

Press and Information Division

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Judgment in Case C-216/01

Budějovický Budvar, národní podnik v Rudolph Ammersin GmbH

**THE ABSOLUTE PROTECTION WHICH THE AUSTRO-CZECH
BILATERAL CONVENTION ACCORDS TO THE NAME "BUD" FOR BEER
PRODUCED AND EXPORTED BY THE CZECH BREWERY IS SUBJECT
TO THE CONDITION THAT IT DIRECTLY OR INDIRECTLY
DESIGNATES A REGION OR A PLACE IN THE CZECH REPUBLIC**

*If the bilateral convention predates the accession of the Republic of Austria to the
European Union, the obligations under that convention remain binding even if they
are contrary to provisions of the Community treaty*

The Budějovický Budvar brewery (in German, Budweiser Budvar), established in the town of České Budějovice (in German, Budweis) in the Czech Republic, produces and exports beer under the names of "Budějovický Budvar" and "Budweiser Budvar". In particular, it exports a beer called "Budweiser Budvar" to Austria. In 1976 that Member State concluded a bilateral convention with the former Czechoslovak Socialist Republic to protect geographic indications of origin of regional food products in the two neighbouring countries. In that convention, Austria granted such protection to the designation "Bud".

In 1999 the Budějovický Budvar brewery requested the Austrian courts to prohibit the Austrian company Ammersin from marketing beer produced by the brewery Anheuser-Busch Inc, established in St Louis (United States of America), under the name "American Bud", inter alia on the ground that under the bilateral convention between Austria and the Czech Republic, the name "Bud" is reserved for Czech beer.

The Vienna Handelsgericht (Austria) asked the Court of Justice whether Regulation No 2081/92 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs or the provisions of the EC Treaty relating to

the free movement of goods preclude the application of a provision of a bilateral convention between a Member State (the Republic of Austria) and a non-member country (the Czech Republic), under which an indication such as "Bud" is accorded protection irrespective of whether there is any risk of consumers being misled, and the import of a product lawfully marketed in another Member State may thus be prevented.

The Court held that Regulation No 2081/92 does not preclude a bilateral convention under which a simple and indirect indication of origin from a non-member country is accorded protection in a Member State, irrespective of whether there is any risk of consumers being misled, and the import into that Member State of a product lawfully marketed in another Member State may be prevented. A simple and indirect geographical indication of origin means that there is no direct link between a particular quality and the specific geographic origin of the product but the name, while not in itself a geographic name, is nevertheless capable of informing the consumer that the product comes from a particular place, region or country.

On the other hand, prohibition of the use of such a geographic name for goods from non-member countries which are lawfully marketed in other Member States is likely to make their marketing more difficult and thus to **constitute a restriction on the free movement of goods**. It was necessary to examine whether that restriction on the free movement of goods could, however, be justified under Community law.

In line with its case-law, the Court found that the aim of the bilateral convention, which contains a prohibition on the use in one State of a geographic name protected in another State, is to ensure fair competition. It therefore falls within the sphere of the protection of industrial and commercial property provided that the name in question has not, either at the time of the entry into force of that convention or subsequently, become generic in the State of origin.

If the findings of the national court show that, in fact, according to the prevailing perceptions in the Czech Republic the name "Bud" designates a region or a place in the Czech Republic and must be protected under the scheme of protection for industrial and commercial property, Community law does not preclude such protection from being extended to the territory of Austria. On the other hand, if "Bud" does not either directly or indirectly designate any part of the territory of the Czech Republic, its absolute protection constitutes an obstacle to the free movement of goods and cannot be justified.

Finally, as regards Austria's international obligations, the Court stated that it is for the national court to check whether at the date of the accession of the Republic of Austria to the European Union (1 January 1995), that State remained bound to the Czech Republic under the bilateral convention of 1976, notwithstanding the break-up of Czechoslovakia – the contracting party to the bilateral convention and the predecessor to the Czech Republic – on 1 January 1993: if that were the case, the bilateral convention could be regarded as predating that accession, with the result that the obligations under the bilateral convention remain binding even where they are contrary to the provisions of the Treaty relating to the free movement of goods. Pending the elimination of any incompatibilities between a bilateral convention

predating accession to the European Union and the Community Treaty, the national courts may continue to apply the provisions of the bilateral convention.

N.B. Another case between the Budějovický Budvar and Anheuser-Busch Inc breweries is currently pending before the Court. That case (C-245/02) was referred by the Supreme Court of Finland and the written procedure has now closed.

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Available languages: DE, FR, EN, ES, IT, NL

The full text of the judgment can be found on the internet (www.curia.eu.int).

In principle it will be available from midday CET on the day of delivery.

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