agreement concluded at Vienna on 11 June 1976 between the Republic of Austria and the Czechoslovak Socialist Republic on the protection of indications of source, designations of origin and other designations referring to the source of agricultural and industrial products, and protocol of 30 November 1977 (BGBl. No 75/1981)

...

26. Agreement implementing the Agreement between the Republic of Austria and the Czechoslovak Socialist Republic on the protection of indications of source, designations of origin and other designations referring to the source of agricultural and industrial products (BGBl. No 76/1981).

... .' (10)

III - Facts and procedure

22. The Czech brewery Bud ejovický Budvar (11) (hereinafter: 'the Budvar brewery' or simply 'Budvar'), which is established in the Bohemian city of Ceské Bud ejovice, Budweis in German (12) (Czech Republic), exports 'Budweiser Budvar' (13) beer to various countries, including Austria.

23. Rudolf Ammersin GmbH (hereinafter: 'Ammersin'), which is established in Vienna (Austria), carries on a wholesale business. It markets inter alia a beer manufactured in the United States of America, namely 'American Bud'. (14)

24. By act of 22 July 1999, the Budvar brewery brought proceedings before the Handelsgericht (Commercial Court), Vienna (Austria), requesting that Ammersin be ordered to refrain from using, in the course of its commercial activities relating to beer or similar products, the designation 'Bud' or similar designations likely to give rise to confusion save where Budvar products were concerned. The applicant based its application on infringement of trade mark rights (15) and, in so far as is relevant here, on unlawful use of the indications of source protected by the 1977 Austro-Czechoslovak agreement.

25. The order sought was granted by the Handelsgericht by order of 15 October 1999, and subsequently upheld by the Oberlandesgericht (Higher Regional Court), Vienna. Leave to appeal on a point of law to the Oberster Gerichtshof (Supreme Court; hereinafter: 'the OGH') was subsequently refused.

26. Since the interlocutory proceedings have been completed, the Handelsgericht, Vienna, must now examine the substance of the case.

27. However, I should note that in parallel proceedings against the Austrian importer of the competing American beer, initially before the Landgericht, Salzburg, and subsequently before the Oberlandesgericht, Linz, Budvar had already sought a similar injunction based on the same grounds and obtained from the court the order sought, which was finally upheld by order of the OGH of 1 February 2000. (16) In that order, in so far as is relevant here, the OGH held that the importation and marketing of the beer 'American Bud' constituted an infringement of the Czech designation of origin 'Bud' which was protected under the Austro-Czechoslovak agreement, and also stated that the injunction thus granted did not infringe the EC Treaty.

28. As it was not directly bound by the judgment of the Supreme Court in these proceedings and had certain doubts as to the compatibility with Community law of the answer which it had provided, the Handelsgericht referred to the Court of Justice of the European Communities, by order of 26 February 2001, the following questions for a preliminary ruling:

'1. Is the application of a provision of a bilateral agreement concluded between a Member State and a non-member country, under which a simple/indirect geographical indication which in the country of origin is the name neither of a region nor a place nor a country is accorded the absolute protection, regardless of any misleading, of a qualified geographical indication within the meaning of Regulation No 2081/92 compatible with Article 28 EC and/or Regulation No 2081/92, if on application of that provision the import of a product which is lawfully put on the market in another Member State may be prevented?

2. Does this apply also where the geographical indication which in the country of origin is the name neither of a region nor a place nor a country is not understood in the country of origin as a geographical designation for a specific product, and also not as a simple or indirect geographical indication?

3. Do the answers to Questions 1 and 2 apply also where the bilateral agreement is an agreement which the Member State concluded before its accession to the European Union and continued after its accession to the European Union with a successor State to the original other State party to the agreement by means of a declaration of the Federal Government?

4. Does the second paragraph of Article 307 EC oblige the Member State to interpret such a bilateral agreement, concluded between that Member State and a non-member country before the Member State's accession to the EU, in conformity with Community law as stated in Article 28 EC and/or Regulation No 2081/92, so that the protection laid down therein for a simple/indirect geographical indication which in the country of origin is the name neither of a region nor a place nor a country comprises merely protection against misleading and not the absolute protection of a qualified geographical indication within the meaning of Regulation No 2081/92?'

29. In the proceedings before the Court observations were submitted by the applicant and the defendant in the main proceedings, the Austrian, German and French Governments and the Commission.

IV - Legal analysis

Admissibility

30. Before examining the substance of the questions referred to the Court by the national court, I should point out that certain parties have raised doubts as to the admissibility of the reference for a preliminary ruling. I consider it appropriate to deal with these objections now, at least so far as they dispute the admissibility of the entire reference for a preliminary ruling, and to examine those concerning individual questions at another, more appropriate juncture.

31. I should first point out that, in the view of Budvar, the questions referred in fact relate to the application of the agreements in force between a Member State and a non-member country. Budvar contends that therefore the Court is being asked to interpret not provisions of the Community law but international agreements transposed into the national law of a Member State, which it does not have jurisdiction to do.

32. In my view, this objection is unfounded. It is true that the resolution of the dispute before the national court is linked to the application of the agreements in force between Austria and the Czech Republic. However, I consider it obvious that the questions referred to the Court by the national court do not directly concern the interpretation of these agreements but that of provisions of the Treaty (Articles 28 EC, 30 EC and 307 EC) and of secondary law (Regulation No 2081/92). It is this interpretation which the national court considers necessary to resolve the matter brought before it, and this falls entirely within the jurisdiction of the Court by virtue of Article 234 EC (formerly Article 177 of the Treaty).

33. The Commission too raises doubts as to the admissibility of these questions, albeit on different grounds. It objects that they are hypothetical and therefore inadmissible.

34. The Commission considers that the national court is referring to the Court a question concerning the interpretation of Community law solely in order to rule out a possible interpretation of national law which that court does not in fact share, that is to say the interpretation placed on the Austro-Czechoslovak agreement by the OGH in the abovementioned order of 1 February 2000 (see paragraph 27 above) in accordance with which the Austro-Czech agreement accords absolute protection to the designation 'Bud', regardless of whether or not it may give rise to a likelihood of confusion.

35. However, I consider that this objection of inadmissibility is likewise unfounded.

36. According to established case-law, '[i]n principle, it is for the national courts alone to determine, having regard to the particular features of each case, both the need for a preliminary ruling in order to enable them to give their judgment and the relevance of the questions which they refer to the Court' and '[a] reference for a preliminary ruling from a national court may be rejected only if it is quite obvious that the interpretation of Community law sought by that court bears no relation to the actual nature of the case or the subject-matter of the main action.' (17)

37. In my view, it is sufficiently clear from the order for reference that the national court considers - in the same way as the OGH found in the abovementioned order of 1 February 2000 - that the designation at issue enjoys absolute protection under the Austro-Czechoslovak agreement. Consequently, under Austrian law the order sought by the applicant had to be granted, thus giving rise to a potential obstacle to intra-Community trade.

38. In those circumstances, I consider that there can be no doubt as to the necessity and relevance of the questions referred. Therefore, I consider that the objection is unfounded.

First question

39. By the first question the national court asks whether it is compatible with Regulation No 2081/92 and Articles 28 EC and 30 EC to provide, in the legal system of a Member State, for absolute protection for a geographical name which is both 'simple', in that it does not imply any particular links between the origin of the product and its qualities, and 'indirect' since, although it is capable of evoking the origin of the product, it is the name neither of a region nor a place.

40. On close consideration, the question raises two distinct matters relating to the protection of the designation 'Bud', one concerning the interpretation of Regulation No 2081/92 and another the interpretation of Articles 28 EC and 30 EC, each of which must be analysed separately.

(a) Protection of the designation 'Bud' in the light of Regulation No 2081/92

Admissibility

41. First of all, the Austrian Government observes, as a preliminary point, that this question is inadmissible in so far as it relates to Regulation No 2081/92, since it can in no way be inferred from the order of the national court that the designations at issue in the present case have been, or are about to be, registered for the purposes of the abovementioned regulation, so that the question of their compatibility with those rules is purely abstract and hypothetical.

42. I should note straightaway that I do not consider that such an objection is well founded. I consider that the national court is by no means requesting a judgment on the validity of a (non-existent) registration of the indications at issue for the purposes of Regulation No 2081/92, but rather an interpretation of that regulation in order to ascertain whether it precludes the rules on indications of source for foodstuffs laid down by the Austro-Czechoslovak agreement.

43. In these circumstances, I do not consider that the questions referred to the Court by the national court are hypothetical or abstract in nature and therefore, in my view, there is no reason to doubt the admissibility of this question.

Substance

- Arguments of the parties

44. As regards the substance, only Ammersin, the defendant in the main proceedings, proposes that the question be answered in the negative since it considers that Regulation No 2081/92 precludes national rules such as those applicable in the present case which accord protection, regardless of the likelihood of confusion, to an indirect geographical indication and which do not make protection of that designation subject to the existence of a direct link between the product and its qualities.

45. Ammersin primarily contends that within the scheme of the regulation the absolute protection of designations of origin and geographical indications is subject to satisfaction of precise quality conditions. Firstly, there must be a direct link between the origin of the product and its characteristics (Article 2). Secondly, the product must conform to the quality requirements set out in a specification and this conformity must be verified by a rigorous control procedure (Articles 4 and 6).

46. Ammersin goes on to state that the uniform rules thus laid down by the regulation cannot coexist with national protection which is also absolute but subject to less stringent conditions, since otherwise the purposes of the Community rules, that is to say the promotion of the quality of agricultural products and fair competition within the common market, will be compromised.

47. Furthermore, a similar conclusion is, still in the view of the defendant in the main proceedings, supported by Article 17 of the regulation, under which national protection of a designation for which registration has been sought pursuant to the regulation may be maintained only for as long as it takes to complete Community registration.

48. Therefore, since, in the present case, no Community registration has ever been sought in respect of the designation 'Bud', it cannot be protected pursuant to the national rules laid down by the Austro-Czechoslovak agreement.

49. By contrast, all the other parties consider that Regulation No 2081/92 does not preclude the maintenance of the national rules on the protection of the geographical indications in question.
50. Budvar primarily disputes the premises from which the national court appears to start and states that the designation 'Bud' is a 'direct' geographical indication, in that it is an abbreviation of the name of the Bohemian city of Budweis, and a 'qualified' one since it is capable of conferring on the beer the worldwide reputation of the brewing tradition of this city of Budweis. In these circumstances, the Czech brewery goes on to state, Regulation No 2081/92 does not preclude protection, by national rules, of a qualified geographical indication of a non-member country.
51. In the alternative, Budvar contends that, as the case-law of the Court has made clear, the abovementioned regulation does not preclude national law from granting 'absolute' protection, regardless of the likelihood of confusion, to a 'simple' geographical indication which does not imply particular links between the source of the product and its characteristics, since such a geographical indication falls outside the scope of the regulation. (18)
52. The Austrian Government and the Commission essentially concur with the argument which Budvar puts forward in the alternative, but they advance it as their principal argument.
53. The German Government also considers that regulation does not, in any event, preclude protection of the indication 'Bud', regardless of whether it must be described as a simple geographical indication or whether, on the contrary, it constitutes a qualified indication. In both cases it falls outside the scope of the regulation. In the first case, because such scope is limited to qualified geographical indications; in the second, because the regulation applies only to qualified indications of goods from Member States and cannot be applied to designations of products from non-member countries, except on the conditions laid down in Article 12, which, however, are not satisfied in relation to the Czech Republic.
54. Finally, the French Government also concludes that this question should be answered in the affirmative. In particular, it contends that Article 12 of the regulation is specifically without prejudice to an international agreement such as the Austro-Czechoslovak agreement. By laying down the rules on geographical indications relating to products originating in non-member countries, this provision specifically safeguards international agreements and thus also the Austro-Czechoslovak agreement and the special rules laid down therein.

- Appraisal

55. I now come to the appraisal of the positions set out by the parties. I note primarily that Budvar has raised the problem of the classification of the designation 'Bud' within the meaning of the Austro-Czechoslovak agreement and disputes the classification made by the national court (see paragraph 50 above).
56. On close consideration, this classification requires an interpretation of the rule by which the relevant provision of the Austro-Czechoslovak agreement was implemented in Austrian law. However, according to the established case-law, 'under the system of judicial cooperation established by Article 177 of the Treaty, the interpretation of national rules is a matter for the national courts and not for the Court of Justice', (19) as, moreover, it is for these courts and not the Court of Justice to interpret the provisions of bilateral agreements 'which bind Member States outside the framework of Community law'. (20)
57. Therefore, it must be held that, in accordance with distribution of jurisdictions effected by Article 234 EC, it is essentially for the national court to classify the nature of the designation in question in the light of the Austro-Czechoslovak agreement, and the interpretation placed thereon by that court cannot be called into question before the Court of Justice.
58. Therefore, here I will merely observe that, according to the actual wording of the question referred for a preliminary ruling, the national court classified the designation in question as a 'simple' and 'indirect' designation, and it is on the basis of this premiss that the compatibility of the rules of the agreement in question with Regulation No 2081/92 must be assessed.
59. That having been said, I should point out immediately that the question raised by the national court must, in my view, be answered in the affirmative since I consider, unlike Ammersin and in agreement with all the other parties, with whose arguments I essentially concur, that Regulation No 2081/92 does not preclude maintenance of absolute protection of a simple indication as provided for in the Austro-Czechoslovak agreement.
60. Furthermore, I should point out that this matter has already been examined by the Court in the Warsteiner judgment of 7 November 2000.
61. On that occasion the Court held primarily that, according to Article 2(2)(b), Regulation No 2081/92 'only concerns geographical indications in respect of which there is a direct link between both a specific quality, reputation or other characteristic of the product and its specific geographical origin', (21) and therefore it is 'common ground that simple geographical indications of source, in the case of which, in the terms used by the national court in its question, there is no link between the characteristics of the product and its geographical provenance, do not fall within that definition and are not therefore protected under Regulation No 2081/92'. (22) That having been said, it concluded that 'there is nothing in Regulation No 2081/92 to indicate that such geographical indications of source cannot be protected under the national legislation of a Member State', (23) and pointed out in particular that 'the purpose of Regulation No 2081/92 cannot be undermined by the application, alongside that regulation, of national rules for the protection of geographical indications of source which do not fall within its scope'. (24)
62. I consider that it is easy to find the answer to the question referred by the national court in these comments. I therefore conclude that Regulation No 2081/92 does not preclude the application of a bilateral agree-

ment between a Member State and a non-member country which grants absolute protection to a geographical indication which, although it is not the name of a specific region or place of the non-member country, designates a product originating in a specific region or place in that country without, however, implying any particular links between the origin of the product and its qualities.

(b) Protection of the designation 'Bud' in the light of Articles 28 EC and 30 EC

Arguments of the parties

63. As regards the compatibility of the rules laid down in the Austro-Czechoslovak agreement with Articles 28 EC and 30 EC, no one doubts that the protection of a geographical designation constitutes, at least potentially, a measure having an equivalent effect to a quantitative restriction with the meaning of Article 28 EC. On account of the differences in the relevant national legislations such protection can hinder the importation of products which have been placed on the market lawfully in other Member States.

64. However, there are different views as to whether it is possible to justify this measure. Whereas Ammersin excludes such a possibility, the other parties consider that the rules of the agreement are justified.

65. Firstly, the defendant in the main proceedings considers that the protection afforded to the designation 'Bud' by the Austro-Czechoslovak agreement cannot be justified on grounds relating to the protection of industrial and commercial property within the meaning of Article 30 EC. That provision introduces an exception to the principle of the free movement of goods. As such it must be interpreted strictly and cannot go beyond what is necessary to safeguard the specific purpose of the industrial property right in question.

66. As the case-law of the Court has held, the specific purpose of protection of geographical indications lies in guaranteeing that the use of the name of a place is reserved for the producers established in that place, but only where the designation enjoys a high reputation amongst consumers. However, Ammersin goes on to state, the designation in question is not the name of a place and does not enjoy any reputation amongst consumers, and therefore protection thereof cannot be justified under Article 30 EC.

67. Furthermore, the absolute protection of such a designation cannot be justified as a measure in the general interest aimed at protecting consumers. In the view of Ammersin, and for the abovementioned reasons, the use of the name 'American Bud' in respect of a beer can in no way mislead consumers as to the origin of that beer and, in particular, cannot lead them to believe that it is a beer from Budweis/Ceské Budejovice.

68. As regards the other parties, I should first point out that, in the view of Budvar, the dispute before the national court does not fall within the scope of Article 28 EC since the beer marketed by Ammersin is imported from a non-member country, namely the United States of America, and there is no connection with the intra-Community trade in goods.

69. As to the substance, Budvar, the German and Austrian Governments, and the Commission consider that the protection by a Member State of a geographical indication such as 'Bud' is justified on grounds relating to the protection of industrial and commercial property within the meaning of Article 30 EC despite the fact that it constitutes a possible obstacle to the movement of goods between the Member States.

70. Those parties observe that, according to the case-law of the Court, the protection of simple geographical indications provided for in bilateral international agreements is justified on the grounds of the protection of industrial and commercial property within the meaning of Article 30 EC, provided that such designations have not become generic in the country of origin (25) and are therefore effectively construed as indications of source in that country. (26) It is for the national court - as the German Government emphasises in particular - to verify whether those conditions are satisfied in the present case.

71. The fact that 'Bud' may constitute a 'simple' designation of source has no bearing on the answer to be given to the national court. The specific purpose of protection of a geographical indication consists in preventing producers not established in the place to which the designation refers from wrongfully exploiting the actual or even merely potential reputation of that designation to the detriment of the producers who are established in that place. To that end, the existence of a direct link between the qualities of the product and its origin cannot therefore be regarded as an essential condition of protection.

72. In any event, and in the alternative, both Budvar and the German Government contend that the protection accorded to the designation in question is in any case justified by an overriding requirement to protect consumers from fraud and, at the same time, to ensure fair competition. Where the protected designation performs, at least in part of the common market, the function of an indication of source, its use by a person not established in Budweis will give rise to a likelihood of confusion by association. Therefore, in such circumstances a prohibition on marketing products bearing such indications constitutes an appropriate and proportionate protection measure.

Appraisal

73. I now come to the appraisal of the positions which have emerged from the proceedings. I should observe as a preliminary point that, as Article 23(2) EC expressly provides and as the Court has had the opportunity to confirm, the prohibition on quantitative restrictions in intra-Community trade provided for in Article 28 EC applies only to goods originating in Member States and to goods which, although originating in non-member countries, are put into free circulation in a Member State. (27)

74. Since the present case relates to the marketing of beer produced in the United States of America, it should be noted that a national measure such as that to which the present question relates must be examined in the light of Article 28 EC only in so far as it concerns

the importation into Austria of beer put into free circulation in another Member State.

75. That having been said, and moving on to examine the Austrian measure, I should recall that, according to established case-law, all national rules 'which are capable of hindering, directly or indirectly, actually or potentially, intra-Community trade are to be considered as measures having an effect equivalent to quantitative restrictions' for the purposes of Article 28 EC. (28)

76. The main proceedings relate to the protection accorded by a Member State, namely Austria, to a geographical designation of a non-member country, namely the Czech Republic, which does not enjoy uniform Community protection under the abovementioned Regulation No 2081/92.

77. As I stated above, in these circumstances the application of the Austrian legislation can pose an obstacle solely to the importation of the beer in question which is marketed legally in another Member State. However, even to that extent there is no doubt that this constitutes a measure having an effect equivalent to a quantitative restriction for the purposes of Article 28 EC.

78. However, the matter does not end there since, as we know, it is still necessary to establish whether or not this measure is justified by virtue of other provisions of the Treaty and in particular Article 30 EC.

79. In this regard I too consider, along with the majority of the parties, that the measure in question is necessary for the protection of industrial and commercial property and therefore justified under Article 30 EC. Above all, I consider that this conclusion follows from the case-law of the Court itself.

80. The Court has already had an opportunity, in Exportur, to examine the question of the compatibility with the Treaty of the protection of simple geographical designations provided for in a bilateral international agreement. (29)

81. In that case, in which the Court was asked to determine whether Articles 30 and 36 of the Treaty, now Articles 28 EC and 30 EC, precluded the absolute protection of simple geographical designations, it observed primarily that such protection had as its aim 'to prevent the producers of a Contracting State from using the geographical names of another State, thereby taking advantage of the reputation attaching to the products of the undertakings established in the regions or places indicated by those names', (30) even though no particular or distinctive quality was necessarily linked to the origin of the product.

82. That having been said, the Court went on to state that '[s]uch an objective, intended to ensure fair competition, may be regarded as falling within the sphere of the protection of industrial and commercial property within the meaning of Article 36 [of the Treaty, now Article 30 EC], provided that the names in question have not, either at the time of the entry into force of that Convention or subsequently, become generic in the country of origin.' (31)

83. There is no doubt that the Austro-Czechoslovak agreement pursues an identical objective, since it aims to prevent persons not established in the Czech Republic from using for the marketing of beer a Czech geographical designation, and more precisely an indication which refers to the Bohemian city of Budweis, thus taking advantage of the reputation attaching to the beer produced in that place.

84. Consequently, I consider that the principle laid down by the Court in Exportur is also applicable to the present case and that the Austrian measure must be regarded as justified in that it is necessary for the protection of industrial and commercial property for the purposes of Article 30 EC.

85. I therefore propose that the Court answer this question to the effect that Articles 28 EC and 30 EC do not preclude the application of a bilateral agreement between a Member State and a non-member country which grants absolute protection to a geographical indication which, although it is not the name of a specific region or place of the non-member country, designates a product originating in a specific region or place in that country without, however, implying any particular links between the origin of the product and its qualities, provided that that designation has not become generic in the country of origin at the time of the entry into force of the agreement or subsequently.

Second question

86. By the second question the national court essentially asks whether Articles 28 EC and 30 EC (or Regulation No 2081/92) preclude a national measure which reserves for producers established in a non-member country the use of an indication which is incapable, in the country of origin, of establishing any link between the product and its geographical origin by granting to that designation absolute protection, regardless of any likelihood of confusion.

87. All the parties agree that this question should be answered in the affirmative because if there is no link between the indication in question and the place of origin of the products such a measure would constitute a quantitative restriction contrary to Article 28 EC and would not be justifiable under Article 30 EC or any other provision.

88. I also consider that there is no other possible answer, since in such a situation it is not possible to rely on the justification relating to the protection of industrial and commercial property provided for in Article 30 EC because in reality the designation in question can in no way be placed in the category of geographical indications.

89. Furthermore, this conclusion follows from Community case-law.

90. As I stated above (paragraph 82), in Exportur the Court held that the protection of geographical designations cannot be justified by the protection of industrial property where such indications have become generic, (32) that is to say where the indication used is a name which, to use the wording in Regulation No 2081/92, 'although it relates to the place or the region where this product or foodstuff was originally produced or marketed, has become the common name of an agricultural product or a foodstuff'. (33)

91. Therefore, if protection of an indication which was initially capable of establishing a link with the origin of the product but has subsequently become generic does not constitute protection of industrial property under Article 30 EC, this must apply all the more to a designation which has never been capable of establishing such a link.
92. Nor can it be maintained that the absolute protection of such an indication is necessary for other compelling reasons of public interest and, in particular, to ensure fair competition.
93. It is quite clear that, if any possibility of consumers being misled as to the origin of the product can be ruled out, as on the assumption put forward by the national court, the designation in question would not be able to result in, even potentially, either a luring away of customers or wrongful exploitation of a reputation which, by definition, does not exist.
94. Consequently, in such circumstances a national provision which granted exclusive use of this designation to producers established in a specific place would not be at all necessary to ensure fair trading but would instead result in those producers being given an unjustified advantage over their competitors.
95. That having been said, I nevertheless have to concur with Budvar and the German and Austrian Governments where they observe that the designation 'Bud' does not appear to be covered by the assumption put forward by the national court in this question because it is clearly an abbreviation of the name of the city of Budweis.
96. In my view, it is undeniable that the designation 'Bud' is, when used in relation to beer, capable of evoking the Bohemian origin of the product by associating it with the city of Budweis. It is sufficient to think of the business name of the renowned Czech brewery to be aware of that - 'Budweiser Budvar', where Budweiser is the complete (and grammatically correct) geographical indication of the city of Budweis and 'Budvar' is a play on words which combines the first of the syllables which make up the name of this city (Bud) with the Czech suffix 'brew' (var).
97. However, the fact remains that such an appraisal merely constitutes an assessment of the facts and therefore does not fall within the jurisdiction of the Court but within that of the national court, which will have to examine whether in the country of origin the designation 'Bud' is, when used in relation to beer, capable of evoking the origin of the product by associating it with the town of Budweis.
98. I therefore propose that the Court declare, in reply to the second question, that Articles 28 EC and 30 EC preclude a national measure which reserves for producers established in a non-member country the use of an indication which is incapable of establishing any link between the product and its geographical origin by granting to that designation absolute protection, regardless of any likelihood of confusion.

Third question

(a) Arguments of the parties

99. By the third question the national court essentially asks whether the rules laid down in the Austro-Czechoslovak agreement are covered by the first paragraph of Article 307 EC despite the fact that succession in respect of the agreement was not officially declared on the part of Austria until 1997, and thus after Austria's entry into the Community.
100. Budvar, the Austrian, German and French Governments and the Commission conclude that this question should be answered in the affirmative and point out that the Austro-Czechoslovak agreement was concluded well before Austria's accession to the Community on 1 January 1995. In their view, the fact that it was not until 1997 that the Bundeskanzler officially declared the agreements in force between Austria and the Czech Republic is in no way relevant for the purposes of Article 307 EC, since that communication of the Bundeskanzler has purely declaratory status. (34)

101.
The Austrian and German Governments and the Commission observe that general international law provides for the automatic succession of States emerging from the dissolution of a previous State in respect of the bilateral agreements concluded by the latter. The Austrian Government in particular emphasises that the international custom in this regard was codified in Article 34(1) of the 1978 Vienna Convention on Succession of States in respect of Treaties, which contains precisely the rule on automatic succession. (35)

102.
Both Budvar and the French Government go on to observe that the Austro-Czechoslovak agreement does not merely enable Austria to protect the indications for which the agreement makes provision, but also places it under an international obligation to do so. Therefore, the entry into force of the EC Treaty in respect of Austria does not preclude the application of this international agreement, as provided for in the first paragraph of Article 307 EC.

103.
In the view of Ammersin, however, the first paragraph of Article 307 EC is not applicable in the present case since Austria was not bound by the Austro-Czechoslovak agreement at the time it acceded to the Community. It claims this agreement had no effect from 1 January 1993, the date on which the original contracting party ceased to exist, and 31 July 1997, the date on which the succession in favour of the Czech Republic took place by virtue of the declaration by the Bundeskanzler.

104.
The defendant in the main proceedings considers that at the time Czechoslovakia was dissolved general in-

ternational law did not require the automatic succession of the Czech Republic in respect of the agreement between Austria and Czechoslovakia. Furthermore, prior to the abovementioned declaration by the Bundeskanzler in 1997, the practice in Austrian international relations had always followed the tabula rasa principle, that is to say the principle whereby, in the event of the dissolution of a State, the agreements concluded by it terminate and there is no succession other than under an agreement between the new State and other original contracting State (in this case Austria).

(b) Appraisal

105.
I now come to the appraisal of this question. In my view, it is evident that in order to give an answer to the questions raised by the national court it is necessary first to establish whether or not the 1976 Austro-Czechoslovak agreement was in force between Austria and the Czech Republic before Austria's accession to the Community on 1 January 1995. Only if this question can be answered in the affirmative can the conditions for applying the first paragraph of Article 307 EC be satisfied, in particular the existence of an agreement concluded before the entry into force of the EC Treaty from which a third country derives 'rights which it can require the Member State concerned to respect'. (36)

106.
Given the circumstances of the present case, and in particular the dissolution of the Czech and Slovak Federative Republic on 1 January 1993, the rules of international law governing the fate of treaties in the event that one of the contracting parties is dissolved must be established before an answer is given to the abovementioned question.

Vienna Convention on Succession of States in respect of Treaties

107.
As is evident, the issue centres on the 1978 Vienna Convention on Succession of States in respect of Treaties, which has been relied on by certain parties and disputed by others.

108.
I should note primarily that the abovementioned convention only entered into force in 1996 in respect of a rather limited number of States (seventeen) which include the Czech Republic and the Slovak Republic but none of the present Member States of the Community. Therefore, as an instrument of international treaty law, it is not binding on these States and thus not on Austria.

109.
However, as we know, this finding does not rule out the possibility that the provisions contained in the convention in question, as in general in conventions codifying international law, could be binding even on States which have not ratified them. In the view of those who draw up and adopt such conventions, they constitute, to a large extent, the mere codification of general international law in force, and the convention at issue is no exception. (37) Therefore, the fact that Austria is not party thereto may not be of decisive importance if it is shown that the provisions of the convention relevant to this case merely recognise pre-existing principles of international law.
110. Therefore, it is necessary to examine the content of these provisions to establish whether they merely reflect such principles or whether they introduce new rules in this regard.
111. As we know, the convention draws a distinction between the case of States emerging from the process of decolonisation, which it refers to as 'newly independent States' (Article 24), and other cases in which a new State is formed (Article 34).
112. In respect of newly independent States liberated from colonial domination, Article 24 lays down a rule which follows the tabula rasa principle and thus excludes, as a rule, any automatic succession in respect of the treaties concluded previously by the colonial power. (38)
113. In respect of all other cases in which a new State is formed, either as a result of its secession or dismemberment, Article 34 lays down a contrary rule which follows the principle of the continuity of international treaty obligations and provides for the automatic succession of the new State in respect of the treaties concluded by the predecessor State. (39)
114. The provision lays down just two exceptions to this rule. It does not apply if the States concerned otherwise agree or if the application of the treaty in respect of the new State 'would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation'.
115. However, I should note straightaway that, in my view, the principle laid down in Article 34 of the convention does not reflect the content of a pre-existing general rule of international law.
116. This view is supported primarily by the actual travaux préparatoires for the convention drawn up within the International Law Commission. In this regard I should note that the special rapporteur appointed by the commission, Sir Humphrey Waldock, had extracted from an analysis of international practice a principle contrary to that laid down in Article 34, that is to say the so-called tabula rasa principle, under which the emergence of a new State in territory formerly belonging to another State cannot lead to the automatic

succession of the former in respect of the agreements concluded by the latter. (40) In the case of the dissolution of a union of States, but only in such case, an ad hoc provision based on the principle of automatic succession was proposed. It was only subsequently - and without any reference to practice - that the drafting committee of the International Law Commission extended to all cases of secession or dismemberment the rule of automatic succession, (41) with the exception, as I have said, of the succession of States emerging from decolonisation (see Article 24 of the convention).

117. I should add that the academic opinion prevalent at the time of the codification also tended to exclude the principle of automatic succession and as a rule gave preference to the tabula rasa principle, albeit with significant exceptions in relations to particular types of agreement or particular situations in which sovereignty changed. (42)

118. In this context, it is very doubtful that, at the time of its adoption in 1978, the principle laid down in Article 34 of the Vienna Convention could have been regarded as the expression of a generally recognised rule of international law. (43)

119. Nor can it be held that the conclusion of the convention may constitute, per se, an indication of the establishment of a new customary rule of similar import. Quite apart from any other consideration as to the nature and function of such instruments, the fact that very few States are party to the abovementioned convention suggests that this is not so. As I stated above, a mere seventeen States have ratified it. (44)

Practice of international relations following codification

120. However, before drawing any definitive conclusions it is also necessary to examine practice following the convention to establish whether or not it contributed to the establishment of a customary rule based on the principle of automatic succession.

121. The practice following the codification is very extensive since, as we know, the final decade of the twentieth century in Europe was characterised by the disintegration of the multi-ethnic States which emerged at the end of the First and Second World Wars. From 1991, first the Soviet Union and then Yugoslavia dissolved into a large number of independent States, in a process of disintegration which was predominantly peaceful in the first case and often bloody, as we sadly know, in the second. Then, on 1 January 1993, the Czech and Slovak Federative Republic also ceased to exist and two new States, the Czech Republic and the Slovak Republic, emerged peacefully in its territory.

122. Below I will attempt to outline the practice which developed following those events and in particular that relating to bilateral agreements. I should note straightaway that, in my view, this practice is evidence of a significant change in the state of general international law because it indicates that, from the early 1990s, an international custom based on the principle of the continuity of international treaty obligations was established, albeit with less rigid automatism than that which follows from Article 34 of the Vienna Convention.

Practice of the new States

- The Czech and Slovak Republics

123. Firstly, it should be noted that both the States emerging from the dissolution of the Czech and Slovak Federative Republic manifested, by general declarations of principle, their intention to succeed in respect of the treaties concluded by the predecessor State. The official declarations by the two Parliaments at the dawn of independence (45) and the abovementioned Czech constitutional law No 4/1993 (46) are explicit in this regard.

124. Furthermore, the practice following the abovementioned declarations demonstrates that this desire to succeed was pursued consistently and met with no objections of principle from third States which had concluded international agreements with Czechoslovakia.

- The republics which emerged from the dissolution of the USSR and Yugoslavia

125. The vast majority of the States which emerged from the dissolution of the Soviet Union and Yugoslavia also manifested, by general declarations of principle, their intention to continue the agreements of international law to which the predecessor States were party.

126. (a) In the case of the breakup of the Soviet Union, note should be taken in particular of the Alma Ata Declaration of 21 December 1991 in which the States which had become members of the Commonwealth of Independent States stated that they would ‘guarantee, in accordance with their constitutional procedures, the fulfilment of international obligations stemming from the agreements concluded by the former Union of Soviet Socialist Republics.’ (47)

127. Subsequent practice has, as a rule, confirmed the desire expressed by the abovementioned declaration, even though some of these States have sometimes adopted a more cautious approach.

128. In particular, the practice of Azerbaijan, Moldova, Turkmenistan and Uzbekistan, although as a rule based on succession in respect of the international obligations of the predecessor State, moderates this principle by essentially giving the new State the option of excluding succession in respect of certain treaties or categories of treaty (so-called ‘optional succession’). (48)

129. (b) On the other hand, the practice of the Baltic States, namely Estonia, Latvia and Lithuania, is not relevant for the purposes of this case. Although when they (re)gained their independence in 1991 these three republics did not consider themselves bound by the treaties concluded by the USSR, this approach cannot be construed as a rejection of the principle of succession. It stems instead from the wish of these republics to be recognised as continuations of the Baltic States which became independent from Tsarist Russia in 1918 and were annexed by the USSR in 1940, a wish which, moreover, has largely been granted by the original contracting third States, many of which had never de jure recognised the Soviet annexation of 1940.

130. (c) The practice of the States which emerged from the dissolution of Yugoslavia also follows, as a rule, the principle of the continuity of international treaty obligations.
131. When they gained their independence, Croatia and Slovenia in particular openly supported the principle of succession in respect of Yugoslav treaties, (49) but they too sought to moderate this principle in relation to certain categories of treaty, (50) or defended the idea of optional succession in certain cases. (51)
- The practice of contracting third States
132. The practice of the third States (or other subjects) party to the agreements affected by the phenomenon of succession also provide significant indications of the continuity of legal relationships.
133. It is primarily States such as Germany, the Netherlands (52) and, outside Europe, the United States, (53) which appear to subscribe unhesitatingly to the principle of automatic succession in cases of secession and dismemberment.
134. The German Government in particular has expressly confirmed this view in the course of these proceedings for a preliminary ruling.
135. I should observe that the practice of the Community institutions also follows this principle, as is demonstrated in particular by Protocol 8 of the Association Agreement between the Community and the Czech Republic on the succession of the Czech Republic in respect of the exchanges of letters between the Community and Czechoslovakia concerning transit and land transport infrastructure. (54) Article 1 of this protocol provides that '[t]he Community on the one hand and the Czech Republic on the other hand assume all rights and obligations of the Community on the one hand and the former Czech and Slovak Federal Republic on the other hand contained in the aforementioned exchanges of letters', having regard to the fact that, as the preamble notes, 'the Czech Republic has declared ... that it "shall assume all the obligations resulting from all the agreements between the Czech and Slovak Federal Republic and the European Communities"', and 'the Czech Republic is, as of 1 January 1993, a successor State to the Czech and Slovak Federal Republic'.
136. These indications of automatic succession in respect of treaties are supported by the more qualified practice of other States.
137. Firstly, as regards Italy, although Government practice appears, as a rule, to follow the principle of automatic succession, (55) the case-law appears instead to hold that a confirmatory agreement or a unilateral declaration of succession on the part of the new State is necessary, at least in respect of particular categories of treaty, such as those relating to extradition. (56)
138. Note should also be taken of the approach adopted by the United Kingdom in respect of the Czech and Slovak Republics. The letter by which the British Prime Minister communicated the formal recognition of the two new States to the respective Czech and Slovak Governments confirms the British view that the treaties concluded previously between the United Kingdom and Czechoslovakia would remain in force 'as appropriate'. (57) In addition to the clear recognition of the principle of the continuation of international treaty obligations, that clarification demonstrates the intention to preserve a certain latitude in dealing with the matter of succession which does not involve rigid automatism.
139. The practice of France and Switzerland is also distinguished by a cautious approach which, although taking the principle of the continuation of international treaty obligations as a basis, makes definitive succession subject to the positive outcome of negotiations to be held with the new State, and thus excludes any automatism. (58)
140. Furthermore, I consider this to be, beyond the declarations, also the extent of Austrian practice, of which, however, divergent interpretations have been put forward in this case (see paragraphs 101 and 103 to 104 above).
141. It follows from the case-law of the Austrian OGH, both before and after Austria's entry into the Community, that the rejection of automatic succession - which constitutes the traditional Austrian position (59) and which Ammersin has emphasised - does not mean rejection of the principle of the continuity of international treaty obligations because, according to that case-law, there is no legal void during the period necessary to conduct negotiations on the succession and the agreements continue to be applied by Austria. (60)
142. Furthermore, it is not possible to disregard the fact that even before Austria's entry into the Community the Austrian position was not as monolithic as Ammersin claims. It is clear that by a note of 30 November 1994 to the Czech Government the Austrian Government terminated - but only in respect of the future - a trade agreement between Austria and Czechoslovakia. (61)
Legislative principle applicable to the present case
143. Consequently, I consider that the examination of the practice both of the new States and of the contracting third States confirms the view set out above (paragraph 122) that a customary rule based on the principle of automatic succession has now been established, albeit with less rigid contents than those which follow from Article 34 of the Vienna Convention, to the effect that it does not operate if one of the two States affected by the succession phenomenon has expressed an intention to the contrary.
144. As we know, in the present case not only is there no evidence of any will on the part of either Austria or the Czech Republic to abandon the treaty obligations established by the 1976 Austro-Czechoslovak agreement, there is also complete correspondence between the clear and unequivocal Czech declarations of 1992/1993 relating to succession in respect of the treaties concluded by Czechoslovakia (see paragraphs 19 and 20 above) and the Austrian declaration contained in the 1997 communication of the Bundeskanzler.
145. Therefore, the fact that Austria did not explicitly confirm that the agreement and the associated instruments remained in force until after Austria's entry into

the Community cannot, in my view, have any bearing on the application of the first paragraph of Article 307 EC to that agreement and the associated instruments.

146. I therefore propose that the Court answer the third question to the effect that the rules laid down in the Austro-Czechoslovak agreement are covered by the first paragraph of Article 307 EC, and consequently prevail over any provisions to the contrary of Community law, despite the fact that Austria did not officially announce the succession of States in respect of the Austro-Czechoslovak agreement until 1997, after Austria's entry into the Community.

Fourth question

147. By the fourth question the national court essentially asks whether the second paragraph of Article 307 EC requires a 'Community' Court to place on an agreement covered by the first paragraph of Article 307 EC an interpretation in conformity with substantive Community law.

148. The parties do not really differ on this question. Apart from the Commission, which does not adopt any position in this regard, all the parties essentially consider that an international treaty concluded by a Member State before its accession to the Community must be interpreted, as far as possible, in such a way as to guarantee fulfilment of the Community obligations of the Member State concerned. However, this presupposes that the provisions of the treaty in question are ambiguous and lend themselves to being interpreted in such a way as to ensure conformity with the EC Treaty.

149. I concur fully with these observations.

150. I consider that an interpretation in conformity with substantive Community law is necessary where a provision is applied such as the second paragraph of Article 307 EC which specifically implements, in this regard, the principle of loyal cooperation laid down in Article 10 EC.

151. However, this principle must be reconciled with the express provision of the first paragraph of Article 307 EC which recognises the supremacy of the international obligations arising from agreements concluded by a Member State before its accession to the Community.

152. Consequently, when placing on the provisions contained in such international treaties an interpretation which is as far as possible in conformity with Community law, the national court may not go beyond the limits laid down by the rules of general international law on the interpretation of treaties, in order not to undermine the practical effect of the first paragraph of Article 307 EC. In particular, a treaty provision must be primarily interpreted 'in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose', as Article 31 of the Vienna Convention on the Law of Treaties provides. (62)

153. Only if these criteria do not enable the meaning of the treaty text to be established with certainty will there be any real scope for a 'compatible' interpretation under the second paragraph of Article 307 EC. In that case, from among several possible interpretations of the treaty text, the contracting Member State will have to give preference to that which is most consistent with its Community obligations.

154. Having stated the foregoing from a general point of view, I do not consider it appropriate to express a view on the question in more specific terms to try and establish whether or not the Austro-Czechoslovak agreement lends itself to several interpretations, and which one of them should be given preference.

155. To answer this question, it would be necessary to interpret the rule by which the international obligation stemming from the Austro-Czechoslovak agreement was implemented in Austrian law. However, as I had an opportunity to observe above (paragraph 56), according to established case-law it is not for the Court but the national courts to interpret the provisions of national law applicable to the dispute or of bilateral agreements which bind Member States outside the sphere of Community law.

156. I therefore propose that the Court answer the fourth question to the effect that, where the meaning of an agreement concluded by a Member State before its accession to the Community, such as the agreement concluded at Vienna on 11 June 1976 between the Republic of Austria and the Czechoslovak Socialist Republic on the protection of designations referring to the source of agricultural and industrial products, is ambiguous and its interpretation, according to the relevant rules of general international law, leaves scope for several meanings, the second paragraph of Article 307 EC requires the contracting Member State to give preference to the meaning which is most consistent with its Community obligations.

V - Conclusion

157. In the light of the foregoing considerations I propose that the Court answer the questions referred by the Handelsgericht, Vienna, to the effect that:

(1) Regulation No 2081/92 does not preclude the application of a bilateral agreement between a Member State and a non-member country which grants absolute protection to a geographical indication which, although it is not the name of a specific region or place of the non-member country, designates a product originating in a specific region or place in that country without, however, implying any particular links between the origin of the product and its qualities.

(2) Articles 28 EC and 30 EC do not preclude the application of a bilateral agreement between a Member State and a non-member country which grants absolute protection to a geographical indication which, although it is not the name of a specific region or place of the non-member country, designates a product originating in a specific region or place in that country without, however, implying any particular links between the origin of the product and its qualities, provided that that designation has not become generic in the country of origin at the time of the entry into force of the agreement or subsequently.

(3) Articles 28 EC and 30 EC preclude a national measure which reserves for producers established in a non-member country the use of an indication which is

incapable of establishing any link between the product and its geographical origin by granting to that designation absolute protection, regardless of any likelihood of confusion.

(4) The rules laid down in the agreement concluded at Vienna on 11 June 1976 between the Republic of Austria and the Czechoslovak Socialist Republic on the protection of designations referring to the source of agricultural and industrial products are covered by the first paragraph of Article 307 EC, and consequently prevail over any provisions to the contrary of Community law, despite the fact that Austria did not officially announce the succession of States in respect of that agreement until 1997, after Austria's entry into the Community.

(5) Where the meaning of an agreement concluded by a Member State before its accession to the Community, such as the agreement concluded at Vienna on 11 June 1976 between the Republic of Austria and the Czechoslovak Socialist Republic on the protection of designations referring to the source of agricultural and industrial products, is ambiguous and its interpretation, according to the relevant rules of general international law, leaves scope for several meanings, the second paragraph of Article 307 EC requires the contracting Member State to give preference to the meaning which is most consistent with its Community obligations.

1: - Original language: Italian.

2: - OJ 1992 L 208, p. 1.

3: - '1. Without prejudice to international agreements, this Regulation may apply to an agricultural product or foodstuff from a third country provided that:

- the third country is able to give guarantees identical or equivalent to those referred to in Article 4,
- the third country concerned has inspection arrangements equivalent to those laid down in Article 10,
- the third country concerned is prepared to provide protection equivalent to that available in the Community to corresponding agricultural products for foodstuffs coming from the Community.'

4: - Agreement on the protection of indications of source, designations of origin and other designations referring to the source of agricultural and industrial products done at Vienna on 11 June 1976, together with the annexed protocol done at Vienna on 30 November 1977. The text is to be found in BGBl. 1981, 75.

5: - BGBl. 1981. 76.

6: - Unofficial translation.

7: - Unofficial translation.

8: - 'Declaration by the Czech National Council to All Parliaments and Nations of the World', 17 December 1992. Unofficial translation.

9: - Unofficial translation.

10: - Unofficial translation.

11: - Its full corporate name is 'Bud ejovický Budvar, národní podnik, Budweiser Budvar, National Corporation, Budweiser Budvar, Entreprise Nationale' and means 'Bud Brewery of Budweis, national undertaking'. The present brewery is the result of the merger of the company 'Budweiser Brauberechtigten Bürgerliches Brauhaus', founded in Budweis in 1795, and the company 'Cesky akciový pivovar v C. Budejovicích', also called 'Budvar Tschechische Aktien-Brauerei', also founded in Budweis in 1895. Following nationalisation in 1948 the two undertakings were amalgamated into a single national undertaking, namely 'Jihoceské pivovary', from which the present company emerged in 1966.

12: - Hereinafter: 'Budweis'. Ever since the sixteenth century a flourishing brewing industry has existed in the city of Budweis, which first belonged to the Kingdom of Bohemia and then, until 1918, to the Austro-Hungarian Empire.

13: - Since 1795 the companies which merged to form the present Budvar brewery have produced and marketed beer bearing the indications 'Budweis', 'Budweis Bier' (in Czech 'Bud ejovické pivo', meaning 'beer of Budweis'), 'Budvar' or 'Budbräu' (meaning 'Bud brewery'; in Czech the term 'var' is the equivalent of the German term 'Bräu' and means 'brew').

14: - The beer in question is produced by the American brewery Anheuser-Busch, which is established in Saint Louis. Since 1876 the Bavarian Brewery, which subsequently became Anheuser-Busch, is said to have placed on the local market a beer bearing the designation 'Budweiser' and subsequently also in the abbreviated form 'Bud'. As far as can be discerned, in 1911 Anheuser-Busch finally obtained from the breweries operating in Budweis at that time authorisation to use the designation on non-European markets. Finally, in 1939 it obtained from the Czech breweries the exclusive right to use the designation 'Budweiser' on the American market. However, after the Second World War Anheuser-Busch began exporting its beer also to Europe (see, as regards this information, the order of the Austrian OGH cited in footnote 16 below and the judgment of the Swiss Federal Court of 15 February 1999, BGE 125 III, p. 193).

15: - It should be noted that the Budvar brewery registered in various countries, including Austria, various trade marks including 'Budvar', 'Budweiser', 'Budweiser Budvar', 'Budweiser Budbräu', and 'Bud'.

16: - OGH, order of 1 February 2002, 4 Ob 13/00s. The text is to be found in Bundeskanzleramt - Rechtsinformationssystem, http://www.ris.bka.gv.at.

17: - See, inter alia, Case C-448/98 Guimont [2000] ECR I-10663, paragraph 22, and Case C-66/00 Bigi [2002] ECR I-5917, paragraphs 18 and 19.

18: - Case C-312/98 Warsteiner Brauerei [2000] ECR I-9187, paragraph 54.

19: - See, in very clear terms, Case C-37/92 Vanacker [1993] ECR I-4947, paragraph 7.

20: - See Case 130/73 Vandeweghe and Others [1973] ECR 1329, paragraph 2.

21: - Warsteiner, cited above, paragraph 43. See also Joined Cases C-321/94, C-322/94, C-323/94 and C-324/94 Pistre [1997] ECR I-2343, paragraph 35.

22: - Warsteiner, paragraph 44.

23: - Warsteiner, paragraph 45.

24: - Warsteiner, paragraph 49.

25: - Case C-3/91 Exportur [1992] ECR I-5529, paragraph 39, and Case C-87/97 Consorzio per la tutela del formaggio Gorgonzola [1999] ECR I-1301, paragraph 20.

26: - Exportur, cited above, paragraphs 28, 37 and 38.

27: - See, inter alia, Joined Cases 51/71 to 54/71 International Fruit Company and Others [1971] ECR 1107, paragraphs 8 to 10, and Case 41/76 Donckerwolcke and Schou [1976] ECR 1921, paragraph 17.

28: - See Case 8/74 Dassonville [1974] ECR 837, paragraph 5.

29: - In that case it was the Convention between the French Republic and the Spanish State on the protection of designations of origin, indications of provenance and names of certain products, signed in Madrid on 27 June 1973.

30: - Exportur, cited above, paragraph 37.

31: - Exportur, cited above, paragraph 37.

32: - Exportur, cited above, paragraph 37.

33: - Regulation No 2081/92, Article 3.

34: - Moreover, the OGH ruled to the same effect in the abovementioned order of 1 February 2002, 4 Ob 13/00s, precisely in respect of the Austro-Czechoslovak agreement whose application is at issue. The order is cited above, paragraph 27.

35: - This is the Vienna Convention on Succession of States in respect of Treaties, done at Vienna on 23 August 1978. As regards the convention see paragraphs 107 et seq. below. For the wording of Article 34 see paragraph 113 below.

36: - See, inter alia, Joined Cases C-364/95 and C-365/95 T. Port [1998] ECR I-1023, paragraph 61.

37: - I should note that the convention is the product of draft articles drawn up within the International Law Commission of the United Nations and then finalised by an ad hoc international conference convened by the UN General Assembly.

38: - Article 24 is worded as follows:

‘A bilateral treaty which at the date of a succession of States was in force in respect of the territory to which the succession of States relates is considered as being in force between a newly independent State and the other State party when:

(a) they expressly so agree; or

(b) by reason of their conduct they are to be considered as having so agreed.’

39: - Article 34 provides as follows:

‘1. When a part or parts of the territory of a State separate to form one or more States, whether or not the predecessor State continues to exist:

(a) any treaty in force at the date of the succession of States in respect of the entire territory of the predecessor State continues in force in respect of each successor State so formed;

(b) any treaty in force at the date of the succession of States in respect only of that part of the territory of the predecessor State which has become a successor State continues in force in respect of that successor State alone.

2. Paragraph 1 does not apply if:

(a) the States concerned otherwise agree; or

(b) it appears from the treaty or is otherwise established that the application of the treaty in respect of the successor State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.’

40: - See Article 21 of the draft articles in ‘Fifth report on succession in respect of treaties by Sir Humphrey Waldock, Special Rapporteur’, Yearbook of the International Law Commission, 1972, volume II, New York, 1974, p. 39 et seq.

41: - See Articles 20 and 21 of the draft articles in ‘International Law Commission, 1191st meeting’, Yearbook of the International Law Commission, 1972, volume I, New York, 1974, p. 272 et seq.

42: - See, to this effect, W.E. Hall, A Treatise on International Law, A.P. Higgins Ed., Oxford, 8th Ed. 1924 (reprint 1979, p. 114 et seq.); L. Hoppenheim, International Law, A Treatise, H. Lauterpacht Ed., Vol. I, London, 8th Ed. 1955, p. 158 et seq., in particular p. 167; Akademie der Wissenschaften der UdSSR, Völkerrecht, Hamburg 1960, p. 122 et seq. (albeit with different rules for cases of revolutionary changes, States liberated from colonial rule and for the other cases); G. Balladore Pallieri, Diritto Internazionale Pubblico, 8th Ed. Milan, 1962, p. 224 et seq.; D.P. O'Connell, State Succession in Municipal Law and International Law, Vol. II, Cambridge, 1967, p. 88 et seq. (emphasising, however, the particular nature of situations of ‘evolutionary independence’); T. Treves, ‘La continuità dei trattati e i nuovi Stati indipendenti’, in Comunicazioni e Studi XIII, 1969, p. 303 et seq.; O. Udokang, Succession of New States to International Treaties, Dobbs Ferry, New York 1972, pp. 412 to 415; D. Nguyen Quoc, Droit International Public, Paris 1975, p. 431.

43: - See, to this effect, M. Sahw, International Law, 4th Ed., Cambridge, 1997, p. 686 et seq.; I. Brownlie, Principles of Public International Law, 5th Ed., Oxford, 1998, pp. 650, 663; S. Rosenne, ‘Automatic Treaty Succession’, in J. Klabbers, R. Lefeber, Essays on the Law of Treaties, The Hague, 1998, p. 99; K. Doehring, Völkerrecht, Heidelberg, 1999, p. 75; B. Conforti, Diritto Internazionale, Naples, 2002, p. 118 et seq.

44: - It took a full eighteen years to obtain the fifteen ratifications necessary for the entry into force of the convention and, moreover, the dismemberment of one of the States that had ratified it, namely the former Yugoslavia. It was precisely the declarations of succession by the States born of this dismemberment, the final one being that of Macedonia on 7 October 1996, which ‘raised’ the number of ratifications, thus bringing about the entry into force of the convention. Furthermore, only seventy of the approximately one hundred and sixty States in existence at that time were represented at the diplomatic conference which adopted the text thereof, and of those seventy States only twenty signed the act.

45: - As regards the declaration of the Czech National Council, see paragraph 20 above. As regards the

equivalent declaration by the Slovak National Council, see Association de Droit International, 'Rapport préliminaire sur la succession d'États en matière de traités', in The International Law Association, Report of the Sixty-Seventh Conference (Helsinki), London 1996, p. 670.

46: - See paragraph 20 above.

47: - Unofficial translation. An English translation is to be found in 21 ILM (1992), p. 149.

48: - See Association de Droit International, 'Rapport préliminaire sur la succession d'États en matière de traités', cited above, pp. 675 and 684; also Långström, 'The Dissolution of the Soviet Union in the Light of the 1978 Vienna Convention on Succession of States in Respect of Treaties', in Eisemann, Koskenniemi, La succession d'États: la codification à l'épreuve des faits, Académie de Droit International de la Haye, The Hague 2000, p. 773.

49: - See Article 3 of the Slovenian constitution, cited by Koskenniemi, 'Report of the Director of Studies of the English-speaking Section of the Centre', in Eisemann, Koskenniemi, op. cit., p. 73, and the Declaration of Independence of the Republic of Croatia, cited by Ortega Terol, 'The Bursting of Yugoslavia: An Approach to Practice Regarding State Succession', in Eisemann, Koskenniemi, op. cit., p. 906.

50: - As regards Croatia, see Article 33 of the Law of 26 July 1991 on international treaties, which makes succession in respect of treaties concluded by the former Yugoslavia subject to their conformity with 'the Constitution or the Croatian legal system', cited by Ortega Terol, op. cit., p. 906. See also Association de droit international, 'Rapport préliminaire sur la succession d'États en matière de traités', cited above, p. 685.

51: - As regards Slovenia, see Association de Droit International, 'Rapport préliminaire sur la succession d'États en matière de traités', cited above, p. 685, and Ortega Terol, op. cit., p. 905 et seq.

52: - See Association de Droit International, 'Rapport préliminaire sur la succession d'États en matière de traités', cited above, p. 689.

53: - See Dalton, 'National Treaty Law and Practice: United States', in American Society of International Law, National Treaty Law and Practice (edited by Leigh, Blakeslee, Ederington), Washington, 1999.

54: - Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Czech Republic, of the other part, Protocol 8 on the succession of the Czech Republic in respect of the exchanges of letters between the European Economic Community (Community) and the Czech and Slovak Federal Republic concerning transit and land transport infrastructure, OJ 1994 L 360, p. 2.

55: - Note, by way of example, an exchange of notes with the Czech Republic done at Prague on 27 October 1997 - 4 February 1998, which amends an agreement of 29 March 1990 between Italy and Czechoslovakia relating to visas (GURI 15 January 1999, No 11 suppl.), and the note of 24 February 1995 by which Italy suspended the application in respect of Macedonia, with future effect, of an exchange of letters between Italy and Yugoslavia relating to the recognition of diplomas and academic qualifications issued by universities and higher education institutions, done at Rome on 18 February 1983 (GURI 3 May 1995, No 101). Both these acts clearly presuppose that there has been succession in relation to the treaties which are amended or suspended.

56: - See Corte d'appello di Roma, 17 October 1980, in Riv. dir. int. 1980, p. 882; Corte d'appello di Torino, 2 July 1993, Riv. dir. int. 1994, p. 197; Corte di cassazione, VI sez. penale, 6 July 1995, No 2828, Jadranko, Cass. Pen. 1996, p. 3022; Corte di cassazione, sez. penale feriale, 17 August 1995, Gligic, Cass. Pen. 1996, p. 2629.

57: - 'I can confirm that, as appropriate, we regard Treaties and Agreements in force to which the United Kingdom and the Czech and Slovak Federal Republic were parties as remaining in force between the United Kingdom and the Czech Republic': UKMIL 1993, Part Three: I.B.i., in 65 BYIL (1994), p. 586. (Italics added.)

58: - As regards France, see Association de Droit International, 'Rapport préliminaire sur la Succession d'États en matière de traités', cited above, p. 688.

As regards Switzerland, see the very clear terms used by the Directorate of International Law of the Ministry of Foreign Affairs in the communication of 30 March 1992 relating to succession in respect of the treaties concluded with the former Yugoslavia and the former Soviet Union which states that 'on constate qu'en matière de succession d'État aux traités, il n'existe aucun principe juridique universellement admis, de même qu'il n'y a pas reprise automatique par l'État successeur des droits et obligations de l'État prédécesseur. Il faut pour chaque traité examiner si la reprise des droits et obligations de l'État prédécesseur par l'État nouvellement crée est conforme aux besoins des deux partenaires contractuels. Cet examen dure souvent un certain temps, pendant lequel il faudra présumer, pour des raisons non pas juridiques mais pratiques, que les traités en question continuent - provisoirement - à s'appliquer'. The communication is to be found in Pratique suisse 1992, 6.1, and is reproduced in Council of Europe, State Practice Regarding State Succession and Issues of State Recognition (edited by Klabbers, Koskenniemi, Ribbelink, Zimmermann), The Hague 1999, p. 321.

59: - See Association de Droit International, 'Rapport préliminaire sur la succession d'États en matière de traités', cited above, p. 685 et seq.

60: - See OGH 6 October 1993, 7 Ob 573/93; 20 January 1994, 8 Ob 590/93; and 11 January 1996, 15 Os 150/95. These decisions are to be found in Bundeskanzleramt - Rechtsinformationssystem, http://www.ris.bka.gv.at.

61: - Note No 11030/94 of 30 November 1994, see Association de Droit International, 'Rapport préliminaire sur la succession d'États en matière de traités', cited above, p. 686.

62: - Article 31(1) of the Vienna Convention on the Law of Treaties, done at Vienna on 23 May 1969.