OPINION OF ADVOCATE GENERAL GEELHOED

delivered on 17 January 2002 [1]

I — Introduction

1. Central to the present reference for a preliminary ruling is the interpretation of two Regulations on common rules for imports from third countries. [2] The referring court essentially asks whether the scope of those regulations extends to the marketing on the home market of the products covered by them.

II — Legal framework

A — *Community law*

2. According to their preamble, the purpose of the Regulations is the liberalisation of imports into the Community, that is to say, the elimination of all quantitative restrictions. Regulation No 3285/94 is the basic regulation and Article 1(2) thereof establishes as a general principle that the importation of certain specified products from third countries into the Community is to be free. In principle, those goods are no longer subject to any quantitative restrictions, without prejudice to certain safeguard measures which may be taken. Regulation No 519/94 specifically concerns imports from State-trading third countries and in Article 1(2) lays down an analogous principle.

3. The structure of the two Regulations is to a large extent similar. Of particular relevance to the present proceedings is the identical exception clause included in the final provisions of the Regulations, namely Article 19(2) of Regulation No 519/94 and Article 24(2) of Regulation No 3285/94. It reads as follows:

'2. (a) Without prejudice to other Community provisions, this Regulation

1 — Original language: Dutch.

2 — Council Regulation (EC) No 519/94 of 7 March 1994 on common rules for imports from certain third countries and repealing Regulations (EEC) Nos 1765/82, 1766/82 and 3420/83 (OJ 1994 L 67, p. 89) and Council Regulation (EC) No 3285/94 of 22 December 1994 on the common rules for imports and repealing Regulation (EC) No 518/94 (OJ 1994 L 349, p. 53).

shall not preclude the adoption or application by Member States:

(1) of prohibitions, quantitative restrictions or surveillance measures on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants, the protection of national treasures possessing artistic, historic or archaeological value, or the protection of industrial and commercial property;

...

(b) The Member States shall inform the Commission of the measures or formalities to be introduced or amended in accordance with this paragraph. In the event of extreme urgency, the national measures or formalities in question shall be communicated to the Commission immediately upon their adoption.' [3]

3 — The French and English language versions of, respectively, Article 19(2) of Regulation No 519/94 and Article 24(2) of Regulation No 3285/94 are identical. The Dutch language texts are not entirely uniform, but still correspond as regards content.

B — *National legislation*

4. Article 398 of the codice postale italiano (Italian Postal Code) [4] prohibits the production or importation into national territory of electrical and radio-electrical appliances and installations, or cables for the transmission of electrical current, with the intention of marketing, using or operating them, under whatever regime, if they do not meet the requirements established to prevent interference with radio communications. The competent authorities are instructed to adopt, with due observance of Community legislation, the appropriate measures for supervising compliance with this provision. The marketing and the importation with the intention to market of the goods mentioned above requires the submission or production of a certificate or a declaration of conformity. The bodies competent to issue the abovementioned certificates and declarations are appointed by Ministerial Decree.

5. Pursuant to Article 399 of the codice postale italiano anyone acting in contravention of the provisions of Article 398 is liable to the imposition of an administrative fine. When the transgressor belongs to the category of manufacturers or importers of electrical or radio-electrical appliances or installations, a fine is to be imposed and confiscation of the products and equipment not in accordance with the declaration of conformity as referred to in Article 398 is to be ordered.

4 — Approved by Presidential Decree No 156 of 29 March 1973, as amended by Law No 209 of 22 May 1980.

III — Facts, procedure and reference for a preliminary ruling

6. The referring court has described the facts and circumstances of the dispute in the main proceedings as follows.

7. By a decision of 17 February 1996 the Prefetto di Cuneo ordered the administrative confiscation, pursuant to Article 20(4) of Law No 689 of 24 November 1981, of 20 non-approved cordless telephones which were on sale at the private limited company 'Expo Casa Manta'. On 9 March 1995 the Guardia di Finanza had seized those appliances in connection with the infringement of Articles 398 and 399 of the codice postale italiano.

8. By an application to the Pretore di Saluzzo, lodged on 12 March 1996, S. Carbone, in his capacity as sole director of 'Expo Casa Manta', appealed against the decision of the Prefetto di Cuneo. In a judgment of 7 January 1997, the Pretore di Saluzzo upheld the appeal and annulled the confiscation order. In that connection the Pretore took the view that Regulations Nos 519/94 and 3285/94 had liberalised the importation of, *inter alia*, cordless telephones from third countries. That liberalisation entailed the non-validity of the prohibition on possession with a view to their sale of appliances not approved by the Italian authorities as none of the grounds for prohibition or for the adoption of safeguard measures as referred to in the Regulations were satisfied in the present case, according to the Pretore.

9. The Prefetto di Cuneo lodged an appeal in cassation from the Pretore di Saluzzo's judgment to the Corte Suprema di Cassazione. The Prefettura claims infringement and misapplication of, *inter alia*, Article 19(2)(a) of Regulation No 519/94 and Article 24(2)(a) of Regulation No 3285/94.

10. According to the Prefettura, Regulations Nos 519/94 and 3285/94 did indeed eliminate all restrictions on the importation of the confiscated goods, but did not affect the rules governing their marketing. In so far as non-approved appliances are concerned, their marketing remains prohibited pursuant to national legislation. In the Prefettura's view, those regulations removed all obstacles to the opening up of frontiers and the free movement of goods between the Member States, but they did not alter the national rules concerning the sale of non-approved cordless telephones.

11. The referring court points out that the confiscation was annulled by the contested judgment of the Pretore di Saluzzo, as the Pretore was of the opinion that the prohibition in Article 398 had been supplanted by the Regulations, which entail the liberalisation of not only the importation but also of the marketing of the goods in question. That interpretation by the Pretore is challenged in the appeal in cassation. Since both regulations exclusively concern imports from third countries, the prohibition in Article 398 on the marketing of non-approved appliances in Italy remains unaffected.

12. According to the referring court, the appeal in cassation clearly raises questions concerning the interpretation of the regulations in question, since the line of argument followed by the Pretore in the contested judgment and the argument advanced by the appellant conflict as regards the extension of the effect of the regulations to the placing on the home market of the products covered by the regulations. In order to find a solution to this problem, the Corte Suprema is required to refer the matter to the Court of Justice pursuant to Article 234, final paragraph, EC. By an Order of 18 April 2000, registered at the Court of Justice on 1 August 2000, the Corte Suprema requested a preliminary ruling on the interpretation of the regulations.

13. The Italian Government and the Commission both submitted written observations to the Court. There was no hearing.

IV — Observations of the Italian Government and the Commission

14. The Italian Government contends that the abovementioned regulations exclusively concern imports into the Community from third countries. The marketing of these products falls outside the scope of the Regulations. Articles 398 and 399 of the codice postale were thus enacted in conformity with Community law.

15. The Italian Government is of the opinion that in the present case the problem can be solved in accordance with the exception clauses of Article 19 of Regulation No 519/94 and Article 24 of Regulation No 3285/94. Under those provisions the seizure and confiscation of the cordless telephones would be in conformity with the rules of Community law in order to prevent interference with authorised radio frequencies which are matters within the competence of the Italian authorities. Viewed from this perspective, it appears that the question submitted by the Corte Suprema could be answered at the national level. The Court would thus not be competent to rule on it.

16. Alternatively, the Italian Government claims that the regulations have indeed eliminated all restrictions on imports of products from certain third countries, but have not had any effect on the rules concerning the obligation to approve goods that are to be placed on the market in Italy. That obligation to approve telecommunications terminal equipment does not stem only from national legislation, but also from Community directives.

17. In light of the foregoing, the Italian Government is of the opinion that the importation of cordless telephones, on the one hand, and the marketing of this equipment, on the other, warrant separate legal evaluation.

18. In its observations, the Commission dwells on the fact that the referring court did not formulate a specific question. It appears from the wording of the order for reference that the Corte Suprema ordered the case to be referred to the Court of Justice for an interpretation of Regulations Nos 519/94 and 3285/94. Although the referring court has failed to supply certain factual information, e.g. concerning the country of origin of the cordless telephones, the Commission nevertheless considers that sufficient elements are present to enable the Court to give a reply such as to contribute to the solution of the dispute in the main proceedings.

19. In substance, the Commission states that a reading of Regulations Nos 519/94 and 3285/94 clearly shows that they concern exclusively the liberalisation of imports into the Community of products from third countries and that they have no effect whatsoever on the further marketing of these products within the Community. During that stage the national or Community rules in force remain applicable. The Regulations merely involve the ongoing unification of the systems concerning imports into the Community and remove exceptions and derogations which were the result of national measures of commercial policy in force before their adoption. They leave intact the Community's competence to take specific safeguard measures, nor do they impinge on the Member States' competence to adopt prohibitions, quantitative restrictions or safeguard measures under the expressly mentioned exceptions.

20. In order to clarify the scope and effect of the Regulations involved in regard to the distinction between liberalisation and marketing measures, the Commission goes on to refer to the General Agreement on Tariffs and Trade (GATT), especially to Article XI concerning quantitative trade restrictions and Article III concerning the domestic marketing of products (national treatment).

21. In addition the Commission discusses the relevant rules concerning the internal

market. It notes that at the time when the appliances in the main proceedings were imported, their marketing was not yet subject to Community harmonisation. According to Community law, in cases such as these the national legislation concerning marketing must be non-discriminatory, proportional to its aim and justified by a general interest, if it is not to conflict with Article 28 EC. In addition, the measures relating to the marketing of products which are imported from third countries must respect the principle of non-discrimination laid down in Article III of the GATT.

22. In conclusion, the Commission emphasised that cordless telephones or radio-receivers are generally not always harmless or neutral from an electro-magnetic point of view. They can interfere with other equipment because of their electronic components. In adopting the national legislation in question, the national legislature sought to introduce means of verifying all electrical and radio-electrical appliances or installations or cables for transmission of electrical current, in order to examine whether they comply with the rules to prevent interference with transmitters and receivers for radio communications. To that end, appliances are subject to the issue of a certificate or declaration of conformity. Since the national rules apply to domestic and imported products, the Commission contends that they do not run counter to Article 28 EC and Article III of the GATT.

V — Assessment

23. The Corte Suprema's request enables the Court to rule on the fundamental distinction between, on the one hand, the treaty regime concerning imports of products from third countries into the Community which forms part of the common commercial policy and, on the other hand, the Community regime concerning the marketing of goods within the common market.

24. As a preliminary issue, however, the matter of admissibility must be dealt with. The Italian Government and the Commission have briefly commented on the Court's competence to give a reply in response to the request from the referring court. On the basis of settled case-law,[5] I am unequivocally certain that the Court must provide the Corte Suprema with an answer. The order for reference is extremely concise and lacks a specifically worded question. The referring Court has nevertheless provided sufficient information concerning the circumstances of the case and the applicable law, on the basis of which the Court can give a useful reply. From that information it may be deduced that there is an actual dispute between Carbone and the Prefetto di Cuneo concerning the marketing in Italy of cordless telephones, which are, it may be inferred, imported from third countries into the Community. The dispute focuses on the interpretation of the object and scope of

5 — See, e.g., recent Case C-472/99 *Clean Car Autoservice* [2001] ECR I-9687, paragraphs 13 and 14.

Regulations Nos 519/94 and 3285/94 which, in so far as relevant to the main proceedings, are virtually identical. Thus, the national court has addressed to the Court a request which sufficiently clearly reflects the subject-matter of the main proceedings and involves the interpretation of Community law. It is for the referring court, if possible, having due regard to the particular circumstances of the case, to determine which Regulation would in point of fact apply. [6]

25. In substance, by its request the Corte Suprema asks whether the scope of the Regulations concerned is limited to the importation of cordless telephones from third countries, or whether it may be extended to the time that these products are marketed domestically. In the latter case, it would be necessary for there to be a direct assessment of the lawfulness of the Italian legislation in question, in light of the two regulations and especially the exception clauses contained therein, after importation of the appliances, but prior to their marketing.

26. I do not share this point of view. As the Italian Government and the Commission have convincingly explained, Regulations Nos 519/94 and 3285/94 exclusively concern the liberalisation of imports of goods from third countries and do not have as their aim the complete liberalisation of the subsequent marketing of those products within the common market.

27. For the Treaty distinguishes between internal and external aspects in the establishment of the common market, in order to attain the Treaty objectives listed in Article 2 EC. The internal side of the common market among other things comprises the elimination of impediments to the free movement of goods between the Member States, among which is the elimination of quantitative restrictions on the import and export of goods and of all other measures having equivalent effect. [7] The external side of the common market specifically comprises the common commercial policy. [8] Both dimensions of the common market are elaborated in separate provisions in the Treaty and form each other's necessary complement.

28. The regulations involved were adopted within the framework of the common commercial policy. To start with, this follows from their legal basis, i.e., Article 113 of the EC Treaty (now, after amendment, Article 133 EC). Article 133(1) EC determines that the common commercial policy is to be based on uniform principles, among which is the achievement of uniformity in measures of

6 — It should also establish whether the cordless telephones were imported into the Community directly from a third country, or whether the appliances in question were perhaps imported into the Community via another Member State. The latter possibility is not an obvious one, in the light of the order for reference, but on the basis of the facts given it cannot be entirely discounted either.

7 — See Article 3(1)(a) and (c) EC.

8 — See Article 3(1)(b) EC.

liberalisation. Both regulations are important instruments of this policy, given that they give concrete form to the principle that the importation of goods into the Community from third countries is basically free from quantitative restrictions. The commercial policy character of the regulations also appears from the prominent role the GATT played in their adoption. The preamble to Regulation No 3285/94 in particular indicates that the international obligations arising from the GATT and other parts of the Agreement establishing the World Trade Organisation (WTO) were given due consideration in the further elimination of safeguard measures and other measures restrictive of imports.

29. The Court's case-law has made it clear that the common commercial policy is the exclusive competence of the Community. The Member States are no longer able to found any competence to take national measures in the field of commercial policy on national law. Essentially, such measures are still permitted only when specifically authorised by the Community. [9] These matters serve to explain the competence which the Council has allowed the Member States pursuant to Article 24(2) of Regulation No 4285/94 and Article 19(2) of Regulation No 519/94. It also justifies the obligation on the part of the Member State to notify the Commission when it intends to invoke a ground for exception.

30. The referring court does not, however, request the Court to further determine the scope of these grounds for exception. As has already been noted, the dispute in the main proceedings concentrates on the question of whether the regulations impinge on the Member States' competence to prohibit the marketing of appliances such as cordless telephones, when these do not meet the requirements laid down for the prevention of interference with radio communications.

31. As soon as products coming from third countries have been lawfully imported into the Community, they are wholly assimilated to products originating in Member States as regards the free circulation of goods within the Community. [10] This presupposes that the time when the goods are imported from third countries must be distinguished from the time when they are consequently placed on the market. Relevant to the placing on the market of goods within the Community are the Treaty provisions concerning the internal side of the common market. The elimination of quantitative restrictions as between the Member States is expressly regulated in Articles 28 to 30 EC. Under Article 28 EC quantitative restrictions on imports and all measures having equivalent effect are prohibited as between Member States, while Article 30 EC allows the Member States to lay down conditions in regard to imports if

9 — Case 41/76 *Donckerwolcke and Others* [1976] ECR 1921, paragraph 32.

10 — See Article 23(2) and Article 10 EC, as well as the *Donckerwolcke* case, cited in footnote 9, paragraphs 17 and 18.

these are necessary to protect a general interest. The grounds for justification listed in Article 30 EC are identical to the letter to the grounds mentioned in Article 24(2) of Regulation No 4285/94 and Article 19(2) of Regulation No 519/94.

32. The manner in which the principles of free circulation are applied in intra-Community movement differs on several points from the scope of the comparable provisions in the Regulations. Without having to go into too much detail, I call to mind that the concept of 'quantitative restrictions' in the sense of the regulations should be understood to mean instruments of commercial policy, such as quotas. The words 'quantitative restrictions on imports and all measures having equivalent effect' within the meaning of Article 28 EC have, on the other hand, through their extensive construction by the Court, been accorded an interpretation which is entirely their own. As a further example, the regulations do not contain the condition from the last reference of Article 30 EC that the trade-restricting measures to be taken by the Member States may not constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States. [11]

33. The Member States' competence to invoke a general interest under Article 30 EC to justify a trade restriction will come to an end when exhaustive and complete harmonisation has been achieved within the Community. On 9 March 1999 the European Parliament and the Council approved Directive 1999/5/EC (hereinafter: 'the Directive') on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity. [12] The Directive, which is based on Article 100A of the EC Treaty (now, after amendment, Article 95 EC), provides a framework for the placing on the market, the free movement and the putting into service within the Community of the said equipment. The Member States are obliged to see to it that the equipment in question is only placed on the market when it complies with the essential requirements involved as well as with several other provisions from the Directive. As regards the placing on the market, no further national provisions may be imposed. [13] The Member States must also prohibit the placing on the market of apparatus not bearing the CE mark, which indicates its conformity with all provisions of the Directive. [14] Thus the Directive assists the free movement of goods within the Community, taking account of the necessary standards of safety which the Member States were previously able to adopt independently pursuant to Article 30 EC. Apart from this, the Directive goes even further and declares the requirements to be likewise applicable to products which

11 — Despite these differences, the Court, in its interpretation of the identical grounds for justification in commercial policy legislation, is guided by the case-law concerning Article 30 EC. See in this respect especially the decision of 15 June 1999 in the *Heinonen* case (C-394/97 [1999] ECR I-3599).

12 — OJ 1995 L 91, p. 10. This Directive had not yet been adopted at the time of the dispute in the main proceedings.

13 — Article 6(1) of the Directive.

14 — Article 8(1) of the Directive.

are marketed on a Member State's home market.

34. The Regulations adopted within the framework of the common commercial policy do not in any way provide for the harmonisation of national regulations. The Regulations' objective, namely the liberalisation of the importation into the Community of goods coming from third countries, after all differs from the objective of Articles 28 and 30 EC and, by extension, from the objective served by the Community harmonisation of national legislations, i.e., ensuring the free movement of goods within the common market.

35. In order to emphasise this distinction, the Commission also rightly referred to the system of the GATT. This analogy makes sense, as the free movement provisions concerning the circulation of goods in the original EEC Treaty are based to a significant degree on the GATT. Article XI of the GATT, concerning the elimination of quantitative restrictions on imports in the commercial dealings between the parties to the GATT, shares the Regulations' objective. Article III of the GATT, on the other hand, concerns the marketing of products within a contracting party's home market. On the basis of this provision, it is prohibited to apply national measures concerning, among other things, the internal sale, offering for sale, purchase or use of products to imported or domestic products in such a way as to afford protection to domestic production. The object of Article III of the GATT thus coincides with that of Article 28 EC.

36. As a result of the distinction indicated, Regulations Nos 3285/94 and 519/94 in my view do not interfere with Italy's competence to apply, in order to prevent interference with radio communications, certain product standards to cordless telephones which have to be met for the appliances to be lawfully placed on the market. This does not alter the fact that in the exercise of this competence the product standards adopted must, where appropriate, comply with other relevant Community provisions, such as Articles 28 and 30 EC and the applicable Community directives. [15]

15 — This assessment is the subject of a request for a preliminary ruling from the Giudice di Pace di Genova (*Radiosistemi*, Cases C-388/00 and C-429/00, judgment of 20 June 2002, not yet published in the ECR).

VI — Conclusion

37. In light of the foregoing, I propose that the Court should reply as follows to the reference for a preliminary ruling made by the Corte Supremo by order of 18 April 2000:

> Regulations Nos 3285/94 and 519/94 exclusively concern the importation into the Community of products from third countries and do not concern the marketing of these products within the Community. Those Regulations do not interfere with the Member States' competence to impose standards on the marketing of cordless telephones that are justified on the grounds of general interest and apply without distinction to national and imported products.