Neutral Citation Number: [2026] UKUT 340 (AAC)
Appeal No. UA-2025-000789-GOR

IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER

Between:

Animal Equality

Appellant

- v -

Secretary of State for Environment, Food and Rural Affairs

Respondent

Before: Upper Tribunal Judge Wright

Hearing date: **6 and 7 May 2026**

Representation:

Appellant:	Alex Shattock of counsel
Respondent:	Michael Fry and Michael Feeney of counsel

On appeal from:

Tribunal:	First-tier Tribunal (General Regulatory Chamber) (Information Rights)
Tribunal Case No:	FD/2024/0002
Tribunal:	Judge O'Connor (Chamber President) and Judge Kiai
Decision Date:	21 January 2025

SUMMARY OF DECISION

This is a decision about Regulation (EU) 1151/2012 on quality schemes for agricultural products and foodstuffs. This is retained or assimilated EU law in Great Britain. The appeal concerns a decision of the respondent to approve an application by Salmon Scotland for a non-minor amendment to the Scottish Farmed Salmon Protected Geographical Indication to change that PGI from "Scottish Farmed Salmon" to "Scottish Salmon". Animal Equality appealed that decision to the First-tier Tribunal. The FTT did not err in law in deciding that under Article 6(1) of Regulation (EU) 1151/2012 the phrase "likely to mislead the consumer as to the true origin of the product" was limited to misleading consumers about the country and region of the

product and does not cover misleading consumers about the methods of production of the product.

<u>KEYWORD NAME (Keyword Number):</u> OTHER GENERAL REGULATORY APPEALS (98)

Please note the Summary of Decision is included for the convenience of readers. It does not form part of the decision. The Decision and Reasons of the judges follow.

DECISION

The decision of the Upper Tribunal is to dismiss the appeal (and to refuse the respondent permission to cross-appeal).

The decision of the First-tier Tribunal made on 21 January 2025 under case number FD/2024/0002 was not made in error of law.

REASONS FOR DECISION

Introduction

1. This appeal potentially involves four legal issues.

2. The most substantive issue, for which Animal Equality was given permission to appeal by the First-tier Tribunal ("the FTT"), is whether the words "*true origin of the product*" in the relevant legislative text include the 'methods of production' of the product in addition to the 'country or region' of the product.

3. Three logically prior issues are said to arise, however, and the respondent ("DEFRA") needs permission to appeal on those three issues. The first issue is when the assessment of whether a person or body has a legitimate interest (so as to be able to bring a relevant challenge) is to be considered, the First-tier Tribunal ("the FTT") having found it was to be considered "*at the first stage of the opposition process*". The second preliminary issue is whether those who have a 'legitimate interest' include, as the FTT found, "*those who have a legitimate interest in promoting the interests of consumers*". The third preliminary issue is whether the FTT erred in law in its approach to whether Animal Equality had such a legitimate interest.

4. To understand how these issues arise, it is necessary to sketch in the relevant factual and legal background.

Relevant factual background

5. Salmon Scotland is a trade body representing the Scottish salmon industry. On 20 July 2023 it applied to DEFRA for a non-minor amendment to the Scottish Farmed Salmon Protected Geographical Indication (PGI) to change the PGI from "Scottish Farmed Salmon" to "Scottish Salmon". DEFRA approved the change on 3 April 2024.

6. The appellant is an animal rights non-governmental organisation that campaigns to end cruelty to farmed animals. This involves campaigning for higher welfare standards in farming, which includes it having a particular interest in the conditions in which farmed salmon are kept.

7. Animal Equality's central concern in the change to the above PGI was that the removal of the word "farmed" from "Scottish Farmed Salmon" would mislead consumers as to the nature of the product. Along with another organisation (Wildfish Conservation, which is not a party to these proceedings), Animal Equality therefore sought to challenge Salmon Scotland's application to change the PGI. It did so by filing a 'notice of opposition' to the application followed by a "reasoned statement of opposition". On 3 April 2024 DEFRA concluded that Animal Equality's reasoned statement of opposition was inadmissible and Animal Equality appealed to the FTT. On the same date, DEFRA approved the amendment application and "Scottish Salmon" was added to the relevant register on the "Protected food name with Protected Geographical Indication" website.

Relevant law

8. The key statutory provision is Regulation (EU) No 1152/2012 on quality schemes for agricultural products and foodstuffs ("EU Reg 1151") . It is not disputed that this constitutes retained EU law and is therefore the relevant applicable law in Great Britain.

9. The most relevant parts of EU Reg 1151 are the following.

10. Article 5(2) provides that for the purposes of EU Reg 1151,

> "'**5.2 '**geographical indication' is a name which identifies a product:
> (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."

11. This is to be contrasted with a "*designation of origin*" under Article 5(1) of EU Reg 1151, which is a name which identifies a product (a) originating in a specific place, region or, in exceptional cases, a country, (b) whose quality or characteristics are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors, and (c) the production steps of which all take place in the defined geographical area".

12. Article 6 lies at the heart of this appeal and provides, relevantly, as follows:

> "**6.**1. Generic terms shall not be registered as protected designations of origin or protected geographical indications.
> 2. A name may not be registered as a designation of origin or geographical indication where it conflicts with the name of a plant variety or an animal breed *and* is likely to mislead the consumer as to the true origin of the product" (the emphasis in both places is mine).

13. Article 48 of EU Reg 1151 is the beginning of a number of articles within Chapter IV in the regulation dealing with "*application and registration processes for designations of origin, geographical indications, and traditional specialities*". Article 49 covers application for registration of names, and provides by Article 49(1) that the applications "*may only be submitted by groups who work with the products with the name to be registered*".

14. Article 50 then deals with the scrutiny of applications and publications, insofar as is material as follows:

> "**50.**1 The Secretary of State shall scrutinise by appropriate means any application received pursuant to Article 49, in order to check that it is justified and that it meets the conditions of the respective scheme….
>
> The Secretary of State] shall, at least each month, make public, in such manner as appears appropriate to the Secretary of State from time to time, the list of names for which registration applications have been submitted to the Secretary of State, as well as their date of submission."

15. It is Article 51 of EU Reg 1151 that deals with the procedure for opposing an application, which, insofar as is material, states the following:

> "**51.** 1. Within three months from the date of publication…., the authorities of a third country, or a natural or legal person having a legitimate interest may lodge a notice of opposition with the Secretary of State.
>
> A notice of opposition shall contain a declaration that the application might infringe the conditions laid down in this Regulation. A notice of opposition that does not contain this declaration is void.
>
> The Secretary of State shall forward the notice of opposition to the authority or body that lodged the application without delay.
>
> 2. If a notice of opposition is lodged with the Secretary of State and is followed within two months by a reasoned statement of opposition, the Secretary of State shall check the admissibility of this reasoned statement of opposition.
>
> 3. Within two months after the receipt of an admissible reasoned statement of opposition, the Secretary of State shall invite the authority or person that lodged the opposition and the authority or body that lodged the application to engage in appropriate consultations for a reasonable period that shall not exceed three months.
>
> The authority or person that lodged the opposition and the authority or body that lodged the application shall start such appropriate consultations without undue delay. They shall provide each other with the relevant information to assess whether the application for registration complies with the conditions of this Regulation. If no agreement is reached, this information shall also be provided to the Secretary of State."

16. A "reasoned statement of opposition" is addressed further, somewhat curiously, in both Articles 10 and 21, and in both places in terms of the admissibility of the statement; although both seem to cover broadly the same ground and any

differences in wording would not appear to be germane. The articles provide as follows:

> "**10**. 1.A reasoned statement of opposition as referred to in Article 51(2) shall be admissible only if it is received by the Secretary of State 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.
>
> 2. The grounds for opposition shall be assessed in relation to the territory of Great Britain, except that, in relation to paragraph 1(d), the grounds for opposition must be assessed in relation to the territory of the United Kingdom.
>
> **21**.1. A reasoned statement of opposition as referred to in Article 51(2) shall be admissible only if it is received by the Secretary of State before expiry of the time limit and if it:
>
> (a) gives duly substantiated reasons why the proposed registration is incompatible with the terms of this Regulation; or
>
> (b) shows that use of the name is lawful, renowned and economically significant for similar agricultural products or foodstuffs.
>
> 2. The criteria referred to in point (b) of paragraph 1 shall be assessed in relation to the territory of Great Britain."

I address what is meant by "*a valid notice of opposition*" when considering appeal rights in paragraphs 19-20 below.

17. Decisions on registration are dealt with in Article 52. Article 52 reads relevantly:

> "**52.** 1. Where, on the basis of the information available to the Secretary of State from the scrutiny carried out pursuant to the first subparagraph of Article 50(1), the Secretary of State considers that the conditions for registration are not fulfilled, the Secretary of State must reject the application.
>
> 2. If the Secretary of State receives no notice of opposition or no admissible reasoned statement of opposition under Article 51, the Secretary of State must register the name.

3. If the Secretary of State receives an admissible reasoned statement of opposition, the Secretary of State] shall, following the appropriate consultations referred to in Article 51(3), and taking into account the results thereof, either:

(a) if an agreement has been reached, register the name; or

(b) if an agreement has not been reached, decide whether to register the name.

4. After making a decision under this Article, the Secretary of State must publish in such manner as appears appropriate to the Secretary of State from time to time:

(a) a notice:

(i) informing the applicant and the public of the decision made in relation to the application and the reasons for that decision, and

(ii) providing information about the right to appeal under Article 54a against the decision and the period within which an appeal may be made, and

(b) where the application is approved, a copy of the approved product specification."

18. Before turning to the appeal provisions in Article 54a, it is to be noted that under Article 53(1) "*a group having a legitimate interest may apply for approval of an amendment to a product specification*".

19. Article 54a of EU Reg 1151 provides, insofar as is relevant, as follows:

"**54a.** 1. An appeal may be made to the FTT against a decision of the Secretary of State specified in column 1 of the table in Part 2 of Annex 1B.

2. Such an appeal may be made:

(a) in all cases, by a person specified in the corresponding entry in column 2 of the table in Part 2 of Annex 1B;

(b) in the case of a decision affecting an application submitted by the authorities of a third country, by the authorities of that third country.

3. In determining such an appeal the FTT:

(a) must consider the decision appealed against afresh, and

(b) may take into account evidence that was not available to the Secretary of State.

4. The FTT may:

(a) dismiss the appeal, or

(b) if it allows the appeal, exercise any power specified in the corresponding entry in the third column of the table in Part 2 of Annex 1B.

5. Where the FTT remits a matter to the Secretary of State for reconsideration and fresh decision:

(a) the Secretary of State, after making a fresh decision, must publish, in such manner as appears appropriate to the Secretary of State from time to time, a notice informing the original applicant, the appellant (if different) and the public of that fresh decision and the reasons for that decision;

(b) the provisions of this Title and Annex 1B apply to the fresh decision made by the Secretary of State."

20. A person with a right of appeal under Article 54a(2)(a) includes, per Annex 1B, "*a person who lodges a valid notice of opposition under Article 51(1)*". Annex 1B defines "*a valid notice of opposition*" as meaning "*a notice of opposition that contains the declaration required by the second subparagraph of Article 51(1)*": in other words a declaration "*that the application might infringe the conditions laid down in [EU Reg 1151]*". Then right of appeal in Annex 1B is also conferred on "*a person marketing a product that is, or may be, affected by the registration of the designation of origin, geographical indication or traditional speciality guaranteed*".

21. Commission Implementing Regulation (EU) No 668/2014 ("EU Reg 668") by its title lays down rules for the application of EU Reg 1151. Article 9(1) of EU Reg 668 provides that for the purposes of Article 51(2) of EU Reg 1151, a reasoned statement of opposition shall be drawn up in accordance with the form set out in Annex III to EU Reg 668. The form at Annex III includes at Point 5 that the "Detail of Opposition" is provided, which must include "*duly substantiated reasons and justification for the opposition*" and "*a statement providing the legitimate interest of the opposition, unless the opposition is lodged by the national authorities of a third country, in which case no statement of legitimate interest is required*".

22. In terms of the relevant legal architecture, Regulation (EU) No 1169/2011 (EU Reg 1169) deals with the provision of food information for consumers.

23. I should add finally on the legal architecture that counsels' industries could not identify any material difference in the phrases "geographical origin" and "true origin" in EU Reg 1152 when looking at the French or German language versions of EU Reg 1152.

The FTT's decision

24. The FTT dismissed both Animal Equality's and Wildfish Conservation's appeals against DEFRA's decision to allow Salmon Scotland's application to change the PGI (protected geographical indication) from 'Scottish Farmed Salmon" to 'Scottish Salmon'.

25. The FTT's reasoning on the three logically prior issues reads, relevantly, as follows (the FTT's shorthand for EU Reg 1152 is "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 imbibed 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…….

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 [then counsel for the appellants], 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 <u>having a legitimate interest</u> 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…..

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…..

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……

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…..

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."

26. The FTT's reasoning on what is meant by "*the true origin of the product*" in Article 6(2) was as follows:

"***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 product’s 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 product’s 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)."

The FTT's grant of permission

27. The Chamber President of the FTT, Judge O'Connor, gave Animal Equality permission to appeal to the Upper Tribunal limited to the issue of what is meant by "true origin of the product" in Article 6(2) of EU Reg 1151. In doing so Judge O'Connor commented as follows:

> "13. Counsel instructed to draw up the grounds in support of the application for permission to appeal, did not appear before the FtT. One consequence of this may be that, at [15] to [19] of the application, the Tribunal's attention is drawn to three judgments not previously cited before it. My view, however, is that these judgments do not even arguably assist the appellant.
>
> 14. At [28] of the application it is averred that the Advocate General's Opinion in Morbier, is persuasive authority for the interpretation of 'true origin' contended for by the appellant. Reference is also made at [17] of the application to [34] of the CJEU's decision in Morbier.
>
> 15. The Court in Morbier was considering, *inter alia*, the interpretation of Article 13(d) of the EU Regulation (concerning a possible infringement of a Protected Designation of Origin) and, in particular, whether Article 13(d) prohibited the reproduction of the shape or appearance characteristic of the product covered by a registered name, where that reproduction was liable to mislead the consumer as to the true origin of the product. The Court was not called upon to determine the meaning of the phrase 'true origin'.
>
> 16. Although the appellant relies on [34] of the CJEU's decision, this must be read in the context of [35], which reads:
>
>> "More generally, it is clear from the court's case law that the system of protection of PDOs and PGIs is essentially intended to assure consumers that agricultural products with a registered name have, because of their provenance from a particular geographical area, certain specific characteristics and, accordingly, offer a guarantee of quality due to their geographical provenance, with the aim of enabling agricultural operators to secure higher incomes in return for a genuine effort to improve quality, and of preventing improper use of those designations by third parties seeking to profit from the reputation which those products have acquired by their quality" (emphasis added)
>
> 17. Paragraph [35] of the decision in *Morbier* was applied at [56] of the CJEU's decision in the European Commission v Denmark (C-159/20) [2023] 1 CMLR 17.
>
> 18. Turning to the decisions in Aristoc and Consorzio, referred to in the grounds, in my view these do not even arguably assist in the interpretation of Article 6 of the Assimilated Regulation.

> 19. The Aristoc decision predates the first adoption of GI regulation in the European Union by nearly 40 years. Furthermore, the remarks relied upon from the opinions of their Lordships House in Consorzio, were made in the context of a decision to make a preliminary reference to the CJEU. Lord Hoffman referred only to the potential relevance of views expressed by the CJEU in relation to trademarks, and even then, the opinion was restricted to remarks made in relation to repackaging, and the point at which trademark rights become exhausted. I observe, however, that in its decision on the preliminary reference, the CJEU did not draw on the case law relating to trademarks (See [2003] 2 CMLR 21).
>
> 20. In this regard, it is also worthy of observation that (i) the antecedents of GIs/PDOs differ substantially from the antecedents of trademark rights and (ii) although there are similarities between trademarks and GI's, they are also fundamentally different. For example, a trademark belongs to a particular trader whereas a GI belongs to all traders whose products possess the relevant characteristics as indicated by the GI."

DEFRA's application to cross-appeal

28. DEFRA seek permission to cross-appeal against the aspects of the FTT's decision (a) as to when the legitimate interest test is to be determined, (b) that the range of people having a legitimate interest includes those who have a legitimate interest in promoting the interests of consumers, and (c) whether the FTT erred in law in concluding that Animal Equality had such a legitimate interest. Those three issues were dealt with on a 'rolled up' basis at the same hearing of Animal Equality's appeal on "true origin of the product".

29. The prompt for DEFRA to seek to cross-appeal was Animal Equality's argument in its grounds of appeal to the Upper Tribunal that if it was to succeed on its appeal to the Upper Tribunal about what is meant by "true origin of the product", on redeciding the appeal all other findings of the FTT ought to be preserved. That might suggest that consideration should first be given to the merits of the appeal on "true origin of the product", as if the appeal was to be dismissed on that ground the logically prior issues would not give rise to any material errors of law, even if they were made out. However, it was agreed before me at the hearing that the other three issues should first be decided because, at least on one analysis, if the FTT was wrong in law to have held that Animal Equality had a 'legitimate interest', that could be the end of the appeal.

Discussion and Conclusion

Time when legitimate interest is to be determined

30. The real difficulty with this ground is its lack of any obvious jurisdictional relevance to whether Animal Equality properly had an appeal before the FTT.

31. Putting this another way, the point *when* DEFRA should have determined, or in fact determined, whether a person or body has a "legitimate interest" has no relevance to whether the FTT erred in law in determining on an appeal whether the person or body has a legitimate interest, or to legality of the FTT's decision on any substantive issues arising on the appeal if the person or body has a

legitimate interest. Put shortly, neither the FTT's nor the Upper Tribunal's jurisdictional concern is with when DEFRA decided if person or body has a legitimate interest. It is whether the person or body has a legitimate interest, and not when DEFRA decided that issue, that goes to the FTT's appellate jurisdiction.

32. DEFRA moreover accept "*that whether legitimacy of interest is matter for determination at the [notice of opposition] or the [reasoned statement of opposition] stage is academic, as in either case the Appellant has a right of appeal…..and the FTT had jurisdiction to determine the Appellant's legitimate interest*".

33. These considerations alone are sufficient in my judgement to refuse DEFRA permission to appeal on the first of the preliminary issues. My comments below on this issue need to be read in this light.

34. The issue of <u>whether</u> the person or body has a legitimate interest is a necessary aspect of their ability to bring an appeal to the FTT, and it will be necessary for the FTT to answer whether the person or body had a legitimate interest at the relevant time if that is an issue on the appeal. This is because the right of appeal conferred by Annex 1B to EU Reg 1151 is in respect of a person who lodges a valid notice of opposition under Article 51(1).

35. Taking account of the express and limited definition of what constitutes a <u>valid</u> notice of opposition found in Annex 1B to the EU Reg 1151, on a narrow reading it may be argued that the right of appeal is conferred on any person who lodged a notice of opposition with the necessary Article 51(1) declaration, whether or not that person had a legitimate interest. However, that would render nugatory the legislative need under Article 51(2) of EU Reg 1151 for the natural or legal person who lodges the notice of opposition to have a "legitimate interest". The correct view, in my judgement (and for what it is worth), is therefore that, relevantly, it is only a natural or legal who has a legitimate interest who may lodge 'a notice of opposition' with the Secretary of State under Article 51. If that person has no legitimate interest then they cannot legally lodge a notice of opposition. In addition to this, for that 'notice of opposition' to be valid under the statutory scheme it has to contain the declaration as provided for in the second part of Article 51(1) of EU Reg 1151.

36. Given the wording of the third sentence in Article 51(1) – a notice of opposition that does not contain this declaration is void – it would appear the rest of the opposition procedure laid out in Article 51, including receipt of a reasoned statement of opposition, may not need to be carried out.

37. However, assuming the Article 51 steps continue (and they did in this case), Article 51(2) provides that if 'a notice of opposition' is lodged (which , per my view above, must, relevantly, be a notice made by a person or body with a legitimate interest), and that notice is followed within two months by "a reasoned statement of opposition", certain further steps then follow, including agreement as to the name of the product following consultations (per Articles 51(3) and 52(3)(a) of EU Reg 1151).

38. Importantly, although whether the person or body seeking to appeal has a right of appeal takes consideration back to the 'notice of opposition' stage, the Secretary of State's *decision* on whether to register the name in such a case (if the paragraph [35] above agreement has not been reached), and against which decision the appeal to the FTT is made, only arises after the (notice of opposition and) reasoned statement of opposition stage(s): per Article 52(3)(b). And, as stated, the right of appeal is against that Article 52(3)(b) decision: per Article 54a(1) of EU Reg 1151. The right of appeal Annex B of EU Reg 1151 is not, however, conferred on the person or body who makes the "reasoned statement of opposition". That could have been provided for in Annex B. Instead, the appeal is conferred on the person who lodges "a valid notice of opposition".

39. It is perhaps noteworthy that nothing within Article 51 about "reasoned statement of opposition", or in terms of whether that reasoned statement is "admissible" under one or both of Articles 10 and 21, expressly requires that the reasoned statement of opposition is made by a person or body with a legitimate interest. However, it would appear from the overall wording of Article 51, and in particular the consultation provisions in Article 51(3) and the Article 51(2) admissibility check on the reasoned statement of opposition only kicking in if the notice of opposition *is followed by* a reasoned statement of opposition, that the Regulation assumes the person providing the notice of opposition is the same person who follows this with a reasoned statement of opposition. In other words, that person remains someone who has a legitimate interest.

40. This perspective would seem to be supported by Article 9(1) and Annex III to EU Reg 668 (the Implementation Regulation). As noted above, Article 9(1) provides that "*[f]or the purposes of Article 51(2) of [EU Reg 1151] a reasoned statement of opposition shall be drawn up in accordance with the form set out in Annex III to this Regulation*". Annex III is titled "Reasoned Statement of Opposition" and Point 5 of that reasoned statement asks for "*a statement providing the legitimate interest of the opposition*".

41. DEFRA argue that the wording in Annex III to EU Reg 668 shows that the legitimate interest only needs to be shown and determined (by DEFRA) at the reasoned statement of opposition stage, and not at the earlier notice of opposition stage. That may (or may not) be so. But the lawfulness of *when* DEFRA should decide whether a person has a legitimate interest under EU Reg 1151 is not a concern of the FTT (or the Upper Tribunal). The FTT's concern is with whether the appellant is "*a person who lodges a valid notice of opposition in relation to the application under Article 51(1)*".

42. For the reasons I have endeavoured to give in paragraph 35 above, it cannot in my judgement (and insofar as this is a matter for me at all) be a correct or sensible reading of the statutory scheme that the right of appeal under Annex 1B of EU Reg 1151 is conferred on a person who has lodged a valid notice of opposition whether or not that person has a legitimate interest. If the opposite were the case then the next two preliminary issues would not arise and Animal Equality would have had a right of appeal even if they did not have a legitimate interest at the point when they lodged the valid notice of opposition.

43. To this extent therefore, whether a person has a legitimate interest has to be addressed by FTT, retrospectively, in respect of the person or body at the time they lodged a valid the notice of opposition. That is what Annex 1B of EU Reg 1151 requires. When DEFRA addressed that issue does not (save perhaps for forensic reasons) affect this jurisdictional issue for the FTT. However, given the terms of Articles 51(2) and (3) and 52(2), (3) and (4) of EU Reg 1151, the reality would seem to be that any adverse decision made by the Secretary of State under Article 52 must, per Article 52(4), provide notice of that decision and the appeal rights under Article 54a, and if those rights are exercised the FTT would need (where it is in issue) to determine if the person making the appeal had a legitimate interest when they lodged a valid notice of opposition.

44. The issue of when DEFRA should decide the legitimate interest of the person opposing the application was not, therefore, a matter for the FTT to determine. However, any error the FTT may have made on this issue (and my own, necessarily *obiter*, reasoning is more in line with the FTT's view) cannot amount to an arguable material error of law by the FTT as its concern was with *whether* Animal Equality had a legitimate interest and not with when DEFRA ought to have decided that issue.

Does "legitimate interest" as a matter of law include those who have a legitimate interest in promoting the interests of consumers?

45. DEFRA argues that the FTT adopted an overly broad test of "legitimate interest" at paragraph [68] of its decision so as to include those interested in promoting consumers' interests. DEFRA accepts "*that in order for a person to have a legitimate interest, it is not necessary for them to have <u>only</u> an economic interest*". This is a change of position by DEFRA from its argument before the FTT. Before the FTT, DEFRA argued 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*". The FTT considered this limited those with a legitimate interest in this case to the producers of salmon.

46. DEFRA now contends, in essence, that for an interest to be "legitimate" it has to relate to the PGI regime under EU Reg 1151, and that regime is about protecting the names of producers and not consumers. The purpose of EU Reg 1151 is not, it is argued, consumer protection, and any consumer interest is limited to interests which relate to the geographical area of the product. DEFRA argue that the FTT erred in law on this issue by failing to consider the purpose of EU Reg 1151 when finding that legitimate interest covers those who are interested in consumer protection.

47. It is important to emphasise that at this stage the argument and enquiry is not about whether the FTT erred in deciding that Animal Equality had a legitimate interest or was interested in protecting consumers. That arises under the next issue on which DEFRA are seeking permission to appeal. The issue at this stage is what is meant by the phrase "legitimate interest" in Article 51(1) of EU Reg 1151. That is an issue of law. Whether Animal Equality had such an interest (assuming the FTT did not misdirect itself in law as to the meaning and scope of

"legitimate interest") was an issue of fact and for the evaluative judgement of the FTT.

48. It is important not to blur these two issues. DEFRA's argument elided these two issues at times. For example, in its skeleton argument for the hearing it submitted:

> "49. For a person to have a legitimate interest sufficient to lodge a notice of opposition, they must therefore be legitimately concerned with whether the proposed amendment would be contrary to the purpose of Assimilated Regulation 1151/2012. It is not sufficient for a political campaigning group to claim that it represents the interests of consumers when the true motive for objecting is that it is opposed in principle to the product in question. Such a 'legitimate interest' has no true connection to Assimilated Regulation 1151/2012 and represents a '*hypothetical*' interest of the type held to be insufficient in Hengstenberg. There is a nexus between Assimilated Regulation 1151/2012 and consumers' interests (e.g. not being misled into purchasing a product by way of its name which does not have the value-added attributes of the legitimate product), and that is the extent to which consumer protection is a legitimate interest in respect of Assimilated Regulation 1151/2012. This is the type of legitimate interest that could exist in addition to a purely economic interest from an economic competitor.
>
> 50. If the FTT's approach is upheld, the reality is that the class of potential people with a legitimate interest would be unlimited. The requirement to have a 'legitimate interest' must in practice mean something, as otherwise it would not be included within Article 51. The practical consequences of the FTT's decision, however, are that any person may qualify as having a legitimate interest so long as they say that they are interested in ensuring that consumers are not misled or that they act for consumers. This in effect deprives the phrase 'legitimate interest' of any meaning, contrary to the purpose of including the requirement in the first place. The consequence of the FTT's approach would be that any political campaigning group would have sufficient interest to appeal against decisions made by the Secretary of State under Assimilated Regulation 1151/2012 or even apply to cancel a PGI under Article 54 on campaigning or political grounds.
>
> 51. That is particularly stark in the instant case where Animal Equality seeks to devalue the product by way of what it considers to be pejorative wording: it is not Animal Equality's case that the word "farmed" adds any value for the producers of Scottish Salmon. That position rather begs the question: if there is a requirement for (asserted) pejorative or even unnecessary wording to be included in a PGI, why would any producer apply for such a PGI? If the purpose is truly consumer protection in the manner asserted by Animal Equality, such a scheme would be mandatory, rather than on application by the producer of the product. If PGIs are unattractive to producers, they will not make such applications which would lead to a weakening of consumers' protection."

49. Much of what is said in these paragraphs is, in my judgement, no more than merits reargument. Moreover, insofar as the paragraph 50 of DEFRA's skeleton is raising a floodgates argument, and such a submission can properly inform what is intended by "*a… person having a legitimate interest*", it is based on a false premise . Manifestly it will not be sufficient for the person to simply "say" that they act for consumers. They will need to satisfy the Secretary of State, and on appeal

the FTT, that they have a legitimate interest. The FTT was, perhaps by a fine margin, satisfied that Animal Equality had legitimate interest, and unless the legal test it applied under that wording was wrong, it will not have erred in law because DEFRA considers that conclusion was wrong or wishes to reargue the merits of that decision.

50. Furthermore, if the DEFRAS's argument is the limited one of arguing that the FTT erred in law by failing to consider the purpose of EU Reg 1151, that argument is wholly without merit as the FTT's decision shows that it considered the purpose of EU Reg 1151: see paragraph 44 in particular of the FTT's decision.

51. DEFRA's argument instead has to be about what as a matter of law is meant by the phrase "legitimate interest" in the context of EU Reg 1151,and that the FTT (arguably) got that wrong.

52. Turning to that argument, I do not consider that it is properly arguable that the FTT erred in law in deciding that "a person having a legitimate interest" in Article 51 of EU Reg 1151 covers a person with an interest in promoting the interests of consumers. I agree with the FTT's analysis and conclusion.

53. I would accept that for the interest to be 'legitimate', the interest should relate to the matters with which EU Reg 1151 is concerned and the relevant application published under Article 50. However, I can identify no properly arguable basis for the phrase being given any narrower definition. The phrase "legitimate interest" is not further defined in EU Reg 1151. Nor is there any can clear indication elsewhere in EU Reg 1151 for "legitimate interest" to be confined to those with an economic interest. Indeed, the opposite is the case. The right of appeal provided for Annex 1B to EU Reg 1151 shows clearly that the appeal right covers both other producers or those affected economically ("a person marketing a product that is, or may, be affected") *as well as* a person who lodged a valid notice of opposition (i.e., per Article 51, the person with a legitimate interest). That shows beyond argument that the appeal right extends beyond those with an economic interest, because that category is already covered in the definition of those with a right of appeal and therefore "the person having a legitimate interest" must be intended to cover those who are not producers or otherwise affected economically.

54. Once it is accepted, as DEFRA now do, that a legitimate interest may extend beyond economic interests and can include interests in consumer protection, that is, it seems to me, an acceptance that the right of appeal extends to cover those with a legitimate interest in promoting the interests of consumers. Whether the person of body has such an interest is then for DEFRA or the FTT to decide as a matter of evidence.

55. Moreover, it is unarguable that this is what relevant CJEU case law has concluded. In *Hengstenberg GmbH & Co. KG v Spreewaldverein eV* (Case C-53/20) the CJEU held at paragraphs [45] and [51]:

> "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."

"51….the desire of the EU legislature to allow a wide range of persons to exercise the right of opposition in the national procedure for opposing the registration of a protected geographical indication or in the procedure applicable to applications for a non-minor amendment to the specification of a product benefiting from such an indication."

56. The CJEU in *Henstenberg* went on in paragraph [52] to state that:

> "……it should be emphasised that the existence of the right to lodge an opposition to the registration of a protected geographical indication or to a non-minor amendment of the specification of a product benefiting from such an indication must be examined on a case-by-case basis, depending on the specific characteristics of each situation. Furthermore, in order to prevent an abuse of that right, such an examination must make it possible to ascertain specifically whether the 'legitimate interest' invoked by a natural or legal person is not unlikely or hypothetical."

57. This is not the language of some *a priori* exclusion of interests. And the FTT assessed on the arguments and evidence before it what the nature of Animal Equality's interest was in Salmon Scotland's application and DEFRA's decision on it.

58. In paragraph [53] of *Hengstenberg* the CJEU then applied the considerations it had arrived at above to the first question referred to it by the national court. It was in that context that the CJEU said:

> ".….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."

This, however, as the FTT found, was no more than the CJEU dealing with the specific case before it. The CJEU was not here laying down a legal principle that the person having a legitimate interest must be a person affected economically. In any event, DEFRA is no longer arguing for such a restriction and it would be an untenable one for the reasons given above.

59. I was taken to other case law (for example, paragraph [38] of the ECJ's decision in *Scotch Whisky Association v Klotz* (Case C-44/17) [2018] Bus LR 1466), but none of it added to, or detracted from, the principled approach to legitimate

interest laid down in *Hengstenberg*. I was also referred to various parts of the recitals and Articles in EU Reg 1151 as supporting the rival contentions on whether an interest is legitimate. I need say no more about that tour of the regulation than that I agree with the FTT's view (see paragraphs 70 and 71 of its decision) that it takes matters no further one way or the other.

Did the FTT err in law in deciding Animal Equality had a legitimate (consumer protection/promotion) interest?

60. Nor is it properly arguable that the FTT erred in law in concluding on the arguments and evidence before it that Animal Equality had a legitimate interest. DEFRA's argument here is no more than merits reargument because it does not consider Animal Equality ever had a legitimate interest. Moreover, it is a merits reargumernt based on argument not taken before the FTT. For example, its argument that Animal Equality is a political campaigning group whose true motive for objecting is that they are opposed in principle to the product in question. No such argument was taken before the FTT and therefore, unsurprisingly, it is an argument the FTT never evaluated. DEFRA did not argue before the FTT that Animal Equality did not have a genuine interest in consumer protection. This is because DEFRAS's case before the FTT was that having a legitimate interest was limited to having an economic interest and Animal Equality did not have an economic interest. It is not arguable that the FTT erred in law in not answering an issue which it was never addressed on.

61. **I therefore refuse DEFRA permission to appeal against the FTT's decision**.

62. This then leaves Animal Equality's appeal and what in law is covered by "true origin of the product"

Does "true origin of the product" include methods of production in addition to the country or region of the product?

63. I dismiss the appeal on the sole ground of appeal before me. This is because, in essence, I agree with the FTT's analysis. I further respectfully agree with the FTT Chamber President's comments when granting Animal Equality permission to appeal.

64. The "true origin of the product" is limited to its geographical origin and does not extend to the methods of production of the product. The word "origin" here properly understood and in the context of EU Regulation 1151 mean geographical origin only.

65. The high point of Animal Equality's argument is that the phrase "true origin of the product" does not include the word "geographical", and therefore true origin may cover something in addition to the true geographical origin of the product. This is not a persuasive argument. Even reading the phrase in isolation still requires identification of the (true) *origin* of the product. The ordinary or literal meaning of "origin" is from <u>where</u> something comes, is derived or begins. In addition, it is

difficult to discern on the language why the methods of producing the product are concerned with the origin of the product.

66. Placing the phrase on its statutory context dos not alter this meaning of the phrase. I need not lengthen this decision by referring unnecessarily to recitals to EU Reg 1151. However, the focus of recital (2) is on demand for agricultural products or foodstuffs with identifiable specific characteristics, in particular those linked "*to their geographical origin*" and recital (17) speaks in terms of designations of origin and geographical indications being limited "*to products for which an intrinsic link exists between product or foodstuff characteristics and geographical origin*" (my underlining). Recital (18) reads:

> "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." (my underlining)

67. Recital (8) refers to the need to prevent labelling that may confuse or mislead consumers. However, in context that is labelling about, for example, the geographical origin of the product and thus, per recital (18), enabling consumers to make more informed purchasing choices. The recitals do not, therefore, obviously support EU Reg 1151 addressing consumer understanding (and not being misled) beyond the specific areas with which the regulation is concerned: e.g., an agricultural product or foodstuff with an identifiable specific characteristic linked to its geographical origin.

68. Turning then to the body of EU Reg 1151, Article 4 sets the Objective as being establishing a scheme for protected designations of origin and protected geographical indications "*in order to help producers of products linked to a geographical area*" (my underlining). The means by which this object of the scheme is met cannot alter this objective. Therefore Article 4(c)'s reference to "*providing clear information on the value-adding attributes of the product*" has to be read within the context of the objective of the scheme. Article 4(c) is not about providing clear information to consumers about other aspects of the product. The "value adding attributes" are necessarily those linked to the geographical area.

69. This perspective is supported by Article 4(1) of EU Reg 668 as it provides, consistently, that:

> "**Article 4 Proof of origin**
> 1.
> The product specification for a protected designation of origin or a protected geographical indication shall identify the procedures which operators must have in place as regards the proof of origin concerning the product, raw materials, feed and other items that, according to the product specification, are required to come from the defined geographical area." (my underlining added for emphasis)

70. I have set out the terms of Article 5(2) at paragraph 10 above, but it is worth repeating:

> "**5(2)** For the purpose of this Regulation, 'geographical indication' is a name which identifies a product:
> (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 take place in the defined geographical area."

71. Given the opening words of Article 5(2), Article 6(2) of EU Reg 1151 has to be read as taking in this Article 5(2) definition of "geographical indication". It provides that a *name of a product* may not be registered as a "geographical indication", if, inter alia (and relevant to this appeal), that geographical indication product name is likely to mislead consumers as to *the true origin of the product*. Read properly in context, as the FTT held, this can only mean the true <u>geographical</u> origin because that is what the "geographical indication" product name is all about. It seems to me, with respect, that this is obvious in terms of the construction (purposive or otherwise) of Article 6(2). To read "true origin of the product" otherwise and as being more extensive in scope removes the clear connection between Articles 5(2) and 6(2) and the (correct) focus of those provisions. That in essence is what the FTT decided and it was right to do so.

72. I add that, contrary to Animal Equality's argument, Article 6(3) in EU Reg 1151 does not provide a material contrast with the language of Article 6(2). Article 6(3)'s language of "*actual territory, region or place of origin of the products in question is concerned*" remains focused on the geographical origin of the product in question.

73. Nor is there anything in the case law that points away from this (obvious) construction of "true origin of the product" in Article 6(2). Cases such as *Scotch Whisky Association v Klotz* (at paragraph [37]) and European Commission v Denmark (Case C-159/20) (at paragraph [56]), contain statements consistent with the objective of the statutory scheme found in Article 4 of EU Reg 1151. Neither case addresses directly the meaning of "true origin of the product", but neither do they lend any support for Animal Equality's construction of that phrase.

74. The case law which Animal Equality argues supports its interpretation of "true origin of the product" do not point decisively or persuasively away from the meaning the FTT ascribed to that phrase either, and none of the cases lead to the conclusion that "true origin of the product" extends to the methods of producing the product.

75. *Aristoc Ltd v Rysta Limited* [1945] AC 68 significantly pre-dates the United Kingdom's membership of the European Economic Community and the adoption of protected geographical indicators within the EU, and in any event was not about geography.

76. *Syndicat interprofessionnel de défense du fromage Morbier v Société Fromagère du Livradois SAS* (Case C-490/19) was about Article 13(1)(d) of EU Reg 1151

(and the same numbered Article in Regulation No 510/2006). That Article 13(1) provides as follows:

> "**Article 13 Protection**
> 1.
> Registered names shall be protected against:
> (a) any direct or indirect commercial use of a registered name in respect of products not covered by the registration where those products are comparable to the products registered under that name or where using the name exploits the reputation of the protected name, including when those products are used as an ingredient;
> (b) any misuse, imitation or evocation, even if the true origin of the products or services is indicated or if the protected name is translated or accompanied by an expression such as 'style', 'type', 'method', 'as produced in', 'imitation' or similar, including when those products are used as an ingredient;
> (c) any other false or misleading indication as to the provenance, origin, nature or essential qualities of the product that is used on the inner or outer packaging, advertising material or documents relating to the product concerned, and the packing of the product in a container liable to convey a false impression as to its origin;
> (d) any other practice liable to mislead the consumer as to the true origin of the product."

77. In paragraph [52] of the Advocate General's Opinion in *Morbier* the AG stated:

> "52….it is important to note, first, that, as is apparent from the expression 'practice liable' used in Article 13(1)(d) of Regulation….No 1151/2012, that provision requires only proof of the existence of a 'risk' that the consumer could be misled by the disputed practice and, secondly, that the risk of the consumer being misled must relate to the 'origin' of the product, which is to be understood in the sense of both 'geographical origin' and 'production origin', since the consumer must be misled into thinking, mistakenly, that the product comes from the geographical area referred to by the registered name <u>or that it was made using a production method covered by the registered name</u>." (my underlining added for emphasis).

78. Importantly, however, the ECJ in its decision on the reference in *Morbier* did not adopt this aspect of the AG's Opinion. What the ECJ held was:

> "34 Article 13(1)(d) of Regulation No 510/2006 and the same article of Regulation No 1151/2012 meet the objectives set out in recitals (4) and (6) of Regulation No 510/2006 and in recitals (18) and (29) and article 4 of Regulation No 1151/2012, from which it is apparent that the system of protection of PDOs and protected geographical indications (PGIs) is intended, in particular, to provide consumers with clear information on the origin and properties of the product, so as to enable them to make more informed purchasing choices, and to prevent practices which may mislead them.
>
> 35 More generally, it is clear from the court's case law that the system of protection of PDOs and PGIs is essentially intended to assure consumers that agricultural products with a registered name have, <u>because of their provenance from a particular geographical area</u>, certain specific characteristics and, accordingly, offer a guarantee of quality due to their geographical provenance,

> with the aim of enabling agricultural operators to secure higher incomes in return for a genuine effort to improve quality, and of preventing improper use of those designations by third parties seeking to profit from the reputation which those products have acquired by their quality." (the underlining is mine and has been added for emphasis).

79. I do not read the ECJ's use of "properties of the product" in paragraph [34] of *Morbier* as taking those properties away from the value-added properties associated with the product because of its geographical origin.

80. The last case on which Animal Equality rely is *Severi v Regione Emilia-Romagna* (Case C-446/07) [2009] ETMR 64 and remarks made by the Advocate General in that case at paragraph [65] of her Opinion. That paragraph in the Opinion reads:

> "The national court should also have regard to the presentation of the packaging, in particular the positioning and size of a geographical name and the description of the place of manufacture. Article 3(1) (8) of Directive 2000/13 states that, subject to the exceptions also contained within that directive, it is compulsory to indicate on the labelling of foodstuffs the particulars of the origin or provenance where failure to give such particulars might mislead the consumer to a material degree as to the true origin or provenance of the foodstuff. In practice, this must mean that the labelling—even if the geographical name is intended to advertise the characteristics of a foodstuff—must ''tell the whole truth'' so as not to mislead the reasonably well-informed, observant and circumspect consumer."

81. Nothing in these general remarks of the Advocate General as to what the national court should have regard in terms of the packaging of the product there in issue (Italian salami) is deciding what is meant by "true origin of the product" in Article 6(2) of EU Reg 1151.

82. There is therefore no binding authority of the ECJ./CJEU that supports Animal Equalities argument or any case law that undermines the construction of "true origin of the product" arrived at by the FTT. In my judgement, that is the clear and correct construction.

83. For all these reasons, Animal Equality's appeal is dismissed.

Stewart Wright
Judge of the Upper Tribunal

Authorised for issue on 31 August 2026