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## It's All About the Pasta: Protectionism, Liberalization, and the Challenge for Quality and Sustainability of Made in Italy

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**IT'S ALL ABOUT THE PASTA:  
PROTECTIONISM, LIBERALIZATION, AND THE CHALLENGE  
FOR QUALITY AND SUSTAINABILITY OF MADE IN ITALY**

*Fernanda G. Nicola\* and Gino Scaccia\*\**

**ABSTRACT**

This article traces the evolution of the regulation of Italian pasta from the beginning of the twentieth century until today. We show how during Fascism the production of wheat became a national battle, and pasta turned out to be the traditional product promoted by Mussolini's propaganda. During the 1960s, new regulations of Italian pasta made exclusively with durum wheat contributed to strengthening the Italian industry during the nation's economic boom. Spaghetti became a global symbol of the *Dolce Vita*, linking Italian pasta to a fashionable and aesthetically desirable way of life. The Italian Parliament adopted a law that obligated the production of dried pasta to be made exclusively with durum wheat, while fresh pasta was made by a mixture of soft and hard wheat. With the establishment of the European Community Customs Union in 1968, followed by the plan to establish a single market in the late 1980s, Italian pasta regulations restricting the labeling of such pasta to durum wheat products were soon caught by European authorities as a protectionist measure. The struggle for the liberalization of Italian pasta took place in the late 1980s before the European Court of Justice, followed by the Italian Constitutional Court. Through re-regulation by the Italian Parliament, the protectionist legislation was set aside, allowing for the arrival of soft wheat pasta from Northern Europe into the domestic market. Despite fears that the consumption of durum wheat pasta would be fatally displaced, our article shows how a confluence of new regulatory measures ranging from labeling, geographical indicators, antitrust, and consumer protection legislation together with EU tariff barriers towards third countries, enabled Italian pasta producers from Southern Italy to thrive rather than disappear. Additionally, the flourishing of a Slow Food culture and attention to local production went hand-in-hand with world-wide

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sustainability goals of pasta Made in Italy that is praised for its health, affordability, and environmental benefits. Pasta containing durum wheat remains the primary product consumed by Italians and exported abroad. This steady demand has revamped old and new local production allowing small pasta companies to prosper through the support of the Italian government and its ongoing struggles with Brussels. However, whether such economic development has a direct impact on the Mezzogiorno remains fuzzier, especially through the displacement of informal economies and new forms of competition coming from soft wheat and grains such as spelt and barley that might change consumer demand and create new challenges for local industries.

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## I. INTRODUCTION: NATIONALISM AND TRADITION IN ITALIAN PASTA

*“The Macaroni is ready, and we will eat it.”*<sup>1</sup>

Addressing the law and regulation of food from a national perspective is not difficult because certain foods convey a deep cultural identity that is a central part of the imagery and becomes the taste of a nation.<sup>2</sup> Such national identities often link a particular food to the territorial community it is rooted in. Food, in fact, can be included within what anthropologists call *material culture*,<sup>3</sup> meaning the set of knowledge and practices concerning the needs and material conduct of human beings,<sup>4</sup> since it results from “selection and creative manipulation of Nature by a community established in a territory.”<sup>5</sup> At times, the linkage between typical food products and the cultural heritage of a territory appears to geographically manifest, like in the case of the character of wines and the relevance of *terroir*.<sup>6</sup> In others, however, as is the case of pasta in Italian culture, there are particular moments in time when spaghetti, called in 1891 by Pellegrino Artusi “*pasta asciutta*” or dry pasta as opposed to soups,<sup>7</sup> made predominantly by durum wheat, has been socially constructed as a national product. While pasta in the form of spaghetti gained popularity in the twentieth century, the first reference to dry pasta came from the Talmud in the fifth century, and it was later introduced in Sicily with the arrival of the Berbers to the Italian island from North Africa.

The Arabs introduced the technique of drying dough for health and transportation reasons, and dried pasta recipes appeared in the Arab world in the ninth century.<sup>8</sup> In this period, pasta manufacturing took place in western

<sup>1</sup> See ALBERTO CAPATTI & MASSIMO MONTANARI, *ITALIAN CUISINE: A CULTURAL HISTORY* 72–78 (Aine O’Healy trans., 2003).

<sup>2</sup> See generally BENEDICT ANDERSON, *IMAGINED COMMUNITIES: REFLECTIONS ON THE ORIGIN AND SPREAD OF NATIONALISM* (1983).

<sup>3</sup> As opposed to *ideal* or thought-culture.

<sup>4</sup> See Annalisa Cicerchia, *Cultura, cibo e paesaggio: lo sguardo economico*, *ECONOMIA DELLA CULTURA* 5, 5 (2010).

<sup>5</sup> See Francesca Polacchini, *Il diritto al cibo come diritto (anche) culturale*, 1 *AMBIENTE, ENERGIA, ALIMENTAZIONE* 169, 172 (2016). The Mediterranean Diet has been recognized by UNESCO as a cultural heritage of humanity protected through Cyprus, Croatia, Spain, Greece, Italy, Morocco, and Portugal. See *Mediterranean Diet*, UNESCO (2013), <https://ich.unesco.org/en/RL/mediterranean-diet-00884>.

<sup>6</sup> See generally AMY B. TRUBEK, *THE TASTE OF PLACE: A CULTURAL JOURNEY INTO TERROIR* (2009).

<sup>7</sup> See KARIMA MOYER-NOCCHI, *CHEWING THE FAT: AN ORAL HISTORY OF ITALIAN FOODWAYS FROM FASCISM TO DOLCE VITA* 199 (2015).

<sup>8</sup> See CAPATTI & MONTANARI, *supra* note 1, at 51.

Sicily, where the Arab culture was stronger. Not surprisingly, in the seventh century, Sicily became the larger documented producer of exports going through Calabria to other Catholic countries and by the sea to Muslim counties in North Africa.<sup>9</sup> Tracing the origins of spaghetti and dry pasta shows how this product reflects the encounter among Semitic, Arabic, and Roman traditions. In the Middle Ages, the Maritimes Republics, especially in Genoa and Venice, were responsible for spreading the Sicilian pasta in Northern Europe and were also the importers of the prized Taganrog wheat from Russia.<sup>10</sup> At the time, this was considered an expensive product unavailable to the poor as bread. However, a shift took place in the seventeenth century when pasta became a central product due to a political and economic crisis leading to the shortage of meat.<sup>11</sup> In the meantime, industrial production through technological improvements such as an iron press led to the creation of pasta factories in Venice and Naples, where the Neapolitans were soon called Macaroni eaters. Not surprisingly, at the time of the Italian unification, the Savoy diplomat Count Cavour, who was behind the geopolitics making the Union of the peninsula possible, realized that he could conquer Sicily but not Naples. The Bourbons were not ready to give it up, and, as Cavour explained it famously, “Clearly the Macaroni isn’t ready yet.”<sup>12</sup> But the success of the Garibaldi expedition and the unification of Italy during the glorious Risorgimento era, which was essentially a takeover by the Northern Savoy Kingdom of the Southern and Northeastern territories controlled by the French, the Austrians, or the Pope, was reflected by the fact that “the Mediterranean blanket, of which macaroni constitutes an essential part, is drawn further towards the North.”<sup>13</sup>

Today, pasta has become an integral part of “Italian Cuisine” that is acclaimed on the international stage, and it has created an “entire industry of

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<sup>9</sup> *Id.* at 52.

<sup>10</sup> See MOYER-NOCCHI, *supra* note 7, at 200.

<sup>11</sup> See CAPATTI & MONTANARI, *supra* note 1, at 57.

<sup>12</sup> However, *maccheroni* are not just an emblem of Naples, they have even played a part in its history, such as at the dinner organized by Eugenie de Montijo, Empress of France and wife of Napoleon III. This was attended by Prime Minister Cavour’s secretary Costantino Nigra who had been sent to Paris to discuss an alliance between Sardinia and France against Austria and so complete the unification of Italy and, in a sort of theatrical sketch, the court chamberlain dressed as Cavour sat at a table laid with various dishes alluding to the political situation of the different Italian regions: gorgonzola (Lombardy), parmesan (duchy of Parma), mortadella sausage (Emilia) and oranges (Sicily). The chamberlain ate everything but refused the plate of *maccheroni* saying he had had enough. Nigra reported the scene to Prime Minister Cavour who immediately understood that France was prepared to give up Sicily but not Naples. “Clearly the pasta isn’t ready yet,” replied Cavour and sent the army to conquer the rest of the south, and, when it reached Naples, he announced, “The pasta is now ready and we are going to eat it.” Sergio Gradogna, *Paccheri and Maccheroni: Neapolitan Gold*, CHARME, <https://www.charmenapoli.it/en/sapori/pasta-di-gragnano-paccheri-maccheroni-loro-di-napoli/> (last visited Mar. 18, 2020).

<sup>13</sup> See CAPATTI & MONTANARI, *supra* note 1, at 57.

gastronomic nostalgia” around it.<sup>14</sup> This is because pasta is something more than food but rather a traditional way of life represented by three central qualities: cleanliness, quality, and fair price.<sup>15</sup> In fact, a spaghetti dish cannot be eaten in a sandwich or while moving or running, and it is cooked in a safe manner by boiling water and using dry pasta. It takes minutes to cook and needs dishes and cutlery to be consumed. It is supposed to be tasted in a restful place where you stay for a while, possibly with friends and a glass of good wine. It calls for human relations, since usually you do not cook pasta if you are alone and in a hurry. It is affordable for a large family or to invite guests over for dinner. In sum: pasta definitely means a culture of eating. This is why pasta is much more than food. It is the epitome of the Italian lifestyle made up of joy, conviviality, hospitality, and pleasure,<sup>16</sup> that can be traced back to Roman times when banquets were a moment for festivity as well as tryouts for new types of foods and flavors.<sup>17</sup>

Moreover, pasta is an easily accessed and relatively cheap food. This is why, in Italy, it has been intensively regulated and protected over the decades. Since the foundation of the Italian state, going through Fascism and the economic boom era up to the Eighties, protectionism has been the rule. To solidify the economy of the Italian state, Benito Mussolini’s Fascist regime used national and political justifications to keep the price of pasta under control. In so doing, the Fascist regime supported national production and traditional cultivations, preserving the taste and quality of such a beloved meal. The pasta religion even had its own professional priests: the new orthodoxy of the so-called “Tortellino Learned Confraternity.”<sup>18</sup>

It is no surprise that since the 1960s, when the Italian lifestyle globally known as the “Dolce vita” was on the rise, the Italian Parliament claimed the right to name and label a product as “pasta” only if it was made of durum wheat.<sup>19</sup> The legislation, commonly referred to as the “pasta purity” legislation, was unsuccessfully challenged twice before the Italian Constitutional Court (ICC). The constitutional judges, in fact, though candidly admitting the protectionist purpose of the legislation at stake,

14 DI RENZO, *Mangiare l'autentico. Cibo e gastronomia tra revivalismi folklorici e industria della nostalgia*, Universitalia (2012).

15 MOYER-NOCCHI, *supra* note 7, at 203.

16 In inscribing the Mediterranean Diet, of which pasta is a cornerstone, in the “Representative List of the Intangible Cultural Heritage of Humanity,” UNESCO pointed out that it “emphasizes values of hospitality, neighborliness, intercultural dialogue and creativity.” *See Mediterranean Diet, supra* note 5.

17 *See* Francesca Bezzone, *The History of Italian Cuisine I*, LIFE IN ITALY (Oct. 30, 2019), <https://www.lifeinitaly.com/history-of-food/the-history-of-italian-cuisine-i>.

18 *See generally* DOTTA CONFRATERNITA DEL TORTELLINO, [www.confraternitadelortellino.it](http://www.confraternitadelortellino.it).

19 Legge 4 luglio 1967, n.580, G.U. July 29, 1967, n.189 (It.).

endorsed the political choice, supporting it with further constitutional grounds.<sup>20</sup>

In the 1980s, Italian protectionist legislation on pasta started to be viewed, even by domestic judges, in the larger scenario of the European single market and confronted with the principles of free movement of goods and competition law enshrined in the European Economic Community Treaty.<sup>21</sup> The “pasta purity” legislation was challenged before the Court of Justice (ECJ), which, in the landmark *Zoni* judgment (1988), declared it was at odds with the free circulations of goods in the common market.<sup>22</sup> In the same year in *Drei Glocken*, the well-known opinion of Advocate General Federico Mancini was seen as a desperate protectionist attempt to save the Italian market from being inundated from low-quality pasta made of soft rather than durum wheat.<sup>23</sup> Production and marketing of pasta were then liberalized all across Europe. Restrictions on using some ingredients when manufacturing pasta, however, continued to be imposed on producers based in Italy, since the ECJ did not oblige the Italian legislature to repeal the pasta law.<sup>24</sup> This restriction caused reverse discrimination against Italian producers, which the ICC declared unconstitutional in 1997, though—for mere procedural reasons—with regard to only “special pastas,” which added ingredients other than semolina and wheat.<sup>25</sup>

As a result, the obligation that producers established in Italy only use durum wheat for manufacturing dry pasta has been maintained even in more recent legislation on pasta.<sup>26</sup> Despite this current patent discrimination of Italian producers versus European ones, no constitutional issues have arisen since. The reason for these acquiesces are mainly economic, cultural, and linked to health reasons. Liberalization of importation of common-wheat-made pasta following the ECJ’s judgments in *Zoni* and *Drei Glocken*, indeed, caused neither the invasion of foreign pasta without durum wheat as feared,<sup>27</sup>

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<sup>20</sup> Corte Cost., 22 giugno 1971, n. 137, Foro it. 1971, I, 1766 (It.); Corte Cost., 15 febbraio 1980, n. 20, Foro it. 1980, I, 901 (It.).

<sup>21</sup> See Treaty Establishing the European Economic Community, arts. 30, 36, March 25, 1957, 298 U.N.T.S. 11, <http://data.europa.eu/eli/treaty/teec/sign> [hereinafter Treaty of Rome (EEC)].

<sup>22</sup> Case 90/86, Criminal Proceedings Against Zoni, 1988 E.C.R. 04285.

<sup>23</sup> Case 407/85, *Drei Glocken v. USL Centro-Sud*, 1988 E.C.R. 04233.

<sup>24</sup> See *Zoni*, 1988 E.C.R. ¶ 25.

<sup>25</sup> Corte Cost., 30 dicembre 1997, n. 443, Foro it. 1998, I, 697, 698–99 (It.).

<sup>26</sup> See Decreto Presidente della Repubblica 9 febbraio 2001, n.187, G.U. May 22, 2001, n.117 (It.); Decreto Presidente della Repubblica 5 marzo 2013, n.41, G.U. Apr. 23, 2013, n.95 (It.).

<sup>27</sup> See Massimo Giannini, *La pasta di grano tenero invaderà presto l'Italia se la CEE avrà ragione*, LA REPUBBLICA (Feb. 14, 1988), <https://ricerca.repubblica.it/repubblica/archivio/repubblica/1988/02/14/la-pasta-di-grano-tenero-invadere-presto.html?ref=search>.

nor a noteworthy decline of production of durum wheat in Italy. Contrarily, the Italian internal demand added to the growing weight of export on total sales<sup>28</sup> and has been absorbing all the internal production of durum wheat pasta. This requires a significant import of durum, especially from Canada, United States, Turkey, Kazakhstan, and Ukraine. Therefore, the Italian pasta industry is doing quite well and even favored from the EU restrictions to non-European products that could compete with its durum wheat pasta.<sup>29</sup> “Fortress Europe” that initially liberalized pasta production through the Union has in the long term served as a way to protect Italian durum wheat production inside its custom Union.<sup>30</sup>

The resistance of durum wheat pasta to the alleged assaults of cheaper soft pasta from inside the European single market is not surprising. On the one hand, the “quality labels” introduced at the European and domestic level have helped consumers make better-informed choices, acting *de facto* as advertising tools for national quality manufacturing. On the other, the spread of cultural sensitiveness for a healthier and environment-attentive way of life has made durum-wheat-made pasta a key component of many of the world’s healthy eating patterns of the scientifically proven “Mediterranean Diet.”<sup>31</sup> Second, the slow-food movement has linked healthy habits to local productions and traditions, leading to the use of the legal system to create geographical indicators to protect local productions. Thirty years after the ECJ rulings, worldwide *gourmet* consumers are aware of the high quality of durum wheat pasta.<sup>32</sup> In 2013, Gragnano D.O.P. pasta, one of the most

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<sup>28</sup> In the year 2018, 56% of the Italian production of pasta had been sold abroad. *Pasta Is Italy's Best Export Product*, CDE NEWS (May 16, 2018), <https://corporatedispatch.com/pasta-is-italys-best-export-product/>.

<sup>29</sup> A notable example is Turkey, whose production of pasta grew by 77% in the last five years, going from 850 tons to 1.5 million tons. See also Delia Maria Sebelin, *Pasta Italian Leadership Threatened by Competitors*, PRO. PASTA, July–Sept. 2018, at 21, 21, <http://www.professionalpasta.it/pasta-italian-leadership-threatened-by-competitors/>.

<sup>30</sup> See generally Brian T. Hanson, *What Happened to Fortress Europe?: External Trade Policy Liberalization in the European Union*, 52 INT'L ORG. 55 (1998).

<sup>31</sup> Rosella Saulle & Giuseppe La Torre, *The Mediterranean Diet, Recognized by UNESCO as a Cultural Heritage of Humanity*, 7 IT. J. PUB. HEALTH 414, 414 (2010) (“The term ‘Mediterranean Diet’ was coined, [] by Americans in the early ’60s.”).

This diet is based on the following dietetic pattern: a) high intake of vegetables, pulses (beans, lentils etc.), fruit and cereals; b) medium-high intake of fish; c) low intake of meat and saturated fat; d) high intake of unsaturated fat (particularly olive oil); e) medium-low intake of dairy products (mainly yogurt and cheese); f) a moderate intake of wine.

*Id.* The effects of this diet on health are analyzed in Annalisa Ricco, Giacomina Chiaradia, Marianonietta Piscitelli & Giuseppe La Torre, *The Effects of Mediterranean Diet on Cardiovascular Diseases: A Systematic Review*, 4 IT. J. PUB. HEALTH 119 (2007).

<sup>32</sup> See Nick Marino, *One Italian's Take on Classic Spaghetti al Pomodoro*, N.Y. TIMES (July 16, 2019), <https://www.nytimes.com/2019/07/16/t-magazine/marie-louise-scio-spaghetti-pomodoro.html>

famous durum wheat pastas, acquired additional protection through a geographical indicator. Additionally, there is a certified procedure for pasta *connaisseurs* such as *trafilatura al bronzo*, or bronze wire drawing, invented in 1917 and allowed for different pasta shapes that “leaves the pasta with a rough surface that sauces more readily cling to.”<sup>33</sup> Finally, protecting durum wheat pasta production antitrust and consumer protection legislation on Unfair Practices has allowed Italian producers to go after foreign competitors using deceptive trademark practices such as portraying the Pisa tower on the packaging or the pasta.

Looking back, Advocate General G. Federico Mancini’s opinion in *Zoni* and *Drei Glocken* appears *avant-garde*, especially when anticipating the impact of durum wheat pasta on consumer health and development or cohesion policy in Southern Italy, where this was one of the most successful crop productions of the Mezzogiorno. With respect to public health, durum wheat pasta is, indeed, a healthy product, especially when compared to soft wheat or a meat dish. Pasta has high nutritional value and rich carbohydrate content that has led to a rise in consumption among health-conscious consumers. Pasta is also an eco-friendly meal. It is, in fact, prepared by simply adding water to semolina, which is extracted from durum wheat, through an environmentally respectful manufacturing process. It does not contain any additives. As a general consequence of that, based on the general tendency in all the richest countries to draw attention to healthy and eco-friendly foods, in our view, the protectionist measures so long utilized in Italy to preserve the pasta quality, ensure the quality of production, and fuel the selling of pasta no longer seem necessary.

The way to foster quality pasta products and in general to promote sustainable development of *Made in Italy* products, in conformity with the UN sustainable development goals, of which pasta is the cornerstone, is found in: (a) creating quality-focused advertising campaigns based on health commitments; (b) enhancing quality controls over the single steps of the manufacturing process, eventually by means of contracts linking companies involved in the production chain; and (c) labeling accurately, to give consumers all the useful information to responsibly make their choice, without hampering the free market. Given its extraordinary organoleptic qualities and its unsurpassed taste, pasta has nothing to worry about and can confidently take up the challenge of health and environmental protection.

We conclude by showing that the tension between protectionism and liberalization remains the core battle fought through legal deregulation in

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(“Sciò prefers her pasta to come from the town of Gragnano, outside Naples, where it’s ‘rigorously dried slowly and from traceable grains,’ then extruded through bronze dies.”).

<sup>33</sup> See MOYER-NOCCHI, *supra* note 7, at 201.

Italy and re-regulation in Europe. This battle was mostly fought through a judicial dialogue between the ECJ in Luxembourg and the ICC in Rome. Finally, we highlight how the sustainability of Italian pasta production is not only an important achievement for health and environmental reasons, but it has deeper economic development implications. In fact, in the case of Mezzogiorno, such industrial policy with important redistributive implications for local pasta production needs to become more explicit in order for the Italian government to address the Southern question.<sup>34</sup>

## II. THE REGULATION OF PASTA IN HISTORICAL PERSPECTIVE

### A. Fascist Ideology, Rural Values, and Protectionism as a Rule

*“A nation of spaghetti eaters cannot restore Roman civilization!”*<sup>35</sup>

Since the very beginning of the history of the Italian state, the social relevance of pasta has led to it being recognized as the staple food of the Italian diet to the point that its price was taken off the free market and fixed by public authorities. During WWI, pursuant to the Lieutenantcy decree 247/1916, the Executive local authority or *Prefetto* was vested with the power to fix the maximum prices of wheat flour and of pasta within its Province of jurisdiction.

Even production of pasta was, and is today, strictly regulated. The Royal Decree of April 6, 1922, n. 547, defined the rules and conditions for import and export, and this did not allow common wheat for manufacturing pasta and semolina that were exclusively based on durum wheat.<sup>36</sup> Based on the different, higher quality of durum, pasta could be classified as a “first” or “second class” product, which makes *Triticum Durum* a harder grain and more conducive to obtain “pasta al dente” with firmer pasta once cooked.<sup>37</sup> Common wheat, on the contrary, was just used to produce first or second-

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<sup>34</sup> See generally Daniela Caruso, *Direct Concern in Regional Policy: The European Court of Justice and the Southern Question*, 17 EUR. L.J. 804 (2011).

<sup>35</sup> Quote attributed to Benito Mussolini. *Benito Mussolini*, QUOTE MASTER, <https://www.quotemaster.org/qbea2cc5d11e77b2f6613c7090acf117b>.

<sup>36</sup> See Decreto Luogotenenziale 11 marzo 1916, n.247, G.U. Mar. 11, 1916, n.59 (It.).

<sup>37</sup> See Corby Kummer, *Pasta*, THE ATLANTIC (July 1986), <https://www.theatlantic.com/magazine/archive/1986/07/pasta/306226/> (explaining that “Semolina is milled from durum wheat (*Triticum durum*; *durum* means ‘hard’), a much harder grain than common wheat (*Triticum vulgare*), which is used to make ordinary flour. (The harder the grain, the more energy required to mill it.) All durum makes firmer cooked pasta than common flour does, but not all durum is alike in hardness or quality. The kind of durum milled into semolina and how a manufacturer makes and dries the dough determine the firmness of the pasta when it is cooked.”).

class flour, not all pasta. Durum wheat is essential for giving dried pasta its typical amber color and resistance to cooking, so appreciated by Italian consumers, who do consider pasta made of common wheat a low-rate one.

After WWI, devastation and hunger brought farmers to strike due to the new harsh conditions of the post-war crisis. In Italy, farmers of Po Valley and Apulia began their strikes in 1920–21, but they were stopped by Mussolini's *squadristi*, or "blackshirts," who openly used violence to restore the social order that the liberal state was not able to secure. "[T]his direct action against farm-worker unions" launched a "second-stage [F]ascism" in Italy that turned Mussolini's political career, in shambles after WWI, on its "path to power."<sup>38</sup> The alliance with rural and farming communities became central for Mussolini, who, at least at the level of rhetoric, wanted to lead the populace back to rural values as opposed to the corruption of urbanization, although *squadristi* soon became the watchdogs for the big planters.<sup>39</sup>

With the establishment of his Fascist regime in 1922 following the March on Rome, Mussolini and the Fascist power needed to establish a new lexicon to share with the media they sought to control.<sup>40</sup> Mussolini aimed to foster his ambiguous aesthetic and ideology through the Italian Ministry of Popular Culture and the Undersecretary of Press and Propaganda.<sup>41</sup> Fascist ideology was fueled by a mix of revolutionary and traditional goals in which he had to reconcile the Roman past and modernity.<sup>42</sup> On the one hand, the ideas of "energizing" and "hardening"<sup>43</sup> the community were based on the assumption that the existing social structures and economic systems with their inequalities would remain in place, projecting a "secular-religious aura."<sup>44</sup> On the other hand, as Paxton explains, Fascist "revolutionaries" supported social change in the sense used by Giuseppe Tomasi di Lampedusa in his famous historic novel *Il Gattopardo*, or "The Leopard," stating that "[i]f we want things to stay as they are, things will have to change."<sup>45</sup>

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<sup>38</sup> See Robert O. Paxton, *The Five Stages of Fascism*, 70 J. MOD. HIST. 1, 14 (1998).

<sup>39</sup> *Id.* at 13–14.

<sup>40</sup> See generally ALEXANDER DE GRAND, *ITALIAN FASCISM: ITS ORIGINS & DEVELOPMENT* (3d ed. 2000); DENNIS MACK SMITH, *MODERN ITALY: A POLITICAL HISTORY* (1997).

<sup>41</sup> See generally EDWARD TANNENBAUM, *THE FASCIST EXPERIENCE: ITALIAN SOCIETY AND CULTURE 1922–1945* (1972).

<sup>42</sup> See generally WALTER L. ADAMSON, *AVANT-GARDE FLORENCE: FROM MODERNISM TO FASCISM* (1993).

<sup>43</sup> See Paxton, *supra* note 38, at 7.

<sup>44</sup> See Walter L. Adamson, *Modernism and Fascism: The Politics of Culture in Italy, 1903–1922*, 95 AM. HIST. REV. 359, 363 (1990).

<sup>45</sup> GIUSEPPE DI LAMPEDUSA, *THE LEOPARD* 40 (Archibald Colquhoun trans., Pantheon Books 1960) (1958).

According to the Fascist propaganda, with the famous Battle for Wheat in 1925, Mussolini aimed to liberate Italy from its dependence on foreign grain imports and dramatically increase local production. The idea of a Battle rather than a Campaign aimed to energize and unify Italian farmers for whom both bread and pasta were religion, family, health, and home. Under the new propaganda, they also signified the “Patria.”<sup>46</sup> Mussolini participated in harvest festivals, and wheat became central to Fascist art as part of its trademark.<sup>47</sup> The Battle for Wheat ended up creating an enormous effort for the Fascist regime. It committed to drain swamps and use all available farmland to grow cereal, called the “noble protein,” after the Battle became “Wheat or Meat,” since there was not enough farmland to sustain both industries.<sup>48</sup> Rather than importing low-cost foreign wheat, the Battle for Wheat ended up heavily subsidizing grain production. Eventually, profits went into the pockets of large landowners and did not “trickle down to [the] landless workers” who saw a downturn in their wages and their caloric consumption only to die in poverty.<sup>49</sup> Since Fascism, the path of dependency of Italian agriculture to produce the noble grain grew stronger, but the quality of durum wheat pasta due to the policy promoting higher yield per hectare eliminated high-quality durum wheat, such as Taganrog, and replaced it with larger grain wheat called Senatore Cappelli.<sup>50</sup>

But the pasta diet based on durum wheat and endorsed by the early Fascist regime as an Italian dish for its economic rather than health or aesthetic goals was linked to the Battle for Wheat, especially in Southern Italy where attempts were made to get a higher yield per hectare given the limited amount of land in Italy.<sup>51</sup> However, by the 1930s, Mussolini’s view on pasta changed, mostly influenced by the Futurist poet Filippo Marinetti, a pioneer behind the Fascist ideology. Marinetti declared war against pasta as a non-refined food that he described in his Futurist Cookbook as inducing “sluggishness, depression, inertia brought on by nostalgia, and neutralism.”<sup>52</sup> Marinetti was a nationalist artist committed to eliminating both the bourgeois obsessions with foreign cultures and the heavy and non-nutritious foods, in particular

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46 See MOYER-NOCCHI, *supra* note 7, at 114.

47 See generally FASCISM, AESTHETICS, AND CULTURE (Richard J. Golsan ed., 1992).

48 *Id.* at 115.

49 *Id.*

50 See MOYER-NOCCHI, *supra* note 7, at 202.

51 *Id.*

52 See CAPATTI & MONTANARI, *supra* note 1, at 294.

pasta, which “slowed down the digestion of Italy, both literally and figuratively.”<sup>53</sup>

*B. The Globalization of Pasta Made in Italy: Economic Boom and Dolce Vita*

*“La vita è una combinazione di magia e pasta.”*<sup>54</sup>

The Italian economic miracle was a period of economic growth in the country, starting after WWII and lasting until the late 1960s. Also called the “economic boom,” it was during this period that the economy transformed the country from a poor and rural nation into a global industrial power. The country doubled its GDP and created a stable economy with a successful social welfare regime providing social housing, universal healthcare, and free education. The industrial cities of the North were inundated with the rural population from the South coming to work in the industrial triangle of Genoa, Turin, and Milan.<sup>55</sup> The modernizing economy based on the industrial success of Northern Italy created a more affluent society able to afford consumer goods, including cars, refrigerators, and televisions. This society emboldened the consumerist lifestyle. Southern migration to Northern industrial towns uprooted communities and created large metropolitan areas that further impoverished Mezzogiorno, while unregulated industrial expansion led to urban congestion and environmental disasters.

The “economic boom” led also to a globalized Italian fashion and aesthetic via the movie “La Dolce Vita” in 1960. This acclaimed movie by Federico Fellini described the sweet life in the Roman capital filled with beauty and aesthetic pleasures.<sup>56</sup> Its aesthetics resonated with the world at large, where middle and upper classes viewed Italy’s way of life with a carefree and sweet attitude appealing to those in search of the “good life.”

Durum wheat pasta products, and in particular spaghetti, were part of the dolce vita lifestyle in which beautiful and sexy American actresses were asked to master the art of eating and taming the delicious plate of pasta. On

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<sup>53</sup> See Huw Lemmey, *Spaghetti al Fascismo*, UTOPIAN DRIVEL (Dec. 23, 2019), <https://huw.substack.com/p/spaghetti-al-fascismo>.

<sup>54</sup> Harriet Barter, *Magic and Pasta*, MAGIC & PASTA, <https://magiapasta.wordpress.com/magia-e-pasta/>.

<sup>55</sup> See generally PAUL GINSBORG, *A HISTORY OF CONTEMPORARY ITALY: SOCIETY AND POLITICS 1943–1988* (2003).

<sup>56</sup> See Phillip French, *Italian Cinema’s Sweet Success*, THE GUARDIAN (Feb. 16, 2008), <https://www.theguardian.com/film/2008/feb/17/features.worldcinema>. *La Dolce Vita* won the Palme d’Or in 1960, was condemned by the Vatican, and was subject to widespread censorship. The ban in Spain was not lifted until after the death of Franco in 1975.

July 4, 1967, on the wave of the economic miracle, the Italian Parliament passed Law No. 580. This legislation created an obligation to use durum wheat for the manufacturing of all dry pasta with only two exceptions. This obligation did not apply to fresh pasta, i.e., pasta to be consumed immediately without long storage,<sup>57</sup> and to pasta intended to be exported.<sup>58</sup> Hence, the Parliament created a ban on pasta made of common wheat that sold in Italy regardless of its Italian or European origin. This requirement to maintain a high-quality of durum wheat pasta in Italy appeared as a protectionist measure to the other countries in the European Economic Community. In fact, pasta producers from European Member States seeking to export their non-durum wheat pasta in Italy were discouraged from doing so from the Italian legislation.

*C. A Single Market: Liberalization Inside and Protectionism Outside the European Community*

The attempts to protect national food products from competition are not new in the history of the European single market.<sup>59</sup> Germany, Greece, France, Italy, the Netherlands, and Hungary have all introduced measures with an equivalent effect on quantitative restrictions on imports. Since the 1970s, these countries allowed manufacturing and marketing of typical national products only when conforming with domestic rules. This was the case for beer, yogurt, cheese, vinegar, and wine. At times, as it is for pasta, certain methods of manufacturing were directly prohibited by law. In other cases, as was the case for beer and vinegar, the prohibition resulted from a joint action of the ban on using a typical name for products manufactured in a different way than the domestic one (i.e., vinegar only if it was made with wine, or beer only if it was made of malt, hops, and water). A concurrent prohibition involved marketing these products with additives, as seen in the case of German beers.<sup>60</sup>

These measures are generally declared incompatible with Articles 30 and 36 of the ECC Treaty.<sup>61</sup> Indeed, in ECJ-consistent case law on the free

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<sup>57</sup> See Treaty of Rome (EEC), *supra* note 21, art. 33.

<sup>58</sup> See *id.* art. 50.

<sup>59</sup> See generally Michelle Egan, *EU Single Market(s) After Brexit*, 7 POL. & GOVERNANCE 19 (2019).

<sup>60</sup> See generally Case 178/84, *Comm'n of the Eur. Cmty v. Fed. Republic of Ger.*, 1987 E.C.R. 01227.

<sup>61</sup> See Treaty of Rome (EEC), *supra* note 21, arts. 33, 36. Article 30 creates a prohibition, "Quantitative restrictions on importation and all measures with equivalent effect shall, without prejudice to the following provisions, hereby be prohibited between Member States." *Id.* art. 30. Article 36 creates some exceptions based on public policy:

movement of goods, measures with equivalent effects on quantitative restrictions on imports have been stated only as those hindering the free circulation of goods lawfully made and marketed in other Member States, not those generally able to discriminate against imported products.<sup>62</sup> Since this was precisely the case for the above described Italian legislation on pasta, a preliminary ruling before the ECJ was issued against the prohibition to sell pasta in Italy made of common wheat, though lawfully made and marketed in other Member States. Thus, the Italian legislation came before the Luxembourg Court.

### III. THE DEREGULATION OF ITALIAN PASTA BEFORE THE EUROPEAN COURT OF JUSTICE

*“[T]he Commission, like Santiago the fisherman in Hemingway’s The Old Man and the Sea, has often ‘fallen asleep dreaming of lions.’”*

Giuseppe Federico Mancini<sup>63</sup>

On the same day, July 14, 1988, two cases decided by the ECJ addressed what appeared before the Court as domestic protectionist measures to prevent a non-Italian exporter from entering the local Italian market. The Italian law looked to keep non-durum wheat pasta mixed with soft wheat out of the market for a variety of reasons. The Italian government argued in favor of Advocate General Mancini’s Joint Opinion in both cases, going against the European Commission in asking the Court to set aside the Italian legislation. In disregarding the AG Option, something that happens rarely in EC law, the ECJ found the Italian law violated the European dormant commerce clause,

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The provisions of Articles 30 to 34 inclusive shall not be an obstacle to prohibitions or restrictions in respect of importation, exportation or transit which are justified on grounds of public morality, public order, public safety, the protection of human or animal life or health, the preservation of plant life, the protection of national treasures of artistic, historical or archaeological value or the protection of industrial and commercial property. Such prohibitions or restrictions shall not, however, constitute either a means of arbitrary discrimination or a disguised restriction on trade between Member States.

*Id.* art. 36.

<sup>62</sup> See generally Case 8/74, *Procureur du Roi v. Benoit & Gustave Dassonville*, 1974 E.C.R. 00837 [hereinafter *Dassonville*]. See Kalypso Nicolaidis, *The Cassis Legacy*, in *EU LAW STORIES: CONTEXTUAL AND CRITICAL HISTORIES OF EUROPEAN JURISPRUDENCE* (Fernanda Nicola & Bill Davies eds., 2017) (for an account of the principle of mutual recognition in the Single Market).

<sup>63</sup> See Case 407/85, *Drei Glocken v. USL Centro-Sud*, 1988 E.C.R. 04233, 4269; see also Case 90/86, *Criminal Proceedings Against Zoni*, 1988 E.C.R. 04285. Giuseppe Federico Mancini was an Italian labor law professor in Bologna, a Socialist Party politician, and a member of the Consiglio Superiore della Magistratura from 1976 to 1981. After his failed appointment to the Italian Constitutional Court, he became Advocate General at the European Court of Justice from 1982–1988 and then judge from 1988–1999.

under which domestic regulatory measures having the effect of quantitative restrictions to trade are invalid.<sup>64</sup>

*A. The Zoni Case Before the ECJ*

The Italian wholesaler Giorgio Zoni, who imported into Italy German pasta products made from a mixture of common and durum wheat, faced prosecution before the magistrate courts in Milan for contravention of Article 29 of Law No. 580/1967, which provides that only durum wheat can be used for the industrial manufacture of dry pasta to be sold in the domestic market, even if imported. As already noted, small-scale preparation of fresh pasta allows for the use of common wheat if the final product is intended for immediate consumption or for the preparation of pasta intended for export.

A preliminary reference procedure was issued by the domestic court to the ECJ to clarify whether the rule imposing durum wheat for the manufacture of pasta products was compatible with Articles 30 and 36 of the EEC Treaty, protecting free circulation of goods as part of the four freedoms in the single market with services, workers, and capital.<sup>65</sup> In particular, the Court was asked whether the interpretation of the EEC Treaty provisions as creating an obligation in Italian law to use only durum wheat in the production of dry pasta marketed inside the Member States was lawful.<sup>66</sup> Joining the appellant, Mr. Zoni, was the Italian Union of industrial pasta producers (Unione Industriali Pastai Italiani-Unipi), the National Confederation of Farmers (Confederazione Nazionale Coltivatori Diretti-CNCD), the company Agnesi (one of the largest Italian pasta producers), and the Italian, French, and Dutch governments, all of who submitted observations.

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<sup>64</sup> See CAOIMHÍN MACMAOLÁIN, *EU FOOD LAW: PROTECTING CONSUMERS AND HEALTH IN A COMMON MARKET* 35 (2007); STEPHEN WEATHERILL, *EU CONSUMER LAW AND POLICY* 48 (2d ed. 2013); Marco Dani, *Assembling the Fractured European Consumer*, 36 *EUR. L. REV.* 362, 367 (2011).

<sup>65</sup> See *supra* text accompanying note 61.

<sup>66</sup> This with respect to three obligations expressed by the national legislation:

(1) was imposed solely in order to safeguard the superior properties of pasta manufactured using only durum wheat; (2) does not entail any discrimination to the detriment of products with the same characteristics coming from other Member States, or discrimination against Community traders in those products, in so far as traders of the aforesaid Member State are also subject to the same restrictions; (3) was not introduced in order to pursue protectionist aims to the advantage of the domestic product and to the detriment of products made elsewhere in the Community and having the same characteristics.

*Zoni*, 1988 E.C.R. at 4302–03.

In its *Cassis de Dijon* jurisprudence,<sup>67</sup> the ECJ ruled that obstacles relating to the composition of products and goods prohibited by the Treaty as measures having equivalent effects to a quantitative restriction on imports could be valid only insofar as they are necessary to satisfy “mandatory requirements such as the protection of the consumer and fair trading” or the safeguard of public health. Even in those cases, the Court is free to establish whether such measure must respect the principle of proportionality, meaning that the goal of the regulation restricting the free movements must be achieved with the least restrictive measures.

Based on these precedents, the Italian government supported the opinion that the use of durum wheat was necessary for three main reasons: first, to preserve the quality of Italian pasta, since durum-made pasta cooks better; second, to promote the “development of durum wheat growing, since the producers of durum wheat have hardly any other market outlet within the Community apart from the market for pasta product”; and third, for health reasons, because chemical additives with harmful effects on human health would allegedly be used to give pasta products made with common wheat the amber color typical of pasta exclusively made with durum wheat. With the judgment of 14 July 1988, in case C-90/86, the ECJ rejected the government’s arguments, ruling that the prohibition in Italy on the sale of pasta products made of durum wheat or a mixture of common and durum wheat represents a barrier to the movement of goods within the Community.

As for the last argument, the European Court rapidly ruled that the alleged harmful effects on human health had not been demonstrated in the case at stake. As for the further two justifications argued by the Italian government, the ECJ stated that they disproportionately hurdle the free movement of goods because the means of achieving legitimate public interest were neither appropriate nor necessary. More specifically, as for the protection of quality, the European Court had already stated in its case law that its aim was to assure consumers that the quality of historically traditional products could be satisfactorily achieved without hindering the free movement of goods—namely, without prohibiting the importation of products lawfully made in other countries.<sup>68</sup> In the Court’s view, labeling products so that consumers may be aware of the quality of what they are buying, be it the case of pasta or beer or yogurt, is fit to preserve quality. In the case at play, the Italian legislature could have restricted the description

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<sup>67</sup> Case 120/78, *Rewe-Zentral AG v. Bundesmonopolverwaltung für Branntwein (Cassis de Dijon)*, 1979 E.C.R. 00649 (establishing that a product such as the French blackcurrant liqueur that was sold lawfully in one Member State may not be prohibited in another Member State).

<sup>68</sup> See, e.g., Case 193/80 *Comm’n v. Italy*, 1981 E.C.R. 3019; Case 178/84, *Comm’n v. Fed. Republic of Ger.*, 1987 E.C.R. 01227.

“pasta made from durum wheat-meal” to pasta products exclusively made from durum wheat to avoid any misunderstandings. Considering the difference in the price of durum and common wheat, this kind of restricting labeling would make consumers aware that the difference in price is justified by a difference in quality. That labeling should be enough to preserve the tradition of Italian pasta and the quality the consumers are accustomed to. Hence, the prohibition on producers using durum wheat appeared to be unnecessary.

Even for pasta served in restaurants, it is well possible for the ECJ to establish a system for informing consumers of the quality and the organic nature of pasta they were going to taste. Nor can it be accepted, in the Court’s view, the Advocate General’s assumption that the name “pasta” can only be used in Italy for products made of durum wheat. The definitions of the same Law no. 580/1967 prove the contrary, the name pasta being used both for products made of durum wheat and of common wheat.

In a further argument, the Italian government stressed the negative economic outcomes of not encouraging the growth of durum. It seemed that the production of durum wheat would not have declined in Southern Italy unless the Court maintained the prohibition on using common wheat for dry pasta. The following events proved the contrary. Figures concerning export trends in the following years show the research for more quality by consumers and competition on quality increased the production of durum.

Following the above, the ECJ finally ruled that extending the prohibition on the sale of pasta made from common wheat to imported products was incompatible with Articles 30 and 36 of the EEC Treaty. Therefore, restrictions on using common wheat were erased, and manufacturing and marketing of pasta were liberalized all across Europe, except for in Italy. The judgment left the Italian political authorities quite free to choose how to protect the domestic manufacturing of pasta within the national market. Nevertheless, the decision opened Italy’s pasta market to European imports, causing newspapers to headline that Italy had lost the Pasta Purity war, and pundits to spread fear that, since even domestic producers would be forced to use the cheapest common wheat, pasta without durum would soon invade Italy to the point that Italians had to get ready to say goodbye to their beloved firm noodles for “gluey and insipid” pasta from Germany or Holland.<sup>69</sup>

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<sup>69</sup> See Giannini, *supra* note 27.

B. *The Avant-Garde Opinion of Advocate General G. Federico Mancini*

The *Zoni* Court decided on the same day a different yet related case on Italian pasta *Drei Glocken*.<sup>70</sup> The facts of *Drei Glocken* involved a German manufacturer exporting to Italy pasta products made from a mixture of durum wheat and common wheat. An Italian retailer, Gertraud Kritzinger, and the manufacturer were convicted to pay an administrative penalty for the breach of the 1967 Italian Law<sup>71</sup> that establishes that *only* durum wheat shall be used for the manufacture of pasta; its main aim was to protect consumers by guaranteeing the quality of pasta. Both *Drei Glocken* and Kritzinger challenged the imposed fine and the 1967 Law before the Pretura di Bolzano, pleading its incompatibility with the EC Treaty prohibiting measures having equivalent effects to quantitative restrictions on imports. The Pretura di Bolzano referred the case to the ECJ in Luxembourg.<sup>72</sup> The Court held that the extension to imported products of a prohibition on the sale of pasta made from common wheat or from a mixture of common wheat and durum wheat, as enshrined in the 1967 Italian law, was incompatible with Articles 30 and 36 of the EEC Treaty.

Despite the ECJ's ruling, Advocate General Mancini would have reached another conclusion, expressed in his famous opinion, taking issue with the industrial policy promoted by the Commission and legitimated by the Court.<sup>73</sup> In contrast to the ruling, Mancini urged the ECJ to uphold the 1967 Italian Law concerning the proper way to manufacture pasta. He recalled the various inconsistencies, inaccuracies, and omissions of the observations submitted by the Commission in its *amicus curiae* brief to the

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<sup>70</sup> See Case 407/85, *Drei Glocken v. USL Centro-Sud*, 1988 E.C.R. 04233, 4247.

<sup>71</sup> Legge 4 luglio 1967, n.580, G.U. July 29, 1967, n.189, art. 29 (It.).

<sup>72</sup> The Pretura asked the following two questions:

Is the prohibition of measures having an effect equivalent to quantitative restrictions on imports contained in Article 30 of the EEC Treaty to be interpreted as preventing, in regard to the importation of pasta products, application of the provisions of Italian law concerning foodstuffs which prohibit the use of common wheat flour in the production of pasta products where those products have been lawfully produced and marketed in another Member State of the European Community?

Is the prohibition of arbitrary discrimination or disguised restrictions on trade between the Member States contained in the second sentence of Article 36 of the EEC Treaty to be interpreted as preventing the application of the abovementioned national provisions?

*Drei Glocken*, 1988 E.C.R. at 4277–78.

<sup>73</sup> *Id.* at 4274 (“Until such time as the Community has issued rules on the production and/or designation of pasta products, which take account in particular of the requirement of consumer protection, Article 30 of the EEC Treaty will not prevent the application of a law of a Member State which imposes the obligation to use exclusively durum wheat for the manufacture of pasta products intended to be marketed within that State.”).

Court, underlining how contradictory, inexact, and incomplete it was.<sup>74</sup> He noticed how a case about pasta and, in particular, this case, was much more complex than it had been made to appear.<sup>75</sup> In fact, it differed from any other previous instances related to the free movement of goods in the single market because

the contested national legislation is the foundation upon which the Community has, over a period of twenty years, based an important part of its agricultural policy and it plays a major role with respect to its external trade.<sup>76</sup>

Mancini analyzed the main aspects of the 1967 Italian legislation for two main reasons. First, he highlighted that this law guaranteed the quality of the pasta and the interests of consumers alike. Mancini then showed how only pasta made with durum wheat did not become sticky during cooking, allowing the consumers to eat it *al dente*. The second goal of the Italian legislation was to encourage the growth of durum wheat in less economically developed regions in the Mezzogiorno, where durum wheat was the only promising crop.<sup>77</sup> Mancini highlighted how, in pasta manufacture, by using only a specific type of wheat, it was possible to ensure that anyone who grew it had a steady, secure income. In fact, durum wheat could not be used to feed animals or to carry out other activities outside of the production of pasta.

Mancini showed with hard data how the 1967 legislation had, on the single market, a great impact, as demonstrated by three main points. First, 71% of the community production of pasta was manufactured in Italy. Second, during the first twenty years under the 1967 regime, the quantity of Italian wheat pasta exported within the EEC grew by 1645%. Finally, according to the findings, exports of pasta containing eggs, in which it is not possible to determine whether common wheat is used or not, have decreased everywhere to a significant extent, also due to the well-known quality of durum wheat pasta.<sup>78</sup>

If, according to the Commission, durum wheat producers had nothing to fear from the incompatibility of the Italian law with the EEC Treaty free movement provisions and the consequent removal of the obligation to use durum wheat for manufacturing dry pasta, the liberalization of trade in this field, as Mancini put it, would have two devastating consequences:

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<sup>74</sup> *Id.* at 4249–51.

<sup>75</sup> *Id.* at 4251.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.* at 4253.

<sup>78</sup> *Id.* at 4254.

[O]n the one hand, glaring examples of surpluses and as a result much greater disbursements of Community funds, and on the other, in the southern regions which produce most European durum wheat, disappearance of the only commercial outlet upon which the growers of that cereal can rely.<sup>79</sup>

In Mancini's view, any decision by the Court should have been read and analyzed in conjunction with the trade agreement concluded between the Community and the United States concerning the export of durum wheat, whose outcomes were still unpredictable.<sup>80</sup> In this respect, the ECJ's ruling according to Mancini was in dire need of a careful analysis of all the internal and international consequences it would entail.<sup>81</sup>

Mancini also examined Directive 79/112/EEC,<sup>82</sup> on the labeling of foodstuffs for sale to the ultimate consumer.<sup>83</sup> He explained that this directive did not require any specific labeling of ingredients when a product was made of only a single ingredient. In these circumstances, the only required label was the name of the product, for example, "orecchiette" or "vermicelli." Mancini affirmed that since the case at issue was about the kind of wheat used to produce pasta, common or durum, under the directive, consumers would be misled since the label would simply say "vermicelli," rather than indicating the ingredient, in this case the type of common or durum wheat used to produce it. Instead of striking down the 1967 Law, the most adequate solution, according to the Advocate General, would have been to treat pasta as a traditional product, as previously made in respect to the French champagne.<sup>84</sup> Since the EEC had enacted provisions to protect both consumers and producers and ensure a certain way of making wine, there was no reason for which similar protection should not also have been granted to durum wheat pasta.<sup>85</sup>

Mancini showed how *Drei Glocken* relied on determining what designations were needed to make consumers easily capable of identifying

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<sup>79</sup> *Id.* at 4257.

<sup>80</sup> *Id.* at 4258.

<sup>81</sup> *Id.* at 4251.

<sup>82</sup> Council Directive 79/112/EEC, of Dec. 18, 1978, on the Approximation of the Laws of the Member States Relating to the Labelling, Presentation and Advertising of Foodstuffs for Sale to the Ultimate Consumer, 1979 O.J. (L 33) 1.

<sup>83</sup> *Drei Glocken*, 1988 E.C.R. at 4259.

<sup>84</sup> In fact, the ECC, through Council Regulation 3309/85, protected the champagne's consumers by limiting the usage of the notion "*méthode champenoise*" to all those sparkling wines produced in the French region of Champagne. *See id.* at 4260-62.

<sup>85</sup> *Id.* at 4262.

the nature of pasta products on the market.<sup>86</sup> While in Italy the notion of “pasta” corresponds to a generic designation, in the rest of the world, the term “spaghetti” or “macaroni,” which in Italy correspond to two different manufacturing techniques to produce pasta, have become a synonym for pasta, and, in some contexts, they correspond by definition, to pasta itself. It follows that, according to him, terms like “‘spaghetti’ or ‘macaroni’ cannot be classified as an unequivocally specific designation.”<sup>87</sup>

In Mancini’s view, creating an appropriate label for pasta products was easy to realize in theory, but in practice, this could raise infinite problems not conceivable by the European legislature.<sup>88</sup> One of the main purposes of the Italian legislation was to protect and ensure the quality standards in the production of pasta, especially for the Italian consumers who buy it without knowing the technical definition of “pasta,” but relying on the concept of “spaghetti” or “macaroni.” Striking down a law like the one enacted by the Italian government just because pasta could be made of something besides durum wheat had, according to the Advocate General, terrible consequences for the protection of consumers.

Finally, Mancini showed the different paths the ECJ could take in its decision. He showed how compliance between the Italian law and the ECC Treaty could endanger the free movement of pasta products “lawfully manufactured in eight of the twelve Member States and for that reason would threaten the solidity of one of the pillars upon which the Community edifice rests.”<sup>89</sup> Alternatively, if the ECJ found incompatible the Italian law with the EEC Treaty, there would be various consequences: first, this decision would “leave without proper defense not only the Italian durum-wheat pasta consumer but also the Community purchaser of spaghetti of the most varied composition”; second, it would “reward and encourage inertia on the part of the Brussels legislature, justifying its claim that it had resolved the problem once and for all by means of the horizontally applicable general provisions of Directive 79/112/EEC”; and finally, it would “de facto, but irretrievably, impair the conditions upon which the Community policy for durum wheat and the agreement between the EEC and the United States on the production and marketing of pasta manufactured from durum wheat.”<sup>90</sup>

Therefore, Mancini suggested that a solution could only be reached through a compromise that could be found in the precedents of the ECJ jurisprudence. Recalling the words of the *German Beer Purity* judgment, the

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<sup>86</sup> *Id.* at 4264.

<sup>87</sup> *Id.* at 4268.

<sup>88</sup> *Id.* at 4270.

<sup>89</sup> *Id.* at 4273.

<sup>90</sup> *Id.*

Court held that through an information system that could inform the consumers effectively, this could perfectly solve the matter of consumer protection as mere consumer choice.<sup>91</sup> Allowing, at least for the moment, the Italian legislation to remain in force and not intervening in the current market situation would

enable the north European purchasers to continue to choose the pasta products which they like best, whilst the Italians, the Greeks and French will not—by reason of imprecise and insufficient information provided by the label on imported products—run the risk of purchasing products which are not to their taste.”<sup>92</sup>

Moreover, by maintaining the *status quo*, the Community would not have to review the conditions under which the commercial agreement with the United States has been stipulated. Mancini suggested that if the Community liberalized trade in pasta and at the same time subsidized production in Southern Italy, it would have been caught by the long dispute in the GATT against the US. This started in the mid-1980s when the US raised tariffs on pasta and, as a result, the Community reached a compromise that allowed, free of duty, a fixed proportionate amount of durum wheat from the US. Thus, Mancini warned that the impact of the elimination of the Italian pasta legislation would lower the overall production of durum wheat in Southern Italy by damaging the development of Mezzogiorno and violate the trade agreement reached with the United States.

In his *avant-garde* opinion, AG Mancini offered a solution for Italian durum wheat pasta in the single market that, even if rejected by the ECJ at the time, today does not seem only moved by nationalistic goals but also sustainability and development ones. In turning durum wheat pasta or *pasta di semola di grano duro* into a protected origin just like the *methode champenoise*,<sup>93</sup> Mancini proposed to safeguard the *Made in Italy* pasta production to maintain the quality of a healthier and more sustainable product, such as durum wheat pasta. Not only did he suggest that it was *naïve* for the Commission to argue that the elimination of the 1967 legislation would not have an immediate impact on the Italian development policy, but also, at the same time, it failed to recognize the EU dependence on US durum wheat imports.<sup>94</sup>

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<sup>91</sup> Case 178/84, Comm’n of the Eur. Cmty v. Fed. Republic of Ger., 1987 E.C.R. 1262.

<sup>92</sup> *Drei Glocken*, 1988 E.C.R. at 4273.

<sup>93</sup> See Michael Ryan Benedict, *Souring La Dolce Vita? Has European Union Regulation Ruined Italian Cuisine or Is There Hope Yet for Traditional Products?*, 21 B.U. INT’L L.J. 373, 383 (2004); see also *Drei Glocken*, 1988 E.C.R. at 4260.

<sup>94</sup> See *Drei Glocken*, 1988 E.C.R. at 4257.

#### IV. THE MANUFACTURING OF PASTA BETWEEN THE ITALIAN CONSTITUTIONAL COURT (ICC) AND THE PARLIAMENT

##### A. Upholding the Protectionist Legislation in Rome

Almost a decade before being reviewed by the *Drei Glocken/Zoni* rulings, the Italian legislation on pasta had already been scrutinized by the Italian Constitutional Court (ICC). In judgment number 137/1971, the prohibition on making pasta from ingredients other than durum wheat and durum semolina was at play. Two Italian producers, Bottiglieri and Caruso, had been prosecuted for having manufactured and sold pasta containing rye rather than durum wheat. The ordinary judge referred the issue to the ICC, which was whether that prohibition might violate Article 41 of the Italian Constitution, protecting the freedom of enterprise,<sup>95</sup> and also whether it seemed unreasonable with regard to the dietetic properties of rye. The judge determined that the ban could not be justified in light of the constitutionally established limits to that freedom, since it did not meet any need for social utility.

In a very short and assertive judgment, the ICC replied that the obligation of using only durum wheat is able to achieve two main purposes of social utility: “the increase of grain production, through the protection of the specialized cereal cultivations, particularly notable in Southern Italy;”<sup>96</sup> and “the protection of the consumers and their health.”<sup>97</sup> As for the reasonableness of banning rye, despite its dietetic qualities, the Court pointed out that legislation ought to “afford consumers the highest and not the lowest nutritional value for the same price.”<sup>98</sup> Notably, the ICC completely ignored the possible common market implications of the question, which could have caused the case to be referred to the ECJ for a preliminary ruling, and based its decision exclusively on Article 41 of the Constitution, keeping the protectionist industrial policy free from stricter judicial review of the principles of free competition behind the common market.

Nine years later, after the *Bottiglieri* case,<sup>99</sup> a new dispute on pasta arose before the ICC where the ban on pasta production made from wholemeal

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<sup>95</sup> See Art. 41 COSTITUZIONE [COST.] (It.) (“Private economic enterprise is free. It may not be carried out against the common good or in such a manner that could damage safety, liberty and human dignity. The law shall provide for appropriate programs and controls so that public and private-sector economic activity may be oriented and coordinated for social purposes.”) (translation by the authors).

<sup>96</sup> Corte Cost., 22 giugno 1971, n. 137, Foro it. 1971, I, 1766, 1767 (It.).

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> See generally *id.*

durum flour was at play. Confronted with a case where Mr. Moja and Mr. De Carlo were prosecuted for having imported and sold spaghetti manufactured with wholemeal durum flour, instead of durum wheat and durum wheat semolina as prescribed by law,<sup>100</sup> the ordinary judge challenged the legislation for violation of the freedom of enterprise on two grounds. First, the precedent of *Bottiglieri* justified the ban because it was aimed at safeguarding and promoting durum wheat production. The Court held that the legislation appeared internally inconsistent in allowing durum pasta and forbidding wholemeal pasta even if both are made from durum wheat. Second, since the legislation allowed the trade of wholemeal bread,<sup>101</sup> it was unclear what social utility goal could justify the prohibition on trading in wholemeal pasta.

The ICC asked the Ministry of Health to provide any useful information for the ruling. The Ministry of Health stated that the ban on wholemeal durum for pasta production could not rely on health-protection reasons and recommended the removal of the prohibition, since wholemeal pasta helps prevent dysmetabolic and digestive tract diseases. The Ministry of Agriculture, more explicitly, declared that the legislation was intended to protect and support the Italian production of durum wheat and explained that the ban on wholemeal flour was due to the greater consumption of wheat for each quantity of pasta produced. As for the different treatment of bread, according to the Ministry of Agriculture, it could be acceptable on grounds of traditional use in “limited rural areas” and due to its immediate consumption, which excludes organoleptic alterations, instead possible for pasta. The Ministry of Foreign Trade and the Italian National Institute of Statistics added that the need for protection of Italian production was patent by providing market analysis of durum wheat. However, they did not explain why a reduced consumption of durum pasta in favor of wholemeal pasta would have necessarily resulted in a decrease in the national production, rather than in a decrease of import, since internal production at the time (and even now, in fact) absorbed all of the internal supply of durum wheat, for which a massive import of durum was necessary.

Despite the refined allegations of the referring judge and the further arguments provided by the Ministries involved, both of which cast into doubt the rationale of the legislation at issue, the ICC confirmed its previous judgment. It acknowledged that information provided by the Ministries had not only seriously weakened the arguments underlying the *Bottiglieri* decision but also recognized that judicial review over economic legislation

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<sup>100</sup> See Legge 4 luglio 1967, n.580, G.U. July 29, 1967, n.189, art. 29 (It.).

<sup>101</sup> See *id.* art. 17.

must be deferential toward political discretion. In the case at play, it was for the Court to discover the social utility purpose underpinning the alleged infringement of the freedom of enterprise and the means to achieve this purpose, whereas it was for Parliament to eventually reconsider the measure at issue in light of data resulting from the inquiries carried out by the Court.<sup>102</sup>

As a result, the ICC admitted that quality features of pasta distinctive of the national tradition are to be safeguarded by national legislation, even by requiring producers not to make use of some ingredients. In the ICC's ruling, the public interest to preserve quality and local tradition, hence national culture, could justify a strict production pattern. Similar to the *Bottiglieri* case, in the *Moja* decision, the ICC took into account exclusively Article 41 of the Constitution, with no regard to the European framework, and neglected the opportunity of a referral to the ECJ.

In *Zoni*, the Luxembourg Court had just ruled that by limiting the import of common-wheat-made pasta from other Member States, the Italian legislation infringed the free movement of pasta within the Union. However, the ECJ did not oblige legislatures to set aside the protective national legislation on pasta,<sup>103</sup> so far as it applied only to pasta manufacturers established in Italy falling under the wholly internal situation.<sup>104</sup> Thus, producers established in Italy not exporting pasta outside the national borders were interdicted from manufacturing and selling packaged pasta in Italy with ingredients other than those prescribed by law, namely by decrees of the Ministry of Wealth. Contrarily, foreign producers, and even Italian importers, were allowed to sell packaged pasta manufactured abroad in Italy pursuant to the corresponding rules of the country of origin. Against this background, the issue was raised before the ICC whether the provisions of law 580/1967 referring to durum-wheat pasta;<sup>105</sup> special pasta added with ingredients;<sup>106</sup> egg-pasta;<sup>107</sup> and the ban on selling or storing pasta if altered, adulterated, or infested with animal or vegetable parasites<sup>108</sup> were unconstitutional since they forbid the industrial manufacturing of dry pasta ingredients other than those allowed by law.

Following the *Zoni* ruling, however, the prohibition of using some ingredients ended up affecting only producers established in Italy who

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<sup>102</sup> Corte Cost., 15 febbraio 1980, n. 20, Foro it. 1980, I, 901, 902–03 (It.).

<sup>103</sup> Case 90/86, Criminal Proceedings Against Zoni, 1988 E.C.R. 04285.

<sup>104</sup> See Sara Iglesias Sanchez, *Purely Internal Situations and the Limits of EU Law: A Consolidated Case Law or a Notion to be Abandoned?*, 14 EUR. CONST. L. REV. 7, 10, 14, 16 (2018).

<sup>105</sup> L. n. 580/1967, art. 28 (It.).

<sup>106</sup> *Id.* art. 30.

<sup>107</sup> *Id.* art. 31.

<sup>108</sup> *Id.* art. 36.

intended to sell their products in the domestic market. Due to the ECJ's judgment, in fact, the prohibition was not applicable to imported or exported pasta. The discrimination against Italy's companies resulted as an indirect effect of implementing European law, and, in the worst scenario, even forced domestic producers to relocate their business to other Member States so as to penetrate from outside the foreclosed Italian market.

With the judgment in case no. 443/1997, the ICC held this "reversed" discrimination unconstitutional. The question arose when an ordinary court was requested to enforce the prohibition on making pasta from ingredients other than durum wheat against domestic manufacturers, Mr. Pepi and Mr. Catto, who had produced pastas containing garlic, parsley, squid ink, beetroot, and chili pepper. The judge asked the Constitutional Court whether the different treatment of domestic and imported products was reasonable. According to the referring judge, the discrimination was double: from one side, between foreign and Italian producers intending to sell pasta within the domestic market; and from the other side, between producers established in Italy, whose pasta was intended to be exported and those whose products were sold in the internal market only.<sup>109</sup> Following the path traced by the ruling in the *Zoni* case, the ICC completely overruled its interpretation on pasta purity legislation.

As already noticed, the *Bottiglieri* and *Moja* courts neglected any insights on the potential effect of purity pasta legislation on cross-border business and on free movement principles underpinning the common-market. The European legal framework was deliberately off the radar of the Constitutional Court, which narrowed its scrutiny to the domestic constitutional rules and carried out a "relaxed" proportionality review of political discretion. The constitutional scrutiny was, in fact, self-restrained to a "rationality test" aimed at assessing the generic suitability of the means chosen by legislators to achieve a legitimate aim of public interest. In sum, the ICC embraced the most deferential of the standards of review.

On the contrary, in case no. 443/1997, the European legal context became the cornerstone of the judgment. In the Court's view, the lack of a uniform European regulation and the need to respect the principle of non-discrimination between firms competing on the common market compels national law to comply with the free movement principles envisaged in the Treaties. Hence, the purview of the national legislature in regulating the pasta market does not "result in pure state self-determination or in unrestrained discretion," but must be filled up with those European principles, which prevent national firms from charges, restrictions, and prohibitions not

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<sup>109</sup> Corte Cost., 30 dicembre 1997, n. 443, Foro it. 1998, I, 697, 700-01 (It.).

provided for producers established in other Member States.<sup>110</sup> The protectionist attitude of the earlier judgments has been outright overcome in favor of a liberal approach, which looks at the national production of pasta in the larger scenario of the common market. As a result, the ICC held Article 30 of law 580/1967 unconstitutional insofar as it did not allow companies established in Italy to use ingredients lawfully used in the territory of the European Union, pursuant to European law.

In *Bottiglieri* and *Moja*, the ICC “endorsed a paternalistic model of consumer protection,” whereby health protection and the nutritional value of durum were key in justifying restrictive measures for the market.<sup>111</sup> Consistent with its liberal attitude, in judgment 443/1997, trust in consumers’ choices takes the place of state paternalism, and faith in the self-regulating virtue of the free market replaces the concern of the Court for consumers’ health and nutrition, to which “must normally be afforded more nutritional value than freedom of choice.”<sup>112</sup> Of note, the ICC, for merely procedural reasons, was due to limit the statement of unconstitutionality to the challenged provision, concerning “special pasta” added with diverse ingredients. As a result, the Italian market of pasta was totally liberalized as to the use of ingredients only with regard to special pastas, and not at all for the production of common dry pasta.

#### *B. The Regulation of Pasta by the Italian Parliament*

Statutory law no. 128/1998 was enacted to implement the aforementioned ECJ and ICC judgments. It declared all limitations and conditions on the production of pasta provided for in law 580/1967 inapplicable to:

products legally produced and sold in the Member States of the European Union or in other contracting countries of the Agreement on European economic space, imported and put on the market in Italy.<sup>113</sup>

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<sup>110</sup> *Id.*

<sup>111</sup> Dani, *supra* note 64, at 365.

<sup>112</sup> *Id.*

<sup>113</sup> See L. n. 580/1967, art. 48 (It.).

The new, complete regulation of pasta and wheat flour was introduced in 2001,<sup>114</sup> and revised in 2011<sup>115</sup> and 2013.<sup>116</sup> This set of norms contains the general regulation of pasta. Four types of pasta are classified: pasta, special pasta, egg pasta, and fresh and stabilized pasta.<sup>117</sup>

Pasta with no adjectives is defined as durum wheat semolina, “durum wheat semolina pasta,” and “whole durum wheat semolina.”<sup>118</sup> The use of soft wheat flour is forbidden for the manufacturing of dry pasta “without prejudice to pasta intended to be marketed to other countries of the European Union or to other contracting parties of European Economic Space, or intended for export.”<sup>119</sup>

Soft, common wheat flour is allowed for the manufacturing of fresh pasta only. When it comes to dry pasta, soft wheat flour can only be “tolerated”<sup>120</sup> in quantities not exceeding 3%.<sup>121</sup> Yet, these strict manufacturing patterns can only be applied to pasta producers established in Italy that sell their products on the domestic market. They are binding for pasta produced and consumed in Italy, not for pasta produced in Italy and delivered on foreign markets, nor for pasta produced abroad and sold in Italy.

As for exported pasta, the ban on using soft wheat flour does not apply to pasta delivered to extra-EU countries or sold in European Union Member States and in countries joining the Agreement on Economic European Space.<sup>122</sup> In effect, that would have constituted a possible violation of Regulation (CE) n. 852/2004 on the hygiene of foodstuffs. The use of common wheat is also allowed for imported pasta and, for instance, produced abroad and sold in Italy. However, pasta totally or partially manufactured with common wheat must be specifically labeled and put on the market with a name that gives consumers clear information on what percentage of common wheat has been used.<sup>123</sup>

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<sup>114</sup> Decreto Presidente della Repubblica 9 febbraio 2001, n.187, G.U. May 22, 2001, n.117 (It.).

<sup>115</sup> Decreto Presidente della Repubblica 23 novembre 2001, n.411, G.U. Nov. 26, 2001, n.275 (It.).

<sup>116</sup> Decreto Presidente della Repubblica 5 marzo 2013, n.41, G.U. Apr. 23, 2013, n.95 (It.).

<sup>117</sup> See D.P.R. n. 187/2001, arts. 6–9 (It.).

<sup>118</sup> See *id.* art. 6, which defines as pasta the products obtained from the drawing, rolling, and drying of doughs prepared exclusively with: durum wheat and water; durum wheat pasta and water; whole durum wheat and water.

<sup>119</sup> See *id.* art. 6, para. 4.

<sup>120</sup> This is precisely the verb used in *id.* art. 6, para. 5.

<sup>121</sup> The above prescriptions span over prepared products based on durum wheat flour and water, which can, in any case, be traced back to pasta.

<sup>122</sup> See D.P.R. n. 187/2001, art. 6, para. 4 (It.).

<sup>123</sup> *Id.*

In conclusion, only pasta produced and sold in Italy must be manufactured with durum wheat. This obligation continues to cause reversed discrimination against producers established in Italy and leaves room for an issue to be raised before the ICC. If it has never occurred, it is probably because dry pasta made with common wheat does not match the common tastes of the overwhelming majority of Italians, whereby producers established in Italy have no real interest in being freed from this obligation. The worries—which had spread after the *Zoni* ruling—that soft wheat pasta would have invaded the Italian market proved to be unfounded, and Italian consumers have massively continued to prefer quality over savings of a few cents in buying pasta.

Rather than consumers' attempts to increase their savings, it is the frenetic European way of life,<sup>124</sup> together with the trend away from gluten, that might cause the crisis of durum wheat pasta in the long run. Pasta made from soft wheat and organic pasta made from rye, spelt, barley, oats, or legume flour, cooks more quickly (3-4 minutes in comparison with 12-13 minutes of the top quality-durum pasta). Moreover, stuffed pasta is “all-inclusive,” containing any sort of sauce (spices, tomato, cheese, meat, and fish) that should otherwise be prepared at home, taking further time from our busy day. Maybe this search for a “faster food”—though healthier than the typical fast-junk-food—explains why consumption of durum has decreased in the last few years, albeit only slightly, while fresh and organic-pasta has grown rapidly.<sup>125</sup>



## EU 28- 2019 Area Forecast

EVOLUTION OF THE EU CEREALS AREA					
Million ha	2017	2018	2019 March fcst	2019 April fcst	% change 2018/2019
<b>TOTAL</b>	<b>55,2</b>	<b>55,1</b>	<b>55,8</b>	<b>56,0</b>	1,5
Soft wheat	23,4	23,1	23,7	23,7	2,8
Durum wheat	2,5	2,5	2,4	2,4	-2,3
Barley	12,0	12,3	12,3	12,4	0,9
Maize	8,3	8,3	8,7	8,7	4,8
Rye	2,0	1,9	2,0	2,0	4,6
Oats	2,7	2,7	2,7	2,7	-2,0

Sources : DG AGRI - G4

<sup>124</sup> See the newly launched *Promoting Our European Way of Life*, EUR. COMM'N, [https://ec.europa.eu/info/strategy/priorities-2019-2024/promoting-our-european-way-life\\_en](https://ec.europa.eu/info/strategy/priorities-2019-2024/promoting-our-european-way-life_en), by the President of the European Commission, Ursula von der Leyen, laying out a set of policies among which include more effective consumer protection “reinforcing the safety of goods, services and food; ensuring compliance of EU consumer rules.”

<sup>125</sup> In 2019, the area cultivated organic durum grew by 5%.



## EU 28- 2019 Production Forecasts

EVOLUTION OF THE EU CEREALS USABLE PRODUCTION					
Million tonnes	2017/2018	2018/2019	2019/2020 March fcst	2019/2020 April fcst	% change 2018/2019
<b>TOTAL</b>	<b>305,3</b>	<b>290,5</b>	<b>307,5</b>	<b>309,5</b>	6,5
Soft wheat	142,0	128,7	140,2	141,3	9,8
Durum wheat	8,7	8,7	8,3	8,4	-3,4
Barley	58,3	56,1	60,3	61,0	8,7
Maize	64,8	69,1	68,4	68,3	-1,2
Rye	7,2	6,2	7,9	7,9	27,4
Oats	8,1	7,6	7,9	8,1	6,6

Sources : DG AGRI - G4

If this recent trend stabilizes, Italian producers of dry pasta might find it convenient to partially abandon cultivation of durum and shift to other cereals,<sup>126</sup> thus fueling a new protectionist wave in favor of durum due to its interconnection with the economic well-being of Southern Italy.<sup>127</sup> However, as we explain in Part V, the unlikely question could arise on whether the prohibition of domestic makers from using low-rate ingredients is the only and best way to protect the high-quality of dry pasta and food products in general.<sup>128</sup>

### V. THE REGULATION OF FOOD PRODUCTS IN THE EUROPEAN UNION

Protectionism towards extra-EU countries and hyper-regulation of access to the hugely financed agricultural market are the keystones of the

<sup>126</sup> Figures by the Italian National Institute for Statistics show that the Italian territory cultivated with durum decreased in 2019 by 2.1%, in contrast to soft wheat (+4), barley (+3), and oats (+4.6). I.STAT, <http://dati.istat.it/Index.aspx?QueryId=33655&lang=en> (last visited Mar. 18, 2020). The reduction is significant in central (-8) and Northern Italy (-10), while in Southern Italy and in the Isles, the cultivated area has slightly grown (+0.1%). *See id.* It is noteworthy the big increase of the area cultivated with bio-durum. From 2015 to 2018, it has gone up by 35%. CENTRO DI RICERCA CEREALICOLTURA E COLTURE INDUSTRIALI, <https://www.crea.gov.it/web/cerealicoltura-e-coltura-industriali> (last visited Mar. 18, 2020).

<sup>127</sup> In 2019, Southern Italy and the Isles have hosted some 72% of durum cultivation. *See* I.STAT, *supra* note 126.

<sup>128</sup> Prices of soft wheat per ton are 30% to 45% lower than prices of durum. CENTRO DI RICERCA CEREALICOLTURA E COLTURE INDUSTRIALI, <https://www.crea.gov.it/web/cerealicoltura-e-coltura-industriali> (last visited Mar. 18, 2020).

Common Agricultural Policy (CAP) of the European Union. The quality of food stuffs is a characteristic feature of the CAP and one of the main goals for Italian agricultural policies, since Italy owns the lion's share of trademarked food products.<sup>129</sup> At a European level, different regulatory regimes concur in protecting the quality of foods.

*A. Protectionism and Liberalization Towards Non-EU Agricultural Products*

While within the EU manufacturing and marketing of pasta have been relatively deregulated, the European market of pasta is protected through subsidies, tariffs, and non-tariff barriers from the imports coming from extra-EU countries. In contrast, inside the single market, safety, sustainability, and health in the regulation of food products are recognized as “an essential aspect of the internal market” as this “contributes significantly to the health and well-being of citizens, and to their social and economic interests.”<sup>130</sup> Along the external borders of the EU, quantitative limitations to import are imposed; for example, such limitations exist *vis à vis* Turkey, which is the third-largest producer of pasta in the world. Once again, the main purpose of supporting European agricultural production this way was supporting market and wages in rural areas.

The Common Agricultural Policy (CAP) of the European Economic Community began in 1962 with the goal of ensuring food security and increased productivity in the agricultural sectors. This policy achieved its goals and, with respect to fruit, cereal, and dairy, which were produced in Europe on a scale that surpassed its demand, reducing the exports with devastating effects for developing countries.<sup>131</sup> By the 1980s, however, the increased supply of agricultural products and the relatively mild pressures from the WTO<sup>132</sup> to reduce a heavily subsidized sector led the EU to reform its CAP policy and imports, for instance, grains from the US, Ukraine, and

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<sup>129</sup> See *The Common Agricultural Policy at a Glance*, EUR. COMM'N, [https://ec.europa.eu/info/food-farming-fisheries/key-policies/common-agricultural-policy/cap-glance\\_en](https://ec.europa.eu/info/food-farming-fisheries/key-policies/common-agricultural-policy/cap-glance_en) (last visited Mar. 17, 2020).

<sup>130</sup> See European Parliament and Council Regulation 1169/2011, 2011 O.J. (L 304) 18 [hereinafter Regulation 1169/2011].

<sup>131</sup> See generally EU LAW STORIES: CONTEXTUAL AND CRITICAL HISTORIES OF EUROPEAN JURISPRUDENCE (Bill Davies & Fernanda Nicola eds., 2017); Daniela Caruso & Joanna Geneve, *Melki in Context: Algeria and European Legal Integration* (B.U. Sch. of L., Working Paper No. 15-23, 2015).

<sup>132</sup> See Alan Swinbank, Comm. on Agric. & Rural Dev., *Research for AGRI Committee—The Interactions Between the EU's External Action and the Common Agricultural Policy* (2016), [https://www.europarl.europa.eu/RegData/etudes/STUD/2016/585879/IPOL\\_STU\(2016\)585879\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2016/585879/IPOL_STU(2016)585879_EN.pdf).

Thailand.<sup>133</sup> Farmers were now being paid not to produce and to take land out of production so that their expensive crop did not have to be thrown or given away but could be replaced with foreign imports.

The argument in favor of food security, however, is no longer central in the CAP that is now readjusting for a European Union that is one of the world's largest exporters of food products. While the CAP is changing its governance regime, it is also re-prioritizing its goals, namely shifting from food security to enlist more holistically climate change, sustainability, and rural development.<sup>134</sup> Overall, the CAP has ensured a minimum price for certain agricultural products by increasing production massively for agricultural goods that would not be competitive. However, EU external action has also been a strong influence on the CAP through the various enlargements, and the neighborhood or the high number of trade agreements has triggered important reforms and more liberalization in imports of agricultural products.<sup>135</sup>

FRUMENTO DURO (DURUM WHEAT)						STIMA UE-28	
	16/17	stime 17/18	stime 18/19	proiezione 19/20	Variazione %	proiezione 19-20	
EU-28	9,8	8,7	8,7	8,5	-2,3	8,1	
France	1,7	2,1	1,8	1,7	-5,6	1,8	
Greece	1,1	0,7	0,7	0,8	14,3	0,6	
Italy	5,0	4,1	4,1	4,2	2,4	4,1	
Spain	1,0	1,1	1,3	1,1	-15,4	1,0	
Kazakhstan	2,1	2,0	2,0	2,0	0,0		
Canada	7,8	5,0	5,7	5,2	-8,8		
Mexico	2,3	2,1	1,5	2,0	33,3		
USA	2,8	1,5	2,1	1,6	-23,8		
Argentina	0,2	0,2	0,2	0,2	0,0		
Syria	1,0	0,9	0,6	0,8	33,3		
Turkey	3,6	3,8	3,6	3,6	0,0		
India	0,9	1,1	1,2	1,5	25,0		
Algeria	1,9	2,0	3,2	2,3	-28,1		
Libya	0,1	0,1	0,1	0,1	0,0		
Morocco	0,9	2,2	2,4	1,9	-20,8		
Tunisia	0,8	0,9	1,0	1,1	10,0		
Australia	0,6	0,5	0,3	0,5	66,7		
Others	5,5	5,5	5,0	5,9	18,0		
<b>WORLD TOTAL</b>	<b>40,2</b>	<b>36,4</b>	<b>38,1</b>	<b>36,5</b>	<b>-4,2</b>		

Fonte : IGC - GMR 498 - 25 aprile 2019

Fonte : COCERAL  
EU-28 Grain Crop  
Forecast  
marzo 2019

<sup>133</sup> See Nicole Cantore, Jane Kennan & Sheila Page, *CAP Reform and Development*, OVERSEAS DEV. INST. (2011), <https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/7245.pdf>.

<sup>134</sup> See generally Christilla Roederes-Rynning, *The Common Agricultural Policy: The Fortress Challenged*, in *POLICY-MAKING IN THE EUROPEAN UNION* 196 (Helen Wallace et al., 7th ed. 2015).

<sup>135</sup> See Swinbank, *supra* note 132.

*B. Hyper Regulation in the Single Market*

As for the protection of human health in relation to food, Regulation (EC) no. 178 of 28 January 2002 lays down the general principles and requirements of food law, establishes the European Food Safety Authority, and sets procedures in matters of food safety. More focused on consumers' interest in relation to food quality is Regulation (EU) no. 1169 of 25 October 2011, which provides for the principles of food information to consumers.

As a general principle on labeling food products in EU Law, the presumption is that there is a link between a distinctive quality of a product and a geographical origin entails discrimination against other Member States, incompatible with the free market. The Protected Designation of Origin (PDO), the Protected Geographical Indication (PGI), and the Traditional Specialties Guaranteed (TSG) are exceptions, since in those cases, the place of provenance is a key part of the manufacturing schemes, hence of the special, high quality of the product in question.<sup>136</sup>

For all foods not labeled as PDO or PGI, the said Regulation no. 1169/2011 provides that indication of the country of origin or of the place of provenance is mandatory whenever its absence could mislead consumers as to the true country of origin or place of provenance of the food product, in particular, if the information accompanying the food or the label as a whole would otherwise imply that the food has a different country of origin or place of provenance.<sup>137</sup> Where mandatory food information is required by food information law, it shall concern information: (a) on the identity and composition, properties, or other characteristics of the food; (b) on the protection of consumers' health and the safe use of the food; and (c) on nutritional characteristics.<sup>138</sup> Mandatory particulars to put on labels are listed in Article 9 of the Regulation. In addition to these requirements intended to harmonize legislation, EU Member States may introduce extra mandatory particulars for specific types or categories of food, provided they are justified on grounds of (a) public health; (b) the protection of consumers; (c) the prevention of fraud; and (d) the protection of industrial and commercial property rights, indications of provenance, registered designations of origin, and the prevention of unfair competition.<sup>139</sup> As excessive as the above

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<sup>136</sup> Pursuant to articles 23 to 26 of Regulation (EEC) No. 2913/92, "place of provenance" means any place where a food is indicated to come from, which differs from the "country of origin." See Council Regulation 2913/92 of Oct. 12, 1992, Establishing the Community Customs Code, 1992 O.J. (L 302) 1, 8-9.

<sup>137</sup> Regulation 1169/2011, *supra* note 130, at 33.

<sup>138</sup> *Id.* at 26.

<sup>139</sup> *Id.* at 38.

regulation may seem, it is a protectionist strategy for the immense heritage of European traditional food products (such as wine, vinegar, cheese, and pasta, of course), which could otherwise be easily copycatted by competitors.

### C. *Origin Labels: A New Pasta War*

Italy promptly gave execution to Regulation no. 1169, approving law no. 4/2011 on labeling and quality of food products. Articles 4 and 5 of that law require producers of marketed, transformed, and partially-transformed food products to state the Country of Origin (CoO) or the Place of Provenance (PoP) on the label. Moreover, for certain types of food, among them pasta, the mandatory indication of the Country of Origin of the primary ingredient is provided.<sup>140</sup>

Since the application of the said rule was conditional to the adoption of the implementing acts by the Commission, Italy introduced provisional by-laws in 2017 on labeling dry pasta and rice intended to be applied until the entering into force of the Commission's implementing acts. At any rate, they were applicable until December 30, 2020.<sup>141</sup> Pursuant to these decrees, all packets of pasta and rice sold in Italy will have to include labels of origin showing where the produce was grown. Origin labels must state if durum is produced in Italy or imported from EU or extra EU countries.

This regulation was intended to certify and track the production of durum wheat to control the quality of pasta products. Demanding that all food producers label packs of pasta to indicate what country the ingredients come from, however, can result in introducing a kind of "made in" label, thus encouraging consumers to buy local and undermining free competition in the single market. Former Industry Secretary Carlo Calenda made it plain and clear, saying: "We want to emphasize the importance of 'Made in Italy' and the quality of our production in order to compete with greater strength on international markets."<sup>142</sup>

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<sup>140</sup> It may well occur that the CoO or the PoP of a food is given, and it is not the same as that of its primary ingredient. In such cases, article 26, paragraph 3 of Regulation 1169/2011 requires the CoO or PoP of the primary ingredient in question also be indicated or marked as being different from that of the food. *Id.* at 33.

<sup>141</sup> Pursuant to Article 2 of the decree on pasta, on the label of pasta products shall be indicated the country where durum wheat has been cultivated and the country where durum wheat semolina has been manufactured. Pasta products legally manufactured and marketed in other Member States of the EU or in foreign countries are, of course, excepted by this obligation. *See* Decreto ministeriale 26 luglio 2017, G.U. Aug. 17, 2017, n.191, art. 2 (It.).

<sup>142</sup> Crispian Balmer & Rod Nickel, *Italy Demands Origin Labels for Pasta and Rice*, REUTERS (July 20, 2017, 4:00 PM), <https://www.reuters.com/article/us-italy-durum-canada/italy-demands-origin-labels-for-pasta-and-rice-idUSKBN1A520F>.

The former Agriculture Minister Maurizio Martina candidly added that “Italy has the right . . . to protect its consumers and its producers.”<sup>143</sup> Forty years after the pasta war began, a new battle over origin labels for pasta was declared between Rome and Brussels. Blatantly, since Italy did not formally notify Brussels of its new origin labels, as required by EU law,<sup>144</sup> the protectionist approach of the Italian government caused energetic reactions all across Europe and beyond, especially among the biggest durum exporters to Italy, such as Canada, the largest producer of durum in the world.<sup>145</sup> Attending a June meeting of European Ministers where Italy first launched its proposal, eleven countries strongly criticized it.<sup>146</sup> Many within governments in the EU and worldwide were unhappy with Rome, which finally notified Brussels of the pasta decrees in early 2019. Yet, the government withdrew its notification during the three-month period given to the Commission and EU governments to scrutinize potential damage to the single market.

Despite the open disregard of the Italian government for this procedure, the Commission, after demanding more information on the case, decided not to hit Italy with an infringement procedure—the process it follows when it considers that a Member State has failed to fulfill an obligation under the Treaties.<sup>147</sup> But the Commission did not formally greenlight the new Italian labels on pasta. However, since 2018, the Commission allows Italy and other Member States to roll out origin labels for milk for a two-year trial period, a different decision for pasta would have been politically controversial, if not flat-out discriminatory.

Be that as it may, the clash between Italy and the EU on the origin labels for pasta is now about to end. On 28 May 2018, the Commission adopted an Implementing Regulation 2018/775 (EU) in force from 1 April 2020, thus

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<sup>143</sup> Nick Gutteridge, *Pasta Wars: Italy Throws Down Gauntlet to EU in Shock Move that Will Divide Single Market*, EXPRESS (Sept. 1, 2017, 12:45 PM), <https://www.express.co.uk/news/politics/848853/European-Union-Italy-EU-food-labelling-pasta-rice-Single-Market>.

<sup>144</sup> On March 7, 2019, the Italian government notified the intention to pass new regulation on food information, pursuant to article 45, paragraph 1 of Regulation 1169/2011. See Regulation 1169/2011, *supra* note 130, at 38.

<sup>145</sup> A spokesman for Agriculture Minister Lawrence MacAulay said the Canadian government was demanding Italy to comply with its trade obligations under the World Trade Organization and the free trade agreement between Canada and the European Union. Balmer & Nickel, *supra* note 142.

<sup>146</sup> The available document did not list which Member States objected.

<sup>147</sup> See Consolidated Version of the Treaty on the Functioning of the European Union arts. 258–60, May 9, 2008, 2008 O.J. (C 115) 47, in which the Commission begins its procedure with a reasoned opinion before launching an infringement procedure against the Member States before the ECJ and eventually ending this process with a monetary penalty.

causing on that date the expiration of the Italian decree.<sup>148</sup> In the meantime, the Italian Antitrust Authority fined the German supermarket chain LIDL one million Euros for using misleading information about the origin of durum wheat used to produce pasta *Italiamo* and *Combino*. It also ordered four producers of durum wheat pasta (Auchan, Cocco, De Cecco, and Divella) to modify their labels and websites to provide consumers with more accurate information.<sup>149</sup>

Although starting from April 1, 2020, the “Italian style” origin labels were no longer mandatory, the Italian government succeeded in pushing Brussels to roll out clear, transparent guidelines on mandatory and origin labels. In June 2018, in fact, the Commission provided new guidelines for food labeling.<sup>150</sup> These were intended to assist food business operators and national authorities in the application of the EU Regulation Provision of Food Information to Consumers by providing answers to a series of questions that were raised after the entry into force of the said Regulation.

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<sup>148</sup> Agriculture Minister Decree of 7 May 2018 makes it clear that the provisional decree shall be applied until 1 April 2020. *See* Decreto ministeriale 7 maggio 2018, G.U. Sept. 29, 2018, n.227, 13 (It.). The Implementing Regulation 2018/775 (not intended to be applicable for PGI and registered trademarks) provides that the CoO or the PoP of a primary ingredient must be given so as to avoid misleading consumers when the CoO or the PoP of the primary ingredient is not the same as those of the food product. *See* Commission Implementing Regulation (EU) 2018/775, 2018 O.J. (L 131) 8. In that case, the CoO or PoP shall be given with reference to one of the following geographical areas:

- (i) ‘EU,’ ‘non-EU,’ or ‘EU and non-EU’; or
  - (ii) Region, or any other geographical area either within several Member States or within third countries, if defined as such under public international law or well understood by normally informed average consumers; or
  - (iii) FAO Fishing area, or sea or freshwater body if defined as such under international law or well understood by normally informed average consumers; or
  - (iv) Member State(s) or third country(ies); or
  - (v) Region, or any other geographical area within a Member State or within a third country, which is well understood by normally informed average consumers; or
  - (vi) The country of origin or place of provenance in accordance with specific Union provisions applicable for the primary ingredient(s) as such;
- (b) by means of a statement as follows: ‘(name of the primary ingredient) do/does not originate from (the country of origin or the place of provenance of the food)’ or any similar wording likely to have the same meaning for the consumer.

*Id.* at 10.

<sup>149</sup> *Pasta: l’Antitrust multa Lidl con una sanzione di 1 milione di euro*, ANSA (Jan 17, 2020, 2:11 PM), [https://www.ansa.it/canale\\_terraegusto/notizie/in\\_breve/2020/01/17/pastaantitrust-accoglie-impegni-aziende-ma-multa-1-mln-lidl\\_5b05af19-cdd1-4048-a31a-e5e17b6acc1e.html](https://www.ansa.it/canale_terraegusto/notizie/in_breve/2020/01/17/pastaantitrust-accoglie-impegni-aziende-ma-multa-1-mln-lidl_5b05af19-cdd1-4048-a31a-e5e17b6acc1e.html).

<sup>150</sup> Commission Notice on Questions and Answers on the Application of Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the Provision of Food Information to Consumers, 2018 O.J. (C 196) 1, 2.

## VI. PASTA MADE IN ITALY: IN SEARCH OF QUALITY AND SUSTAINABILITY

The economic impact of agricultural policies in the European Union remains very large, and the consequences of the Common Agricultural policy instituted since Charles De Gaulle to strengthen the internal production of Europe have contributed to economic growth, but they have also been “milked” by autocrats.<sup>151</sup> However, as pointed out in the European Parliament Resolution on Milano Expo 2015, the agriculture sector:

[R]emains a keystone for the Union’s economy, given that agricultural exports represent two thirds of its total external trade, that the Union remains the biggest agricultural exporter in the world and that the EU’s food sector generates an annual turnover of almost 1 trillion Euros and employs more than 4 million people.<sup>152</sup>

No surprise that the CAP funding is very politicized. In recent years they have been subjected to reforms to allow for a more integrated approach towards not only equitable, green, and rural development policy but also more transparency in their disbursements.<sup>153</sup>

Against this background, the recent pasta war on labeling between Rome and Brussels is only a tiny part of a continent-wide nationalist tendency to claim more leeway from the Commission to protect workers and national farmers and production against the results of a totally liberalized free market. Whether it is populism or an attempt at casting into doubt the EU-liberal and free market gospel, it is hard to deny that a balanced position between liberalization and hyper regulation seems to be possible even at the EU level, as far as durum wheat pasta is concerned.

A middle path between outright liberalization and anti-competitive protectionism could be marked by promoting territorial excellence brandings, origin labeling, and high-quality oriented manufacturing schemes. The shift to quality could, in fact, ensure marketing expansion of Italian pasta, since it is able to meet the multifaceted challenge that is before us in the decades to

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<sup>151</sup> See Selam Gebrekidan & Matt Apuzzo, *The Money Farmers: How Oligarchs and Populists Milk the E.U. for Millions*, N.Y. TIMES (Nov. 3, 2019), <https://www.nytimes.com/2019/12/11/world/europe/eu-farm-subsidy-lobbying.html?searchResultPosition=4>.

<sup>152</sup> European Parliament Resolution of 30 April 2015 on Milano Expo 2015: Feeding the Planet, Energy for Life (2015/2574(RSP)), 2016 O.J. (C 346) 88, 89.

<sup>153</sup> See Comm. on Agric. & Rural Dev., *Overview of CAP Reform 2014–2020*, AGRICULTURAL POLICY PERSPECTIVES BRIEF 1 (Dec. 2013), [https://ec.europa.eu/info/sites/info/files/food-farming-fisheries/farming/documents/agri-policy-perspectives-brief-05\\_en.pdf](https://ec.europa.eu/info/sites/info/files/food-farming-fisheries/farming/documents/agri-policy-perspectives-brief-05_en.pdf).

come—the challenge of food security for human health, clean environment, sustainability, and preserving rural economy so to better fight climate change.

*A. New Frontiers in the Protection of Italian Pasta: Supply Chain Contracts and Quality-Origin Labeling.*

Teamwork is the keyword for enhancing the production of quality durum wheat from Italy—support farmers and strengthen the competitiveness of Italian pasta without infringing European rules. *Contratti di filiera*, or supply chain contracts, are the legal tool to build a team. They are aimed at joining the forces of all actors playing a role in the production chain of pasta: seed producers, farmers, storage centers, pasta manufacturers, retailers, and agro-food research institutions. By cooperating and linking themselves in mutual obligations, all contractors can assign incentives for sustainable cultivations, jointly finance research and development on seeds and high-tech manufacturing patterns, trace all the steps of the production chain, increase health and safety checks, tighten the quality controls on ingredients, and concentrate the product offer. Finally, by achieving economies of scale usually out of the reach of small and medium enterprises, Italian companies seemed to have learned a lesson.

Supply chain contracts in the field of durum wheat pasta are booming. From 2017 to 2019, supply chain contracts between pasta producers and suppliers have doubled in numbers, going from 6,000 to 12,000. More than 200,000 enterprises joined supply chain contracts, covering now 15% of the cultivated area in Italy.<sup>154</sup> Thanks to fine-tuning and investments in the production chain, in ten years, export has risen by 20% and reached a value of forty billion euros.<sup>155</sup>

The case of pasta “La Molisana” provides the best example of how supply chain contracts were able to turn an announced failure into a big commercial success. In a financial mess and forced by the courts to sell its facilities, this pasta producer became a well-known commercial brand by means of protocols and contracts focused on quality and control of all its production chain, which is among the few to use 100% Italian durum wheat.

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<sup>154</sup> See Mimmo Pelagalli, *Grano duro, i contratti di filiera raddoppiano e rilanciano*, AGRONOTIZIE (Nov. 25, 2019), <https://agronotizie.imaginenetwork.com/agricoltura-economia-politica/2019/11/25/grano-duro-i-contratti-di-filiera-raddoppiano-e-rilanciano/65004>.

<sup>155</sup> *Rilancio grano duro italiano. Siglato protocollo Mipaaf-Barilla: nel 2020 acquistate 120mila tonnellate in più*, AGRICOLTURA (Dec. 12, 2019), <https://www.agricultura.it/2019/12/12/bellanova-rilancio-grano-duro-italiano-siglato-protocollo-mipaaf-barilla-nel-2020-acquistate-120mila-tonnellate-in-piu/>.

Given that sales of 100% Italian dry pasta increased by 11% in 2019, access to the Italian chain of durum wheat is likely to become a key factor for competitiveness. Big companies, too, seem to have grasped this fact and are entering supply chain-contracts. Following an MOU with the Ministry of Agriculture signed in December 2019, Barilla, the world's leading pasta producer, is committed to joining those contracts for at least 70% of its supply chain of Italian durum, thus increasing by 120,000 tons (+20%) the purchase on the Italian market.<sup>156</sup>

Another way to make sure that pasta made in Italy preserves its quality without violating the single market rules is to promote food safety and sustainability through accurate labeling and more focused advertising geared to educate consumers about healthy dietary habits.

### *B. Sustainability of Pasta Made in Italy*

Key drivers of the new era of high-quality food products are health, environment, and sustainability. Among the seventeen UN Sustainable Development Goals, which countries have committed to achieving in order to assure a more sustainable future by 2030, there are goal three: Good Health and well-being, and goal fifteen: Life on Land, focusing on environmental protection. This is connected with Goal Two: Zero Hunger, focusing on local production and the reduction of pricy foods.<sup>157</sup>

Finally, durum wheat pasta in particular, due to its rich grain content, is proved to be as healthy as much more expensive diets. Pasta is a source of energy and nutrition, has a low glycemic index, and contains protein, iron, calcium, phosphorus, and vitamins A, B1, and B2 because of the durum wheat. Moreover, pasta reduces the risk of high blood pressure and cardiovascular diseases as it has low-sodium and cholesterol content. It can be consumed—though, in limited amounts—even in diets fit for diabetes and cardiovascular disorders. Pasta is a healthy and filling meal and is made of ingredients that do not contain any additives. Moreover, dry pasta made from durum is not vulnerable to parasites.

The above organoleptic features are better preserved when pasta is produced as close as possible to the manufacturing site. The greater the distance between the crops and the manufacturing site, the more necessary it will be to use additives and chemical preservatives, thus compromising the healthy qualities of pasta products. Under this perspective, labeling the origin

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<sup>156</sup> *Id.*

<sup>157</sup> See *About Sustainable Development Goals*, U.N. SUSTAINABLE DEV. GOALS, <https://www.un.org/sustainabledevelopment/sustainable-development-goals/>.

of the primary ingredient is not only the key to the quality of the product as a meal but even for health reasons. This would give an advantage to Italian durum over imported durum, which comes with thousands of miles of carbon footprint from Canada or Australia and needs chemical preservatives to be maintained.

With respect to goals fifteen and two of the UN Sustainable Development Goals, it is commonly recognized among scholars and scientists that diets containing a high proportion of animal products require the consumption of significantly more natural resources than diets containing a high proportion of vegetable products. Pasta is made simply by adding water to semolina, which is extracted from durum wheat. This mix is kneaded with the appropriate technique without human touch through hygienic methods at computer-controlled and high-tech facilities; then, this dough is dried. Almost no meal is as environmentally friendly as pasta, and local production of *Made in Italy* creates an affordable and balanced diet with a very low carbon impact in the global supply chain of durum wheat pasta.

### C. *The Struggle for Economic Development of Mezzogiorno*

No doubt that economic growth in Mezzogiorno is strictly dependent on the agricultural sector, including the popular agri-tourism, that is, local farms turned into restaurants or bed and breakfasts for tourists, providing a cultural experience connected to the local territory. Pasta, especially durum-made pasta, can be an important driver to boost this growth. In fact, durum wheat cultivations in Southern Italy cover more than seventy percent of the national cultivated surface. The unique mix of wind, sun, and dry air gives an incomparable advantage to any other place for the cultivation of durum and the production of dry pasta. Increasing the consumption of dry pasta means, quite inevitably, increasing production in Southern Italy. Yet, the distributive implications in the Italian political economy of the pasta resurgence are more complex when looking into the development of Mezzogiorno. As a matter of fact, it is uncertain whether the resurgence of pasta production in Southern Italy will contribute, just like Advocate General Mancini predicted, to raise the GDP of a historically underdeveloped region.<sup>158</sup> As Tomaso Ferrando explains well in his essay on the globalized Italian tomato, it depends on how the distribution of power and value along the value chain takes place.<sup>159</sup> Whether such redistribution will benefit small and medium-sized producers, farmers, and agricultural workers, or whether this will be asymmetrical and

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<sup>158</sup> See Caruso, *supra* note 34, at 805.

<sup>159</sup> See Tomaso Ferrando, *Gangmastering Passata: Multi-territoriality of the Food System and the Legal Construction of Cheap Labor Behind the Globalized Italian Tomato*, 14 FIU L. REV. 521 (2021).

completely unbalanced towards large producers and retailers remains to be seen. Our view is that legal intervention is needed—for example, to regulate the supply chain contracts—to make sure that revenues coming from the selling of pasta be re-distributed to properly pay the weakest rings of the value chain.

Finally, there are at least two other reasons of concern about the economic potential of pasta *Made in Italy* and its redistributive effect in Mezzogiorno. First, the formalization of the pasta market under the scrutiny of EU guidelines has created a new threat for the booming informal economy around, for instance, the production of *orecchiette* in Bari. In the Puglia region of Southern Italy, the grandmothers who have been housewives mostly employed in the informal economy have been selling the fresh-made pasta as a side job to restaurants all over the region. This informal economy also allowed many of them to raise their families and make some extra money by selling *orecchiette* to local restaurants and tourists.<sup>160</sup> Displacing these informal regimes is not *per se* the problem as long as these could be replaced with more formalized legal production chains that could offer the grandmothers flexible conditions of work by making effective health and safety controls over ingredients and manufacturing.

Additionally, another motive for concern if we look at the recent marketing trends, the selling of gluten-free and organic pasta made from spelt, barley, rye, and oats is booming and, although not immediately, it could cause the decrease of dry pasta made from durum in the long run. Should this trend continue for years to come at the disadvantage of dry pasta, Italian producers might find it convenient to partially abandon the cultivation of durum wheat and shift their production to other types of cereals. In both cases, pasta *Made in Italy*, if supported by a vigorous Italian industrial policy to change for the benefit of the weakest, could realign the distribution of power and value in global supply chains, restrain and restore the informal economy to legality and anticipate the shift towards a variety of pasta products, and boost economic growth in Southern Italy linked to tourism and a more sustainable and healthy food production.

## VII. CONCLUSION

The legal regulation of pasta *Made in Italy* has swung between protectionist and liberalization measures that ended up protecting the cultural heritage of a healthy and sustainable product while respecting international

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<sup>160</sup> See Jason Horowitz, *Call It a Crime of Pasta*, N.Y. TIMES (Dec. 8, 2019), <https://www.nytimes.com/2019/12/07/world/europe/italy-bari-pasta-orecchiette.html>.

free trade regimes and the European single market principles. The history we have summarized above explains that closing European borders to free imports when confronting the Italian industrial policy of strict regulation of production patterns, now only limited to domestic enterprises, has prevented farmers from shifting from low yielding durum wheat in favor of cheaper but lower quality crops used in pasta products. The struggle for preserving pasta *Made in Italy* has succeeded through a web of legislative, regulatory, and contract law provisions to preserve a high-quality *Made in Italy* pasta with a distinctive trademark all over the world.

In light of the global sustainability trends in developed economies, the industrial policy of the Italian government also benefitted from the increasing sensitivity of consumers to high-quality food and its environmental impact. The struggle for high-quality durum wheat pasta has nicely allied with rewarding sustainable, organic, and healthy foods. Due to its unique blend of high nutritional content, environmentally friendly manufacturing, low price, and unsurpassed taste, pasta could confidently take up the challenge of becoming the new globalized food, replacing meat-based junk food. Finally, whether the economic development created by the production of pasta *Made in Italy* has trickled down to local manufacturers and created stable economic growth in Mezzogiorno by creating new employment and raised GDP remains an open question. In fact, unless pasta *Made in Italy* becomes an industrial policy priority for the Italian government, the imbalanced distribution of value and power along the value chain of durum, the informal economies, and the competition created by filled pasta or pasta made by alternative grains might undermine its redistributive effects.