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Case References: FT/FD/2024/0001  
FT/FD/2024/0002

**First-tier Tribunal  
General Regulatory Chamber  
(Food)**

**Heard at Field House  
On: 27 November 2024  
Decision given on: 21 January 2025**

**Before**

**Judge O'Connor - Chamber President  
Judge Kiai**

**Between**

**(1) WildFish Conservation  
(2) Animal Equality**

**Appellants**

**and**

**Secretary of State for the Environment,  
Food and Rural Affairs**

**Respondent**

**Representation:**

Appellants: Jointly represented by Mr N Baldock of Counsel

Respondent: Represented by Mr M Fry of Counsel, and Mr M Feeney of Counsel

**Decision: The appeals are DISMISSED**

**DECISION AND REASONS**

1. Both members of the Tribunal have contributed to this decision.

### **Introduction to Geographical Indications**

2. In the modern world, food, drink, and agricultural products with a geographical connection, or that are made using traditional methods, can be registered, and protected as intellectual property. This protection is called geographical indication (“GI”).
3. The wines of France have many things to answer for, but one of the more esoteric is thought, at least by some, to be the birth of the geographical indication. Widespread counterfeiting of French wine in the late nineteenth century led to France enacting a wine labelling law in 1905 prohibiting the misuse of wine names. To justify protecting geographical names, the French laws enshrined the notion that location, and more precisely the *terroir* – a deep connection between the products and the land where the vine was grown and the wines were made, was a key ingredient in differentiating between wines by indicating a distinct origin; and thus the geographical indication was spawned<sup>1</sup>.
4. The first adoption of GI Regulation in the European Union (“EU”) took place in 1992 (Council Regulation (EEC) No. 2081/1992 on the Protection of Geographical Indications and Designations of Origins for Agricultural Products and Foodstuff). The 1994 Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), adopted the EUs definition of a GI; *“indications which identify a good as originating in the territory ... where a given quality, reputation or other characteristic of the good is essentially [no longer exclusively] attributable to its geographical origin.”*
5. EU Regulation 1151/2012 (“the EU Regulation”) updated and consolidated the regulations previously contained in EU Regulation 509/2006 on traditional specialities guaranteed, and EU Regulation 510/2006 on protected designations of origin and geographical indications. Regulation 510/2006 was itself preceded by Regulation 2081/92.
6. Post ‘Brexit’, the Agricultural Products, Food and Drink (Amendment etc.) (EU Exit) Regulations (S.I. 2020/1637) amended the retained EU Regulation 1151/2012 (“the Assimilated Regulation”).
7. GI protection guarantees a product’s characteristics or reputation, authenticity, and origin. It protects the product name from misuse or imitation. The UK GI schemes protect registered product names when they are sold in Great Britain (England, Scotland and Wales). All product names protected in the EU on 31 December 2020 are protected under both the UK and EU GI schemes.
8. An individual or business does not own a GI. Any producer can make and sell a product under a registered product name if they follow the product’s GI specification and are verified to do so.

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<sup>1</sup> *Geographical Indications at the Crossroads of Trade, Development, and Culture* (Irene Calboli and Ng-Loy Wee Loon (eds)) (Cambridge University Press, 2017)

9. The UK GI Register was established, and is maintained, by the Secretary of State for the Department for Environment, Food, and Rural Affairs (“DEFRA”).

### **The appeals**

10. The Scottish farmed salmon sector currently produces approximately 200,000 tonnes of Atlantic salmon with a farm gate value of over £1 billion. Farmed salmon is Scotland’s, and the UK’s, number one food export, being exported to over fifty countries, with a value of around £600million.
11. The present appeals are brought against DEFRA’s decision, to approve an application made on 20 July 2023, by Salmon Scotland Ltd (“Salmon Scotland”), for a non-minor amendment to the product specification for the Scottish Farmed Salmon protected geographical indication (submitted under Article 53(1) of Regulation (EU) No 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuff (“the EU Regulation”) as amended by the Agricultural Products, Food and Drink (Amendment etc.) (EU Exit) Regulations (S.I. 2020/1637)) (“the Assimilated Regulation”). This is the first time this Tribunal has had to consider appeals brought under this legislation.
12. Salmon Scotland (formerly the Scottish Salmon Producers’ Organisation) is the trade body representing the Scottish salmon production sector. Its current membership produces 100% of the salmon farmed in Scotland as well as upstream supply chain actors. It represents the sector in political, regulatory, technical, and public fora.
13. DEFRA’s decision to approve the amendment application is undated, but it was added to the relevant register on the ‘Protected food name with Protected Geographical Indication’ website, on 3 April 2024.
14. At the core of this appeal is DEFRA’s approval of that part of Salmon Scotland’s application which sought an amendment to the name of the Protected Geographical Indication (“PGI”), from ‘Scottish Farmed Salmon’ to ‘Scottish Salmon’. No other aspects of the amendment application, or DEFRA’s subsequent approval thereof, have been raised before us.
15. Both appellants filed ‘notices of opposition’ to Salmon Scotland’s application and, thereafter, both filed ‘reasoned statements of opposition.’ On 3 April 2024, DEFRA concluded that both appellants’ reasoned statements of opposition were inadmissible.

### **What is the process for objecting to a non-minor amendment of a GI?**

16. Article 53(2) of the Assimilated Regulation provides that, *“Where the amendment involves one or more amendments to the specification that are not minor, the amendment application shall follow the procedure laid down in Articles 49 to 52”*.
17. Article 51 of the Assimilated Regulation deals with the issue of standing to object to an application for a non-minor amendment to a GI, the process for doing so, and the consequences thereafter.

18. A natural or legal person having a “*legitimate interest*” may lodge a “*notice of opposition*” with DEFRA within three months of the date of publication of the application. If a notice of opposition does not contain a declaration that the application might infringe the conditions laid down elsewhere in the Assimilated Regulation, it is void (Article 51(1)).
19. If a notice of opposition is lodged with DEFRA “*and then followed within two months with a reasoned statement of opposition*” DEFRA shall check the admissibility of the reasoned statement (Article 51(2)) and, if admissible, DEFRA shall invite the person who lodged the opposition and the person who lodged the application, to “*engage in appropriate consultations*” for a reasonable period (Article 51(3)). There is a further process which follows.

### **What is the First-tier Tribunal’s role?**

20. An appeal may be brought to the First-tier Tribunal (FtT) against a decision made by DEFRA of a type specified in column 1 of the table in Part 2 of Annex 1B to the Assimilated Regulation. This includes a decision made by DEFRA to approve an application submitted under Article 53 to amend a product specification for a PGI (Article 54a (1)). Column 1 of the table in Part 2 of Annex 1B does not make provision for a right to appeal against a decision taken by DEFRA that a reasoned notice of opposition is inadmissible.
21. An appeal can only be brought by a person specified in the corresponding entry in column 2 of the table in Part 2 of Annex 1B, which includes, in the instant scenario, “*a person who lodges a valid notice of opposition under Article 51(1) in relation to the application...*” (Article 54a(2)).
22. In determining an appeal, the FtT must consider the decision appealed against afresh, and may consider evidence that was not available to DEFRA (Article 54a(3)). It is prudent at this stage to allude to the joint approach taken by the appellants to these appeals, which was to identify ten instances in which it is said that DEFRA erred when making the decisions under appeal. The respondent’s answered the appeal but framing its response in terms of the ten purported errors.
23. Given that our role is to consider the decision under appeal afresh, we have not adopted a similar approach. In reality, the substance of the appellants’ case focused on the correct approach to Article 6(2) of the Assimilated Regulation, and we found the submissions made within the ‘Grounds’ to be helpful in our consideration of this provision, in particular those set out in Grounds 1 and 2.
24. Moving on, if the FtT allows the appeal it may (in the instant scenario) quash the decision, restore the data in the entry for the PGI, remove a copy of the amended product specification or remit the matter to the Secretary of State [DEFRA] for reconsideration and a fresh decision (Article 54a(4)).
25. The parties agree that the Tribunal must decide the relevant facts on the balance of probabilities.

26. Mindful of the principles helpfully summarised in Verlander v Devon Waste Management & Anor [2007] EWCA Civ 835, we can record that we were able to make all necessary findings of fact without needing to resort to the burden of proof. We observe, however, that, at least in relation to the issue of whether the appellants have a legitimate interest in the examination of the non-minor amendment to the PGI, Mr Baldock accepted that it is for the appellants to establish such an interest. We also find that it is the appellants who bear the legal burden of proof in establishing that a ground of opposition under Article 6 of the Assimilated Regulation is made out. This, in our view, is clear from reading Article 6 in conjunction with Articles 10 and 51 of the Assimilated Regulation.

### **Does the FtT have Jurisdiction in these appeals?**

27. Neither party took issue with the FtT's jurisdiction in their respective written cases and, upon initial inquiry and subsequent pressing from the Tribunal at the hearing, both parties maintained this overarching position.
28. Jurisdictional issues are, however, matters solely for the Tribunal to determine. The Tribunal cannot be imbued with jurisdiction by consent. For reasons which will become apparent below, we have considerable difficulty in reconciling the respondent's position that the Tribunal has jurisdiction to hear the appeal, with its submission that neither appellant has a legitimate interest in an examination of Salmon Scotland's amendment application (see, for example, [22] of the respondent's skeleton argument).
29. In such circumstances, and despite the parties' agreement on the issue, we have sufficient concern over the jurisdiction of the FtT in these appeals to consider it prudent for us to delve further into the issue.
30. Despite the parties' agreed position that the FtT has jurisdiction to determine these appeals we were, nevertheless, greatly assisted by their submissions on the meaning to be attributed to the term '*legitimate interest*' in Article 51. We will return to a consideration of this, shortly.
31. We first consider the explanation put forward by the parties as to why it is said that the FtT has jurisdiction. Mr Fry led on this issue, submitting, without demur from Mr Baldock, that both appellants had lodged valid notices of opposition with DEFRA, in accordance with Article 51(1) of the Assimilated Regulation and, therefore, by virtue of Article 54a(2) and column 2 of the table in Part 2 of Annex 1B, they were each entitled to appeal DEFRA's decision.
32. In this regard, the Tribunal's focus was drawn to a provision within Part 1 of Annex 1B, found under the heading "*interpretation*", that states: "*a valid notice of opposition means a notice of opposition that contains the declaration required by the second paragraph of Article 51(1)*" i.e. a declaration that the application might infringe the conditions laid down elsewhere in the Assimilated Regulation. We recall at this stage that by the second paragraph of Article 51, it is stated that a notice of opposition is "*void*" if it does not contain such a declaration.

33. Mr Fry avers that the fact that both appellants lodged a notice that contains the requisite declaration, is sufficient for those notices to be valid for the purposes of column 2 of the table in Part 2 of Annex 1B.
34. We do not accept that the only feature required of a valid notice of opposition under Article 51, is that a notice is served containing the required declaration. To adopt such an approach would, in our view, ignore the restrictive wording of the first paragraph of Article 51(1) i.e. that “*a natural legal person having a legitimate interest may lodge a notice of opposition.*” (our emphasis)
35. The words of Article 51(1) could not be clearer, only a natural or legal person with a legitimate interest can lodge a notice of opposition. If the natural or legal person does not have a legitimate interest, then they are not permitted to lodge a notice of opposition, and any notice lodged by that person would not be a notice of opposition of a type permitted by Article 51(1).
36. Given that the notices lodged by the respective appellants each contained the required declaration, and no point is taken as to the timeliness of the lodging of these notices, in our conclusion, in order to resolve the issue of whether the FtT has jurisdiction to determine the instant appeals, the question that we must pose, and answer, is; whether the appellant (one or both) has a legitimate interest within the meaning given to that phrase in Article 51(1)?
37. In written submissions, the respondent maintained that it is “*a complete answer to the Appellants’ appeals*” that neither appellant has a legitimate interest. This submission was not, however, targeted towards the issue of jurisdiction, but rather went to the issue of whether an admissible reasoned statement of opposition had been lodged with DEFRA pursuant to Article 51(2) i.e. the second stage of the opposition process. The respondent did not recant from this approach in oral submissions.
38. We do not accept this submission.
39. In our view, the structure of Article 51 clearly intends to impose the legitimate interest restriction on the first stage of the process i.e. the lodging of a notice of opposition, and not at the subsequent stage of the lodging of a reasoned notice of opposition.
40. In reaching this conclusion, we have taken cognisance of the terms of Article 10 of the Assimilated Regulation, which provides for the requirements of an admissible reasoned statement of opposition under Article 51(2). There is no mention therein of the need for an assessment of whether a person, who has lodged a reasoned statement of opposition, has a legitimate interest in an examination of the non-minor amendment application. This is in contrast, for example, with the identified need to assess the timeliness of the lodging of the statement. This, in our view, must be because the issue of legitimate interest will have already been assessed at the first stage of the opposition process.
41. On DEFRA’s own case, accepting the submission that the issue of legitimate interest is only relevant to the second stage of the opposition process leads to some curious consequences. DEFRA’s written case is that a person (natural or legal) who does not have a legitimate interest in an examination of the non-minor amendment application

(even if this is known and accepted) would be entitled to a right of appeal to the FtT, but that appeal would be bound to fail. Upon being pressed by the Tribunal, Mr Fry provided an alternative submission at the hearing, contending that an appeal would be available to a person who did not demonstrate a legitimate interest in the amendment application but that, on appeal, the Tribunal would not be entitled to take account of any submissions made by the appellant.

42. Our conclusion that the issue of a person's legitimate interest is a matter to be considered at the first stage of the opposition process, is also entirely consistent with the approach taken by the Fourth Chamber of the Court of Justice of the European Union in Hengstenberg GmbH & Co. KG v Spreewaldverein eV (15 April 2021 Case C-53/20), which we consider further below.
43. We now turn to consider what the term *legitimate interest* means in the context of Article 51.
44. We need not waste further judicial ink on traversing the legal landscape relating to the principles of interpretation applicable to our consideration of the Assimilated or EU Regulations. The parties agree that the Tribunal should take a purposive approach to its interpretation, and we concur.
45. The appellants contend that the aim of the Assimilated Regulation includes an element of consumer protection, and, in particular, the right of consumers to be able to make an informed choice at the point of purchase. It is said that both appellants have a legitimate interest in the protection of consumers of Scottish salmon.
46. The appellants also properly point out that neither of DEFRA's decisions of 3 April 2024, concluding that the reasoned grounds of opposition were inadmissible, took issue with their legitimate interest in the amendment application, nor did DEFRA raise this issue in its joint Response to the appellants' Notices of Appeal. The first time this issue was raised before the Tribunal was in the respondent's skeleton argument, filed 9 days before the hearing. Although this issue was raised late by the respondent, neither appellant has sought to take a procedural or fairness point.
47. The respondent submits that the range of persons who have a legitimate interest in the examination of the amendment application is limited to those who have a legitimate 'economic interest' in such an examination which, to all intents and purposes, limits the pool to the producers of salmon.
48. It is contended by the respondent that the purpose of the Assimilated Regulation, and the GI regime, is to protect the names of specific products to promote their unique characteristics linked to their geographical origin. It is averred that a GI emphasises the relationship between a geographic region and the name of the product, where a particular quality, reputation or other characteristic is essentially attributable to its geographical origin. PGIs protect producers against others misusing or imitating the registered name and guarantee the origin of the product to customers. The essential purpose of the Assimilated Regulation is to help producers benefit from the value-added characteristics associated with the geographic origin of their product. As far as there is any consumer protection element to the purpose of the Regulation, this is

solely for the purpose of the accrual of a benefit to the producer and, thus, the appellants do not have the required legitimate interest.

49. In support of its overarching submission, the respondent places reliance on the CJEU's judgment in Hengstenberg, drawing in particular on paragraphs 39 and 56 therein to support the proposition that for a natural or legal person to have a legitimate interest in the examination of a non-minor amendment to a PGI, they must have an economic interest therein. The appellants submit that the Court in Hengstenberg considered only a subset of those natural or legal persons who have a legitimate interest in the examination of a non-minor amendment, and that it did not provide an exhaustive definition of that term.
50. We think it is helpful to first examine the decision in Hengstenberg. To put in context why this decision may be of potential relevance, we need only draw attention to section 6(2) of the European Union (Withdrawal) Act 2018, which provides that decisions of the European Courts may be taken into account in domestic courts and tribunals. It is accepted by both parties that the CJEU's decisions regarding the EU Regulation may be persuasive (see also TuneIn v Warner Music [2021] EWCA Civ 441).
51. The Hengstenberg case relates to gherkins protected by the geographical indication 'Spreewälder Gurken'. This GI had been registered with the Deutsches Patent-und Markenamt (German Patent Office - "DPMA"), since 1999. Hengstenberg is a German company specialising in sauerkraut, cabbage, and gherkins. Spreewaldverein eV, is the association of gherkin manufacturers.
52. In 2012, Spreewaldverein filed a request with the DPMA for the modification of the GI specifications concerning the manufacturing process of the gherkins. This was opposed by Hengstenberg. The DPMA concluded that the modification conformed to the EU Regulation. Hengstenberg disputed this before the Bundespatentgericht (Federal Patent Court). The Federal Patent Court concluded that Hengstenberg lacked an entitlement to appeal because the only parties with a legitimate interest to oppose this type of decision were the producers located in the production zone of the GI - which did not include Hengstenberg. In so concluding, the Court distinguished between applications for registration of the GI, and applications for amendment of the GI specification.
53. Hengstenberg appealed to the Bundesgerichtshof (Federal Court of Justice). This Court stayed the proceedings and referred three questions to the CJEU for preliminary ruling, pursuant to Article 267 of the Treaty on the Functioning of the European Union.
54. The Fourth Chamber ("the CJEU") considered only the first of these questions:

"In the procedure for a non-minor amendment of the specification, can any actual or potential – provided that it is not entirely implausible - economic effect on a natural or legal person be sufficient to establish the existence of the legitimate interest, within the meaning of Article 53(2), first subparagraph, in conjunction with Article 49(3), first subparagraph, and (4), second subparagraph, of Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs, that is necessary for the purposes of an



opposition to the application or an appeal against the favourable decision on the application?"

55. We observe at this juncture, that Article 49(3) of the EU Regulation requires Member States to provide for a national opposition procedure that affords a reasonable period within which any natural or legal person having a legitimate interest, and established or resident on its territory, may lodge an opposition to the application.
56. The CJEU concluded [at 55] that:

“The first subparagraph of Article 49(3) and the second subparagraph of Article 49(4) of Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs, in conjunction with the first subparagraph of Article 53(2), thereof, must be interpreted as meaning that, in the context of the procedure applicable to applications for non-minor amendments to the specification of a product covered by a protected geographical indication, any natural or legal person affected economically, actually or potentially – provided that such an effect is not entirely implausible – by the amendments applied for may establish the ‘legitimate interest’ required to lodge an opposition to the application for amendment submitted or to bring an action against the decision granting that application, as long as the risk of harm to the interests of such a person is not purely improbable or hypothetical, which is for the referring court to ascertain.”
57. If read in isolation, the CJEU’s answer to the referred question clearly provides support to the respondent’s contention that the term ‘legitimate interest’ in Article 51 imports a requirement that the appellants need to establish an economic interest in the examination of the amendment application.
58. However, we agree with the appellants’ contention that it is wholly unsurprising that the CJEU’s answer is framed only in terms of economic interest, given that it was not asked to determine the definitional breadth of the term *legitimate interest* in the EU Regulation, but was specifically asked to consider whether “*any actual or potential economic effect*” on a person would be sufficient to establish the existence of the legitimate interest.
59. The CJEU founded its reasoning on a series of separate considerations which, albeit drawn in the context of Article 49(3), apply *mutatis mutandis* to an analysis of Article 51.
60. The CJEU initially considered the relevance of the words “*any natural or legal person,*” concluding, at [36], that it was clear from their addition, that the legislature did not intend to adopt a narrow interpretation of the range of persons who may exercise the right to oppose.
61. At [37] to [39], the CJEU further identified that under the EU scheme it was for the Member State to analyse an amendment application and statement of opposition, which required detailed knowledge of matters particular to that Member State. It followed from this, the Court reasoned, that it is particularly necessary to open widely the category of persons who may benefit or suffer from such an amendment.

62. At [41] – [43], the CJEU considered the aims of the EU Regulation:

“[41] First, it is clear from Article 1(2) of Regulation No 1151/2012, read in the light of recitals 17, 18 and 20 of that regulation, that that regulation seeks to establish quality schemes which contribute to the quality of products and their method of production being recognised as factors of added value.

[42] Secondly, it is clear from Article 1(1) of Regulation No 1151/2012, in the light of recitals 20 and 39 thereof, that that regulation is also intended to prevent the creation of conditions of unfair competition.

[43] Additionally, the aim of the provisions of Regulation No 1151/2012 is to prevent the misuse of protected designations of origin and protected geographical indications, **not only in the interests of consumers**, but **also in the interests of producers** who have striven to guarantee the qualities expected of products lawfully bearing such indications (see, by analogy, judgment of 7 June 2018, *Scotch Whisky Association*, C-44/17, EU:C:2018:415, paragraph 38 and the case-law cited).” (emphasis added)

63. As is clear from [43], the CJEU drew, by analogy, upon an earlier judgment of the CJEU in The Scotch Whisky Association v Michael Klotz (case C-44/17).

64. In the *Scotch Whisky Association* case, the association had sought an order requiring Mr Klotz to cease marketing a whisky, which was not Scotch Whisky, under the name ‘Glen Buchenbach’. On a preliminary reference by the Regional Court in Hamburg, Germany, the Court considered the interpretation of Article 16 of Regulation 110/2008, which related to the protection of geographical indications of spirit drinks, Scotch Whisky being a PGI. In doing so, the Court concluded that the aim of Regulation 110/2008 was to prevent the misuse of PGIs, in both the interests of consumers and in the interests of producers.

65. Moving on, the Court in Hengstenberg summarised the relevance of the aims of EU Regulation, at [45]:

“It follows from the foregoing that the broad interpretation of the concept of ‘legitimate interest’ is the most appropriate for pursuing those objectives, since it ensures that a wide range of persons may promote, by means of opposition or appeal, respect for the high quality and the method of production of specific products, while preventing producers whose products are covered by a registered name from enjoying a competitive advantage by lowering quality standards after registration of a non-minor amendment to the specification of the product concerned.”

66. At [48] – [51], the CJEU considered the origins of the EU Regulation. We observe, in particular, the conclusions at [48]:

“[48], it is apparent from Article 7(3) of Regulation No 2081/92, which was repealed by Regulation No 510/2006, itself repealed by Regulation No 1151/2012, that the right to object in the context of the procedure for registration of a protected geographical indication before the national authorities was open to ‘any legitimately concerned natural or legal person’,

a concept which was interpreted by the Court as meaning that it included the existence of a legitimate economic interest (see order of 26 October 2000, *Molkerei Großbraunshain and Bene Nahrungsmittel v Commission*, C-447/98 P, EU:C:2000:586, paragraph 72).” (our underlining)

67. Duly analysed, we find that the CJEU’s reasoning in Hengstenberg supports the conclusion that the term *legitimate interest* should be interpreted widely and, in particular, that the pool of natural and legal persons having a legitimate interest in an application for a non-minor amendment is not restricted to those who have a legitimate economic interest in the examination of such an application.
68. Additionally, in our conclusion, both [43] of Hengstenberg and the rationale of the CJEU in the *Scotch Whisky Association* case, lend support to the appellants’ contention that the range of persons who may have a legitimate interest in the examination of a non-minor amendment application is not restricted to producers but can include those who have a legitimate interest in promoting the interests of consumers.
69. We reach the same conclusions upon undertaking our own analysis of the Assimilated Regulation.
70. We agree with the respondent that both Article 1 and Article 4 of the Assimilated Regulation detail aims which support a more restrictive interpretation of the term legitimate interest, with those articles making specific reference to the objective of the Regulation, and the PGI scheme, as being to “*help producers*”. This is also the focus of a number of the recitals, including (3), (20), (28), (34) and (47).
71. However, there are a number of other recitals, such as recitals (8), (18), (29) and (38) which clearly provide support for the contention that one of the aims of GI protection under the Regulation is to safeguard the interests of consumers and, therefore, that the range of persons who may have a legitimate interest in the examination of a non-minor amendment application is not restricted to producers, but can include those who have a legitimate interest in promoting the interests of consumers. This, in our view, is particularly highlighted by the following recitals:

“[18] The specific objectives of protecting designations of origin and geographical indications are securing a fair return for farmers and producers for the qualities and characteristics of a given product, or of its mode of production, and providing clear information on products with specific characteristics linked to geographical origin, thereby enabling consumers to make more informed purchasing choices”, and

“[29] Protection should be granted to names included in the register with the aim of ensuring that they are used fairly and in order to prevent practices liable to mislead consumers.” (our underlining).
72. The question remains, though, as to whether, given our findings above, the range of persons who have a legitimate interest in an examination of the amendment application made by Salmon Scotland, includes either of the appellants.
73. To assess this, we need to further scrutinise the appellants. We accept the descriptions provided by the respective appellants’ activities in their Grounds of Appeal and, in

reaching our conclusions, we have also taken into account the additional information before us relating to their activities.

74. WildFish Conservation refers to itself in the following terms in its Grounds of Appeal:

“WildFish is a UK charity that campaigns to protect wild fish populations and their ecosystems. Formerly known as Salmon & Trout Conservation, WildFish has a strong legitimate interest in the application made by Salmon Scotland, having highlighted the damage caused by Scottish salmon farming to wild Atlantic salmon and sea trout populations for well over two decades, including, for example, giving evidence to the (then) Rural Affairs, Climate Change and the Environment Committee of the Scottish Parliament considering the impact of sea lice and escapes from Scottish salmon farms on wild fish, during the passage of the Aquaculture and Fisheries (Scotland) Bill in 2012. ...”

75. WildFish also coordinates a coalition campaign known as ‘Off the table’ which aims to raise awareness of the environmental harms caused by the salmon farming industry and calls upon the hospitality sector to take farmed salmon off its menus. WildFish suggests to consumers that they should not purchase Scottish farmed salmon. In addition, WildFish made a detailed submission to the Competition and Markets Authority (“CMA”) on 26 October 2023, to its ‘greenwashing’ enquiry, which seeks to better understand whether products and services that claim to be green or eco-friendly are being marketed to shoppers accurately. That expansion of the CMA’s investigation, into the sale of food, would include the sale of Scottish farmed salmon to the consumer.

76. Animal Equality says as follows of itself:

“Animal Equality is a registered charity (England & Wales) .... It is a leading organisation working to advocate on behalf of farmed animals and raise awareness of the realities of fish farming and work to hold the industry to account for welfare violations.”

77. Animal Equality has conducted a number of investigations into the Scottish fish farming industry, in an attempt to highlight what is said to be a lack of transparency in the industry over farming practices. This has been covered by the UK mainstream press and television outlets.

78. In our conclusion, the threshold for demonstrating a legitimate interest for the purposes of Article 51(1) is not a demanding one. As we have identified above, the legislature did not intend to adopt a narrow interpretation of the range of persons who may exercise the right to oppose. We also find it significant that, at the first stage of the opposition process, a person is not required to notify DEFRA of their grounds of opposition, and need do no more than provide a declaration that the application *might* infringe the conditions laid down in the Regulation. This less demanding threshold also chimes with the CJEU’s observations at [55] of Hengstenberg.

79. Drawing all of this together, whilst we find the case is clearer for WildFish, having considered all the evidence, we conclude that both appellants have a legitimate interest

in the protection of consumers of salmon in the UK, including salmon produced in Scotland. On the evidence before us, we find that the risk of harm to the interests relied upon by the appellants is not purely hypothetical.

80. We, therefore, accept that both appellants were entitled to, and did, lodge a notice of opposition, and that we have jurisdiction to determine both appellants' appeals.

**Admissibility of the reasoned statements of opposition/Discussion on the substance of the appeal**

81. Contrary to the way in which the appellants framed their respective cases in their Notices of Appeal, there is no right of appeal against a decision to treat a reasoned statement of opposition as inadmissible.
82. The appeals before the Tribunal are against the single decision by DEFRA to approve the non-minor amendment application.
83. DEFRA's decisions of 3 April 2024, that the reasoned statements of opposition were inadmissible, are, however, of import in these appeals for two reasons. First, the reasoning detailed in the inadmissibility decisions provides an insight into DEFRA's rationale for approving Salmon Scotland's application; the approval decision itself providing no self-standing rationale other than to say that "*no reasoned statement of opposition has been received by [DEFRA].*" Second, Article 53(2) of the Assimilated Regulation provides for a specified period of consultation, prior to a decision being made on the application, between the person who lodged the amendment application and any person who has lodged an admissible reasoned statement of opposition. There has been no such consultation period in the instant matter; an ineluctable consequence of DEFRA's decisions that the appellants' reasoned statements of opposition were inadmissible.
84. We now turn to consider the decisions to treat the appellants' reasoned statements of opposition as inadmissible. As identified above, at the hearing the respondent relied in this regard upon the absence of the appellants having a legitimate interest in an examination of the non-minor amendment application. However, this is not a line of reasoning that features in the letters to the appellants of 3 April 2024, and we have already found that this is not the proper place in the opposition procedure to consider such an issue. If we are wrong on this we have, in any event, found that both appellants have the required legitimate interest.
85. Moving on to matters of substance rather than procedure, the appellants confirmed at the hearing that they sought only to pursue the contention that the respondent's decision to amend the non-minor amendment application was contrary to Article 6(2) of the Assimilated Regulation.
86. Articles 6 and 10 of the Assimilated Regulation are therefore the key provisions in these appeals.
87. By Article 10:

“(1) A reasoned statement of opposition as referred to in Article 51(2) shall be admissible only if it is received by ...[DEFRA] within the time limit set out in that paragraph and if it:

- (a) shows that the conditions referred to in Article 5 and Article 7(1) are not complied with;
- (b) shows that the registration of the name proposed would be contrary to Article 6(2), (3) or (4);
- (c) shows that the registration of the name proposed would jeopardise the existence of an entirely or partly identical name or of a trade mark or the existence of products which have been legally on the market for at least five years preceding the date of the publication provided for in point (a) of Article 50(2); or
- (d) gives details from which it can be concluded that the name for which registration is requested is a generic term.”

88. Article 6(2) reads:

“6...

- (2) A name may not be registered as a designation of origin or geographical indication where it conflicts with a name of a plant variety or an animal breed and is likely to mislead the consumer as to the true origin of the product.”

89. In the letters to the appellants of 3 April 2024, the respondent averred, *inter alia*, that:

“...Article 6(2) of 1151/2012 states ‘a name may not be registered as a designation of origin or geographical indication where it conflicts with a name of a plant variety or an animal breed and is likely to mislead the consumer as to the true origin of the product. ‘Salmon’ is the common name for several species of fish of the Salmonidae family and it is not a breed. While ‘Scottish’ indicates that the product is made from salmon originating in Scotland.

...

We note your concerns over the removal of the word ‘farmed’. However, due to labelling rules, the packaging will still have to refer to the product having been ‘farmed’, and similarly, for the ‘wild salmon’ would need to state on the packaging the waters it was captured in. We believe that this information ensures that consumers are adequately informed of product provenance. ...”

### ***Article 6(2) of the Assimilated Regulation***

90. We start our consideration by stating the obvious, that the inquiry demanded under Article 6(2) of the Assimilated Regulation has two conjunctive requirements. First, whether the proposed name of the GI conflicts with the name of a plant variety or animal breed? Second, if so, whether that name is likely to mislead the consumer as to the true origin of the product?

91. In their Joint Reply of 6 August 2024, the appellants contended that wild salmon and farmed salmon are genetically different and with very different phenotypic

characteristics. It was asserted that the type of salmon that is farmed in Scotland is a 'breed' for the purposes of Article 6(2). The consequence of this, the appellants submit, is that the name Scottish Salmon conflicts with that of an animal breed, Scottish Farmed Salmon, "because it doesn't distinguish between the two and is likely to mislead."

92. Shortly prior to the hearing, the respondent conceded that 'farmed salmon' is a breed of Atlantic salmon. We find that the respondent was correct to make such a concession.

***Conflicts with the name of an animal breed***

93. The respondent, nevertheless, submits that the appellants' contention on Article 6(2) must fail, primarily because it does not identify any conflict between 'Scottish salmon' and the name of any animal breed i.e. the appellants do not get over the hurdle imposed by the first limb of Article 6(2). In this regard, the respondent interprets the words "conflicts" as meaning "identical to." In addition, it is submitted, in relation to the second limb of Article 6(2), that "true origin" must mean true geographic origin. The respondent contends that the name 'Scottish Salmon' identifies the true geographic origin of the product, Scotland, and consumers would not be misled in this regard.
94. The parties are not *ad idem* as to the proper approach to be taken by the Tribunal in relation to either limb of the Article 6(2) inquiry, and neither party has adduced any legal authority providing substantive assistance to the Tribunal in this regard.
95. What is palpably clear is that the name Scottish Salmon is not identical to the name of an animal breed. The respondent's position is that this must be the end of the Tribunal's inquiry into Article 6(2). There is no animal breed with the name Scottish Salmon, so there is no conflict. The appellants resist any interpretation of the first limb of Article 6(2) which narrows the inquiry as propounded by the respondent. When duly analysed, the appellants' contention involves taking account of the consumer's perspective when deciding whether there is a conflict.
96. A plain reading of Article 6(2) leads to the inescapable conclusion that a subjective element should not be imported into the inquiry as to whether a proposed name of a GI conflicts with the name of a plant variety or animal breed. The view of, or consequence to, the consumer is not expressed within Article 6(2) as being part of the inquiry under the first limb, which is in stark contrast to the inquiry required under the second limb, where the potential confusion, or misleading, of a consumer is front and centre.
97. Nevertheless, we must approach the task of interpreting Article 6(2) in the same way as we approached the task of interpreting Article 51, by taking a purposive approach, and by considering Article 6(2) in the context of the Assimilated Regulation as a whole. In this regard, all that we have previously said about the purpose and aims of the Regulation, is of equal application to our assessment of the proper interpretation of Article 6(2).
98. Article 6(2) wears its policy intent on its sleeve. The potential for consumer confusion is at its heart. Where the names of plant varieties or animal breeds conflict with potential GIs, the GI might nevertheless be registered as a PGI on the basis that no

confusion arises for consumers as to the true origin of the product had been established. This is consistent with the object of GIs to make goods attributable to their origin, and to guard against the wrongful use of indicators of origin.

99. Having considered the policy intent behind Article 6(2), we do not accept the respondent's inferential contention that the word '*conflicts*', should be read as meaning, 'identical to'. If the intention was to import such a stringent requirement into Article 6(2), then this could easily have been achieved by using much simpler and clearer language. Furthermore, given that the mischief that Article 6(2) is designed to address is likely consumer confusion, there is no merit in interpreting the word '*conflicts*' restrictively, as the respondent's contention demands.
100. This conclusion is further supported by looking elsewhere in the Regulation. Article 42 provides for a post GI registration exception to the Article 3 protection offered by a PGI, for the marketing of products the labelling of which happens to include a GI protected name that "*contains or comprises of*" the name of an animal breed or plant variety (subject to five conditions, one of which is that the consumer is not misled). We find the difference in terminology used in Article 6(2) and Article 42 to be informative, and conclude as a consequence that the legislature cannot have intended the word '*conflicts*' in Article 6(2) to mean '*comprises of*' [a name of a plant variety or animal breed], or indeed '*contains*' [the name of a plant variety or animal breed].
101. As we have emphasised above, the real focus of the Article 6(2) assessment is found in its second limb, which underpins the mischief that Article 6(2) is designed to address. The first limb of Article 6(2) is intended to be no more than a gateway into the core assessment required by that provision and, as such, cannot have been intended to impose an unduly high threshold.
102. Drawing all of this together, in our view, the appropriate approach to the assessment under the first limb of Article 6(2), is to ask the question: Is the name proposed for GI registration sufficiently similar to the name of an animal breed or plant variety so as to require a full enquiry under the second limb of Article 6(2)?

### *Animal breed*

103. The next question which logically follows is; what defines an animal breed for the purposes of the Assimilated Regulation?
104. The Assimilated Regulation itself does not define the term 'plant variety' or 'animal breed.' In such circumstances, are we to look at animal breeds as defined in some unspecified legal instrument, or breeds which are accepted by the scientific community? Furthermore, given that the Assimilated Regulation is now specific to the British shores, do we look only to legal or scientific acceptance (or, indeed, some other form of acceptance) in this context, particularly if there are differing approaches across the world to the same animal or plant?
105. In its written case, the respondent referred to, and relied upon, the definition of the term 'breed' found in EU Regulation 2016/1012: "*a population of animals sufficiently uniform to be considered to be distinct from other animals of the same species*". The appellant does not seek to disagree with this approach. We need not reach a conclusion on the



appropriate approach to take to the term “*animal breed*” in the Assimilated Regulation, because the parties are in agreement that ‘farmed salmon’ is an animal breed. In addition, neither party has contended that salmon, wild salmon or Scottish salmon, are animal breeds. We proceed on this basis.

106. Returning to a consideration of the factual assessment required under the first limb of Article 6(2), we find, on the specific facts of this case, that the name Scottish Salmon is a sufficiently similar name to the breed ‘farmed salmon’ (i.e., an animal breed), so as to require a full inquiry under the second, gatekeeper, limb of Article 6(2). In this case, for context, that further inquiry includes an inquiry into the meaning of the phrase ‘*true origin*’.

### ***True origin of the product***

107. We finally turn to consider the second limb of Article 6(2), whether the conflict between the name proposed for GI registration (Scottish Salmon) and the name of the animal breed ‘farmed salmon’ “*is likely to mislead the consumer as to the true origin of the product*”?
108. Once again, the parties disagree as to the correct interpretation of Article 6(2), on this occasion the disputed phrase being ‘*true origin*’. This is not defined in the regulations. The respondent maintains that this phrase must be read as true geographic origin.
109. An issue also arose as to the relevance of the food labelling regulations to the assessment under the second limb of Article 6(2). We have not needed to address the ‘food labelling issue’ in order to reach our conclusions below and have proceeded on the basis that the labelling regulations are not relevant. We make clear, however, that this is not a reasoned legal finding, but rather an approach born out of our conclusions on the meaning of ‘*true origin*,’ and the consequences that has on the specific facts of this case.
110. Moving on, the appellants aver that a purposive approach demands a wide interpretation of the phrase *true origin* and, in particular, that reading Article 6(2) in the context of Article 5(2), leads to the conclusion that ‘*true origin*’ must include the essential characteristics of the product, in this case that the product is farmed, and not be restricted to its geographic origin.
111. For the purposes of the Assimilated Regulation, a geographical indication is a name which identifies a product [Article 5(2)]:
- “(a) originating in a specific place, region or country;
  - (b) whose given quality, reputation or other characteristic is essentially attributable to its geographical origin; and
  - (c) at least one of the production steps of which takes place in the defined geographical area.”
112. The nexus between a product’s characteristics and the name of the GI is identified in Article 5(2)(b) i.e., the product’s characteristics must be attributable to the product’s geographical origin. Article 5 also specifies the nexus between a products process of manufacture, or the production steps, and the name of a GI. This nexus is, once again,

founded on geographical origin, with at least one of the production steps having to take place within the defined geographical area (Article 5(2)(c)).

113. The core function of a GI is to indicate the geographical origin of a product. GIs are necessarily descriptive: they serve as geographical attributions which accurately link the origins of a product with its distinctive characteristics. The distinctive characteristics of the product do not define its origin, they are consequential upon it. Nor, self-evidently, do a products production steps define its origin. In addition, the relevant product characteristics, and production steps, required for use of a PGI are found in the GI specification.
114. Consequently, in our conclusion, taking a purposive approach to the interpretation of Article 6(2)(b) leads to us to agree with the respondent's contention that the phrase '*true origin*' means true geographical origin.
115. Applying this to the facts of the appeals before us, we note that it forms no part of the appellants' case that salmon produced in accordance with the Scottish Salmon GI specification would mislead a consumer as to the true *geographical* origin of the product. We observe, in particular, that the GI specification identifies the relevant geographical area within which at least one of the production steps is to take place, as "*The western coastal region of mainland Scotland, Western Isles, Orkney and Shetland*".
116. Accordingly, we, find, having considered the matter afresh on the evidence before us, that the non-minor amendment to the GI approved by DEFRA does not lead to a breach of Article 10(1)b of the Assimilated Regulation when read in conjunction with Article 6(2).

### **Other submissions**

117. We finally turn to address a number of other submissions that the appellants make on the facts of this case.
118. In their skeleton argument, and with reference to a 2013 decision of the EU Commission relating to "Irish Salmon" – the appellants contend that removal of the word *farmed*, means that the only qualification for the PGI is its country of origin and, therefore, the requirements of Article 5(2)(b) of the Assimilated Regulation would not be met. The PGI would become akin to a PDO, but any application for a PDO must fail because not all of the production steps take place within Scotland.
119. At the hearing Mr Baldock conceded the *Irish case* was "*very different*," and we agree. The decision relating to '*Irish salmon*' concluded that none of the characteristics of the product identified in the proposed specification, related to the geographic area in question. That is not the case with Scottish salmon, where the quality of the product is attributable to its geographic origin for the reasons provided in the PGI specification. The evidence before us does not support a contrary conclusion.
120. The appellants further contend, in their skeleton argument, that the fact that the fish are not 'born and bred in Scotland' is important information that the consumer should be made aware of, and that removal of the word '*farmed*' from the PGI would leave a consumer not knowing whether any production steps have taken place. It is submitted,

therefore, that whilst “*it can be argued that Scottish salmon comes within the Article 5(2) definition, that is to ignore the purpose of the Regulation*”.

121. There is no dispute that one of the production steps of *Scottish salmon*, does take place in the geographic region identified in the PGI, and in our conclusion this plainly meets the requirements of Article 5(2)(c). The appellants’ contention as to the scope of Article 5(2)(c) seeks to unjustifiably redraw the terms of the provision, when the language used therein could not be clearer. The intended scope of the provision is made all the clearer by comparing it to the terms of Article 5(1)(c), which relates to the requirements of a PDO.
122. In conclusion, we reject the appellants’ contention that the requirements of Article 5(2)(b) and/or Article 5(2)(c) of the Assimilated Regulation have not been met.

### **Conclusion**

123. As indicated above, the appellants confirmed at the hearing that they sought only to pursue the contention that the decision to amend the non-minor amendment application was contrary to Article 6(2) of the Assimilated Regulation. We have found against the appellants on this issue. However, insofar as the appellants do seek to maintain an assertion that the requirements of the Article 5(2) have not been met, we, again, reject this contention.
124. We conclude, as a consequence, that the appellants’ appeals against DEFRA’s decision to approve the Salmon Scotland’s non-minor amendment application, are dismissed.

Chamber President  
*Judge O’ Connor*

Judge Kiai  
*Judge Kiai*

21 January 2025