In Case 218/83

REFERENCE to the Court under Article 177 of the EEC Treaty by the Cour de Cassation de la République Française [Court of Cassation of the French Republic] for a preliminary ruling in the proceedings pending before that court between

LES RAPIDES SAVOYARDS SÀRL, whose registered office is at Annemasse, Haute-Savoie,

DIFFUSION MARKETING INTERNATIONAL SÀRL, whose registered office is at Stains, Seine-Saint-Denis,

ROGER DEJUSSEL, employee of Les Rapides Savoyards, with an address for service at Annemasse,

and

DIRECTEUR GÉNÉRAL DES DOUANES ET DROITS INDIRECTS [Director General for Customs and Indirect Taxes],

on the interpretation of the Agreement between the European Economic Community and the Swiss Confederation of 22 July 1972 and of Protocol No 3, annexed to that agreement, concerning the definition of the concept of "originating" products and methods of administrative cooperation,

THE COURT (Fourth Chamber)

composed of: T. Koopmans, President of Chamber, K. Bahlmann, P. Pescatore, A. O'Keeffe and G. Bosco, Judges,

Advocate General: Sir Gordon Slynn
Registrar: J. A. Pompe, Deputy Registrar

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the observations submitted pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and written procedure

On 8 June 1977 Les Rapides Savoyards Sàrl, a transport undertaking and customs agent, whose registered office is at Annemasse, Haute-Savoie, imported into France from Switzerland, on behalf of Diffusion Marketing International Sàrl, whose registered office is at Stains, Seine-Saint-Denis, 25 cartons containing a consignment of 13 170 ballpoint pens.

The ballpoint pens consisted *inter alia* of cartridges coming under heading 98.03 of the Common Customs Tariff, imported from the United States of America and put into free circulation in France by Diffusion Marketing International. That company had subsequently re-exported those cartridges on a temporary basis to Switzerland, to be fitted by a Swiss manufacturer with plastic or chrome clips, barrels and caps coming under the same tariff heading. The barrels and clips originated in the United States and were imported directly into Switzerland.

Roger Dejussel, a representative of Les Rapides Savoyards, declared the pens for home use in France at the Annemasse customs office. In support of that declaration he submitted a EUR 1 movement certificate. Such certificates are used in trade between the EEC and the countries of the European Free Trade Association (EFTA). In particular its use in trade with Switzerland is provided for in Decision No 10/73 of the EEC/Switzerland Joint Committee of 12 December 1973 (Regulation (EEC) No 3600/73 of the Council of 27 December 1973, Official Journal 1973 L 365, p. 135) amending Protocol No 3 concerning the definition of the concept of "originating products" and methods of administrative cooperation, annexed to the Agreement between the European Economic Community and the Swiss Confederation of 22 July 1972 (Regulation (EEC) No 2840/72 of the Council of 19. 12. 1972, Official Journal, English Special Edition 1972 (31 December), p. 190). The certificate submitted by Mr Dejussel had been issued by the Swiss customs authorities.

Goods accompanied by a EUR 1 movement certificate qualify for the preferential import arrangements provided for in the agreement between the EEC and the Swiss Confederation, in this case a rate of import duty of 2.6% instead of the general rate of 13% provided for by the Common Customs Tariff.

According to Article 2 of the Agreement between the European Economic Community and the Swiss Confederation, the agreement applies to products

originating in the Community or Switzerland, subject to certain exceptions. Article 11 provides that the rules of origin are laid down in Protocol No 3. According to Article 1 (2) of Protocol No 3, products originating in Switzerland within the meaning of the agreement are, on the one hand, products wholly obtained in Switzerland and, on the other, products obtained in Switzerland in the manufacture of which products other than those wholly obtained in Switzerland are used, provided that the said products have undergone sufficient working or processing within the meaning of Article 5. Article 5 (1) provides *inter alia* that the working or processing specified in List B is to be regarded as "sufficient". That list, which constitutes Annex III to the Protocol, as amended by Decision No 3/74 of the Joint Committee of 31 October 1974 (Regulation (EEC) No 3288/74 of the Council of 2. 12. 1974, Official Journal 1974, L 352, p. 31), provides that the incorporation of non-originating materials and parts in *inter alia* the products contained in heading 98.03 does not make such products lose their status of originating products, provided that the value of those products does not exceed 5% of the value of the finished product.

The Annemasse customs office considered that the ballpoint pens imported from Switzerland by Les Rapides Savoyards did not satisfy those conditions, since the products in question consisted almost entirely of components originating in the United States and the value of those components exceeded 5%. Annemasse customs office determined the value of the parts not originating in Switzerland, in accordance with Article 35 (8) of the French Customs Code, on the basis of the exchange rate between the dollar and the French franc applicable on the day of importation and established that the value of the components varied, depending on the model concerned, from 6.04% to 23.68%. It therefore refused preferential treatment to the imported products in question.

Les Rapides Savoyards lodged an appeal against that decision with the Commission de Conciliation de d'Expertise Douanière [Customs Assessment and Arbitration Board]; the appeal was rejected on 16 May 1978.

The customs authorities brought the matter before the Tribunal d'Instance [District Court], Saint-Julien-en-Genevois, which by judgement of 19 June 1979 confirmed the decision of the arbitration board. The Cour d'Appel [Court of Appeal], Chambéry, upheld that decision by judgment of 11 May 1981.

Les Rapides Savoyards Sàrl, its representative, Roger Dejussel, and Diffusion Marketing International Sàrl appealed to the Cour de Cassation of the French Republic.

By judgment of 29 June 1983, the Commercial Chamber of the Cour de Cassation decided, pursuant to Article 177 of the EEC Treaty, to stay the proceedings until the Court of Justice has given a preliminary ruling on the following questions:

1. Must the Agreement of 22 July 1972 concluded between the European Economic Community and the Swiss Confederation, Protocol No 3 thereto and the Community regulations be construed as meaning that, where the values adopted in order to determine the customs value of a product are expressed in a currency other than that of the Member State in which the evaluation is made, these must be converted at the official rate of

exchange prevailing on the date on which the declaration is registered?

2. If not, how, according to Community law, must that rate of exchange be calculated?

The judgment of the Cour de Cassation was registered at the Court of Justice on 29 September 1983.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted on 6 December 1983 by the Commission of the European Communities, represented by Edith Cristoyannopoulos and Jörgen Sack, members of its Legal Department, on 14 December 1983 by the French customs authorities, represented by Mr Boré and Mr Xavier, of the Paris Bar, on 21 December 1983 by the plaintiffs in the main proceedings, represented by Paul-François Ryziger of the Paris Bar, and on 27 December 1983 by the Government of the Italian Republic, represented by Arnaldo Squillante, head of the Department for Contentious Diplomatic Affairs, Treaties and Legislative Matters at the Minisry of Foreign Affairs, assisted by Marcello Conti, Avvocato dello Stato.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry. However it requested the parties to the main proceedings and the Commission to reply in writing to a number of questions. The replies were submitted within the prescribed period.

By order of 29 February 1984, pursuant to Article 95 (1) and (2) of the Rules of Procedure, the Court decided to assign the case to the Fourth Chamber.

II — Written observations submitted to the Court

The *plaintiffs in the main proceedings* point out that their action is intended to establish which exchange rate is to be applied in order to determine the value both of the components imported directly from the United States into Switzerland and used to make up the finished product, and of the components imported from the United States into France, where they were in free circulation and from where they were re-exported to Switzerland.

The value of the goods used as components of a product varies and depends on the rate of exchange applicable. In order to determine which rate of exchange is applicable in this instance it is necessary to interpret the agreement between the EEC and Switzerland.

That interpretation raises a problem of great importance. A relatively long period of time elapsed between the entry into France of the cartridges, their export to Switzerland and the re-entry into France of the manufactured pens. The proportion represented by the value of the cartridges inserted in the pens varies according to whether reference is made to their value when they were imported into France or when the pens were re-imported into France, since in the meantime the exchange rate of the dollar against the French franc and the value of the French franc against the Swiss franc had changed completely.

Even though the agreement between the EEC and the Swiss Confederation did not lay down any absolutely explicit rule on that point, it is necessary to extract a

uniform rule from the agreement, in order to avoid deflection of trade, distortion in the conditions of competition and discrimination between the nationals of the different Member States.

Since such a rule would serve to establish the exchange rate applicable to the calculation of the proportion of goods of foreign origin used in the manufacture of goods in Switzerland, an overriding consideration is that economic operators must be able to make reliable forecasts. In particular, when they conclude a complicated contract involving the manufacture in Switzerland, on their behalf, of certain goods containing imported products as components, they must be in a position to determine whether, when the finished products are exported from Switzerland to a Member State of the EEC, they will be subject to a customs duty of 2.6% or one of 13%. It follows that the only reasonable interpretation of Article 5 of Protocol No 3, in conjunction with List B annexed to that Protocol, is that the exchange rate to be taken into consideration is the rate applicable when the components are imported.

That solution is in conformity with Article 6 (1) of Protocol No 3, according to which:

"Where the Lists A and B referred to in Article 5 provide that goods obtained in the Community or in Switzerland shall be considered as originating therein only if the value of the products worked or processed does not exceed a given percentage of the value of the goods obtained, the values to be taken into consideration for determining such percentage shall be:

on the one hand,

as regards products whose importation can be proved: their customs value at the time of importation;

...."

Article 6 (1) also states that for manufactured goods the price to be taken into consideration in determining the percentage is "the ex-works price of the goods obtained, less internal taxes refunded or refundable on exportation."

It follows that it is Article 6 of Protocol No 3 which is applicable to this dispute and not Article 35 of the French Customs Code.

The *French customs authorities* consider that, for the sake of clarity, it is necessary to distinguish between, on the one hand, the determination of the customs value of the goods and, on the other hand, the conversion of the monetary units in which the customs value is expressed. The request for a preliminary ruling concerns only that second problem.

(a) The customs value

The method of determining the value of the different articles in question in the main proceedings is perfectly clear from Article 6 of Protocol No 3, from Explanatory Note 6 concerning that article and from the administrative decision of 23 March 1973, published in the Bulletin Officiel des Douanes [official gazette of the customs authorities], No 2768 of 23 March 1973. It is as follows:

For the cartridges coming from the United States, imported into France and then exported on a temporary basis to Switzerland, the relevant value is the customs value at the time of importation into the country in which the working was carried out (Switzerland);

For the barrels and clips, coming from the United States, the appropriate value is the customs value at the time of importation into Switzerland;

For the finished product, the value is the "ex-works price", as defined in the relevant texts.

(b) The exchange rate

The exchange rate to be taken into consideration is the rate prevailing on the day on which the finished product receives customs clearance in France.

That follows from Article 35 (1) and (8) of the French Customs Code. Only the country into which the products are to be imported under the preferential arrangements is in a position to assess whether the conditions are satisfied. That general rule has been adopted in numerous international agreements such as the Convention on the Valuation of Goods for Customs Purposes, signed at Brussels on 15 December 1950, under the auspices of the Customs Cooperation Council, in particular Annex II to that Convention, Note 1.

The Agreement between the EEC and the Swiss Confederation does not derogate from the rule that the exchange parity must be assessed by the authorities of the State into which the finished product is imported and at the date of the customs declaration.

Since in this case the Court is required to interpret an agreement concluded with a non-member country, it is necessary to refer to the rules on interpretation under international law such as those laid down in the Vienna Convention on the Law of Treaties, and not to those which are applied in the interpretation of Community acts. The provisions of international agreements must not be construed in the same way or have the same effect attributed to them as any "comparable" provisions of the EEC Treaty.

Viewed in its international law context, the Agreement between the EEC and the Swiss Confederation cannot produce effects which go beyond those which result from the actual wording of its wording of its provisions. Those provisions do not confer on exporters the right to rely on a rule prohibiting the importing State from fixing the parity of its own currency at the date of the customs declaration.

Les Rapides Savoyards cannot claim preferential treatment as regards exchange rates, such as exists under the European Monetary System, which applies exclusively in relations between the Member States and entails obligations which Switzerland has not agreed to accept.

The Agreement with Switzerland determines the origin of a product on the basis of the value of the components making up the finished product. As a result, once that value has been determined in accordance with the established rules of customs law, it becomes necessary, at the date of the importation of the finished product to convert the monetary unit in which the value was expressed into the monetary unit of the country importing the finished product. However, legally, there are two distinct questions, one concerning exclusively the value for customs purposes and the other involving the monetary powers of the State importing the finished product. The trade agreement contained no provisions excluding or even limiting the powers of the importing Member State of the EEC in monetary or exchange matters.

The position adopted by Les Rapides Savoyards is not only incompatible with

the Agreement between the EEC and the Swiss Confederation and the rules of international law, it is also contrary to Community law itself.

According to Article 9 (1) (a) of Council Regulation (EEC) No 1224/80 of 28 May 1980 on the valuation of goods for customs purposes (Official Journal 1980 L 134, p. 1) "where factors used to determine the value for customs purposes of goods are expressed in a currency other than that of the Member State where the valuation is made, the rate of exchange to be used shall be that duly published by the competent authorities of the Member State concerned. According to Article 9 (1) (b) 'such rate shall reflect as effectively as possible the current value of such currency in commercial transactions in terms of the currency of such Member State and shall apply during such period as may be specified by the aforementioned competent authorities".

The same provisions applied under Regulation (EEC) No 803/68 of the Council of 27 June 1968 on the valuation of goods for customs purposes (Official Journal, English Special Edition 1968 (I), p. 170), which was in force when the imports in question were carried out.

It therefore falls exclusively within the authority of the State into which the goods are imported to determine, when the customs declaration is made, the exchange rate applicable. To adopt a method whereby the rate of exchange is ascertained before the date of the importation of the finished product, perhaps several months in advance, would lead to an infringement of the rule which is a corollary of the principle of non-retroactivity, that a provision, in this instance the measure fixing the parities, cannot continue to exist after it has been repealed.

Moreover there is no basis for such a method in the rules of Community law or in the provisions of the agreement between the EEC and the Swiss Confederation. Indeed it would impose an unreasonable obligation on the authorities of the importing country as regards their authority over monetary matters.

On a practical level the view advanced by the plaintiffs in the main proceedings would lead to unacceptable consequences. The fixing of parities retroactively would encourage traders to speculate and the concept of origin in the strict sense would be rendered meaningless.

The following reply should be given to the questions referred to the Court:

In accordance with the Agreement between the European Economic Community and the Swiss Confederation, where the factors used to determine the customs value of goods and, in particular, whether the preferential treatment provided for in that Agreement is to be accorded, are expressed in a currency other than that of the Member State where the valuation is made, the rate of exchange to be used in that fixed by the competent authorities of the Member State concerned at the date of the customs declaration leading to the release for home use of the finished product.

The *Government of the Italian Republic* submits observations essentially of a general nature on the interpretation of the provisions of the Agreement between the EEC and Switzerland.

The question how and to what extent currency fluctuations must be taken into account in order to establish the proportion of non-Swiss products used in the manufacture of products imported from Switzerland is a problem which

necessarily requires a uniform solution irrespective of the Member State into which the products are imported. Otherwise trade will be deflected and competition distorted in a manner incompatible with the objectives pursued by the Community in concluding the Agreement.

On the basis of the provisions of Protocol No 3, it is possible to formulate a uniform general rule applicable in each case.

According to Title II of Protocol No 3 (Articles 8 *et seq.)*, the fact the products which are the subject of commercial transactions between the EEC and Switzerland are "originating products" is to be attested by a movement certificate issued by the customs authority of the exporting country. The value of the components which are not "originating products" must be determined by the exporting country, in this case Switzerland.

Article 6 of Protocol No 3 requires that reference be made to the customs value of the components at the time of their importation into the country where the finished product wil be manufactured and from where that product will be exported. The second subparagraph of Explanatory Note 6 to Article 6 as amended by Joint Committee Decision No 2/81 of 1 June 1981 (Council Regulation (EEC) No 2452/81 of 27. 7. 1981, Official Journal 1981, L 247, p. 27) states that customs value must be understood as meaning the customs value as determined in accordance with the Agreement on implementation of Article VII of the General Agreement on Tariffs and Trade done at Geneva on 12 April 1979. It follows that Article 9 of that Agreement (Council Decision 80/271/EEC of 10. 12. 1979 concerning the conclusion of the Multilateral Agreements resulting from the 1973 to 1979 trade negotiations, Official Journal 1980, L 71, pp. 1 and 107) applies. That article provides that:

"1. Where the conversion of currency is necessary for the determination of the customs value, the rate of exchange to be used shall be that duly published by the competent authorities of the country of importation concerned and shall reflect as effectively as possible, in respect of the period covered by each such document of publication, the current value of such currency in commercial transactions in terms of the currency of the country of importation.

2. The conversion rate to be used shall be that in effect at the time of exportation or the time of importation, as provided by each Party."

The same principles applied before the amendment of Explanatory Note 6 to Protocol No 3 by Joint Committee Decision No 2/81, in application of Note 4 concerning Article 1 of Annex II to the Brussels Convention of 15 December 1950 on the Valuation of Goods for Customs Purposes.

In the circumstances of this case, the conversion should therefore be carried out by applying the official rate of exchange published by Switzerland, the country which imports the parts and components of the finished product and exports the finished product to France. Once the proportion of the total value which can be attributed to components which are not "originating products" has been determined on the basis of that conversion, that proportion, which is intended to establish whether the finished product is "an originating product", should remain fixed and

invariable, irrespective of which Member State the product is exported to from Switzerland.

Any other solution and, in particular, the application of French national provisions, would mean that different customs procedures would apply depending on which Member State imports the products from Switzerland.

Such different treatment is completely unjustified and totally incompatible with the aims pursued by the Agreement between the EEC and Switzerland.

The *Commission* takes the view that it is not possible to separate the problem of the exchange rate from the prior question, as to which authority has jurisdiction to determine the value of products which are not originating products and which are incorporated in the goods obtained in Switzerland.

In view of the fact that, in accordance with Articles 8, 9 and 10 of Protocol No 3, as amended by Joint Committee Decision No 10/73, the EUR 1 certificate is issued by the Swiss authorities for products exported from Switzerland to the Community, importation within the meaning of Article 6 of the Protocol can, in this instance, refer only to the importation of parts which do not originate in Switzerland. It was therefore for the Swiss authorities to calculate the different values, in accordance with the rules of Swiss law concerning customs valuation and exchange rates.

The EUR 1 certificate certifies that the finished product is an originating product and the issue of such a certificate for a product qualifies the product for the preferential treatment provided for in the Agreement between the EEC and Switzerland. In this instance it was for the Swiss authorities to calculate the percentage of 5% on the basis of the rate of exchange between the dollar and the Swiss franc. The fact that the exporting country has the power to make that calculation precludes any difference of treatment resulting from currency fluctuations on importation into another Member State. Moreover it also removes possible discrepancies between national legal systems concerning the rate of exchange to be applied. That system guarantees the trader a high degree of legal certainty since he is protected from changes in the exchange rate once the certificate has been issued.

It is open to the importing Member State to contest the validity of the EUR 1 certificate. Article 16 of Protocol No 3 imposes the obligation on Member States and Switzerland to assist each other in checking the authenticity and accuracy of certificates. Article 17, as amended by Joint Committee Decision No 1/77 of 14 December 1977 (Council Regulation (EEC) No 2933/77 of 20. 12. 1977, Official Journal 1977, L 342, p. 27) provides that subsequent verifications of EUR 1 certificates are to be carried out whenever the customs authorities of the importing State have reasonable doubt as to the accuracy of the information regarding the true origin of the goods in question. In this case, if the French customs authority had any doubts as to the Swiss origin of the products in question, the proper procedure would have been to ask the Swiss authorities to carry out a subsequent verification of the EUR 1 certificates issued. In the meantime they could have decided to suspend the application of the provisions

of the Agreement pending the results of the verification, and released the goods to the importer, subject to any necessary precautionary measures. If the Swiss authorities had confirmed the accuracy of the EUR 1 certificate and if the French authorities had decided to challenge the declarations of the Swiss authorities, the normal procedure would have been to refer the question to the EEC/Switzerland Customs Committee (a subcommittee of the Joint Committee), which has jurisdiction to rule on such questions. By way of final appeal, the question could have been submitted to the Joint Committee.

Thus the Customs Committee has agreed on the general principle that preferential treatment must not be refused before a verification can be carried out in accordance with Article 17 of Protocol No 3. In the absence of any decision to the contrary, the importing Member State is therefore bound by the document issued by the exporting EFTA country, in this case, Switzerland.

Those provisions are in the interest of not only exporters in non-member countries but also Community exporters. The Community expects the authorities of EFTA countries to follow the same procedure as for certificates issued by the customs authorities of the Member States.

The following reply should be given to the questions raised by the Cour de Cassation:

For the purposes of the issue of a EUR 1 certificate, the value of products not originating in Switzerland which are incorporated in products originating in that country and exported to the Community is determined by the Swiss authorities in pursuance of Protocol No 3 of the Free Trade Agreement between the Swiss Confederation and the Community. The result of that determination may be contested by the importing Member State only in accordance with the procedure provided for under that Agreement.

III — Oral procedure

At the sitting on 16 May 1984, the plaintiffs in the main proceedings, represented by Paul-François Ryziger, the French customs authorities, the defendant in the main proceedings, represented by Mr Boré and Mr Xavier, and the Commission, represented by Edith Cristoyannopoulos and Jörgen Sack, presented oral argument and replied to the questions put by the Court.

The *plaintiffs in the main proceedings* stated in particular that, in the alternative, they were prepared to accept the argument and the system proposed by the Commission.

The *French customs authorities* stressed that the replies given by the Court must be strictly confined to the questions referred to it and that it was necessary to distinguish between two operations having different objects and involving different methods: the customs operation determining the origin of a product and the customs operation determining the customs value of the product. In connection with the second operation, the exporting country, in this instance Switzerland, could not be allowed to fix in a unilateral and absolute manner, by issuing the European movement

certificate, the customs procedure and exchange rate applicable to the goods in the importing country. It was clearly for the importing country, by virtue of its sovereignty over its own customs territory, to fix the basis for the assessment of customs duty. Protocol No 3 in no way precluded the importing country from checking the origin and the value of products. The conversion into national currency of the elements of the value of the product, expressed in foreign currency, must be carried out in accordance with the latest exchange rate of the importing country, at the time when the valuation was made, that is to say, on the date of importation.

The *Commission* clarified its written observations.

The Advocate General delivered his opinion at the sitting on 19 June 1984.

Decision

1 By judgment of 29 June 1983, which was received at the Court on 29 September 1983, the French Cour de Cassation (Court of Cassation) referred to the Court of Justice for a preliminary ruling under Article 177 of the EEC Treaty two questions on the interpretation of the Agreement between the European Economic Community and the Swiss Confederation of 22 July 1972 and, more particularly, of Protocol No 3, annexed to that agreement, concerning the definition of the concept of "originating" products and methods of administrative cooperation (Official Journal, English Special Edition 1972 (31 December), p. 190).

2 On 8 June 1977 Les Rapides Savoyards Sàrl, and its managing director, Roger Dejussel, imported from Switzerland on behalf of Diffusion Marketing International Sàrl, whose registered office is at Stains, Seine-Saint-Denis, a consignment of ballpoint pens coming under tariff heading 98.03, covered by a EUR 1 movement certificate, issued by the Swiss customs authorities in pursuance of Protocol No 3 and certifying that the goods were of Swiss origin.

3 It appears from information provided in the proceedings, which has not been contested, that the pens were manufactured and assembled as follows: the cartridges were imported by Diffusion Marketing International from the United States of America, released into free circulation in France and re-exported to Switzerland under the temporary exportation procedure. In Switzerland they were fitted, by a Swiss manufacturer with chromed caps

and casings obtained in Switzerland itself and with barrels and, for certain pens, clips imported into Switzerland directly from the United States of America. The finished product, bearing the trade-mark of the Swiss manufacturer (Lindy), was declared, on importation into France, as a product originating in Switzerland, at the ex-works price expressed in Swiss francs. The plaintiffs in the main proceedings requested the application of the preferential customs rate of 2.6 % of the customs value, which applied at that time between Switzerland and the Community.

4 The French customs authorities analysed the value of the product in question and re-assessed the value of the various component parts according to whether they had originated in the United States of America or in Switzerland, in accordance with Article 35 (8) of the Customs Code. That article provides that, where the values used to determine the normal price of a product are expressed in foreign currency, the conversion must be carried out on the basis of the official exchange rate prevailing on the date on which the declaration is registered, in other words at the time of importation. The customs authorities considered that, according to their calculations, the value of the components coming from the United States of America in the finished product exceeded the threshold of 5 % which is the limit imposed by Protocol No 3 and List B of Annex III thereto, on the incorporation of components originating in third countries, for a product to be recognized as being of Swiss origin. The customs authorities therefore applied the general rate of the Common Customs Tariff which was at that time 13 %, subject to the deduction of customs duties already paid on the importation of the cartridges.

5 The plaintiffs in the main proceedings lodged an appeal with the Commission de Conciliation et d'Expertise Douanière (Customs Assessment and Arbitration Board) which was rejected on 16 May 1978. The customs authorities brought the matter before the Tribunal d'Instance (District Court), Saint-Julien-en-Genevois, which, by judgment of 19 June 1979 confirmed the decision of the arbitration board. The plaintiffs in the main proceedings appealed to the Cour d'Appel (Court of Appeal), Chambéry, which upheld that decision by judgement of 11 May 1981. Les Rapides Savoyards Sàrl, its representative, Roger Dejussel, and Diffusion Marketing International Sàrl appealed against that decision to the Cour de Cassation.

6 It appears from the documents before the Court and from the single ground of appeal cited in the order for reference that the dispute before the French courts concerns, in the first place, the rate of exchange applied by the French customs authorities in assessing the different elements of value taken into account in order to determine the origin of the product in question and, more particularly, the relevant time for the purpose of defining the exchange rate relations between the various currencies involved. The plaintiffs in the main proceedings consider that the exchange rate applicable must be that prevailing at the time when the various components were imported, either into France or into Switzerland. The customs authorities, on the other hand, take the view that all those values are to be determined at the time prescribed by Article 35 (8) of the French Customs Code, namely the time of the importation of the finished product into France. The plaintiffs in the main proceedings consider that that method is incompatible with the provisions of Protocol No 3 because of the uncertainty which it creates as to the origin of a product following changes in the exchange rates which may occur between the time of the importation of the component parts and the time of the importation of the finished product.

7 It also appears from the documents before the Court that in the proceedings prior to the appeal to the Cour de Cassation and in the formulation of the ground on which that appeal was based, the plaintiffs in the main proceedings did not contest the French customs authorities' power to reassess, at the time of the importation of the finished product, the elements to be taken into consideration in determining the origin. Discussion was confined to the question whether it was compatible with the free-trade Agreement and any Community regulations which might be relevant to apply the exchange rates prevailing at the time of the importation of the finished product to the assessment of the components previously imported into Switzerland.

8 It is in connection with the dispute as thus defined that the Cour de Cassation decided to request the Court of Justice to give a ruling on the following questions:

1. Must the Agreement of 22 July 1972 concluded between the European Economic Community and the Swiss Confederation, Protocol No 3 thereto and the Community regulations be construed as meaning that, where the values adopted in order to determine the customs value of a product are expressed in a currency other than that of the Member State in which the evaluation is made, these be converted at the official rate of exchange prevailing on the date on which the declaration is registered?

2. If not, how, according to Community law, must that rate of exchange be calculated?

9 In the course of the proceedings before the Court, the parties to the main proceedings essentially repeated the arguments which had already been advanced before the national courts. On the other hand the Commission and the Government of the Italian Republic submitted to the Court criteria for interpretation based on the free-trade Agreement and Protocol No 3, which had not been considered by the courts in the earlier proceedings.

10 The Commission and the Italian Government maintain that in order to reply to the questions submitted to the Court by the Cour de Cassation it is first necessary to examine the division of powers as between the Swiss customs authorities and the customs authorities of the Community as regards determination of the origin of products in trade between Switzerland and the EEC. The Commission emphasizes that the scope of that problem goes beyond the facts of this case, in view of the fact that clauses similar to those in Protocol No 3 appear in all the free-trade agreements concluded by the Community with the Member States of the European Free Trade Association (EFTA) and that the rules relating to origin apply in identical terms both to goods exported by the States in question to the Community and to goods exported by the Community to those States.

11 The Commission and the Italian Government state that according to Articles 6, 8 and 10 of Protocol No 3, it is for the Swiss customs authorities to establish the origin of products exported to the Community and, in the case of products incorporating elements imported from a third country, to determine whether or not the value of those elements exceeds the 5 % limit provided for in the Protocol. Where that limit is not exceeded, the Swiss origin of the product is certified by the issue of a EUR 1 movement certificate, as laid down in the Protocol.

12 The Commission and the Italian Government also state that the Community customs authorities are not entitled to substitute their own calculations for the assessment of the elements of value taken into consideration by the authorities of the exporting State in order to determine origin. They are therefore

under an obligation to apply the preferential treatment provided for by the Agreement to goods whose Swiss origin is duly certified. The Commission emphasizes that it is important that the decisions taken by the Swiss customs authorities concerning origin are respected in the Community in view of the fact that the Community, for its part, must be able to expect that such decisions taken by the customs authorities of the Member States are also recognized in Switzerland.

13 The Commission and the Italian Government consider that only that method is capable of ensuring that the determination of origin is the same in all the Member States of the Community, since the application of national rules such as the French Customs Code might lead to conflicting determinations of the origin of the same product depending on the fluctuations of the different national currencies. Such differences of determination would in turn lead to deflections of trade and distortions of competition.

14 In conclusion the Commission and the Italian Government take the view that it is necessary to reply in the negative to the first question submitted by the Cour de Cassation inasmuch as it is for the national customs authorities to re-assess, on the basis of the official exchange rate prevailing on the date of importation, the elements used to determine the origin of the goods on the basis of the different component parts of a product. They consider that in reply to the second question it should be stated that the values to be taken into consideration in order to establish the origin and consequently, to determine whether the preferential treatment provided for by the free-trade Agreement is to be applied, must be assessed in accordance with the division of powers provided for by Protocol No 3 annexed to the Agreement concluded with the Swiss Confederation. The Commission draws attention to the fact that Article 16 of Protocol No 3 imposes on the Member States and Switzerland the obligation to assist each other in checking the authenticity and the accuracy of EUR 1 movement certificates and that Article 17 enables those certificates to be checked subsequently where there is any doubt as to the accurary of the information regarding the true origin of the goods in question.

15 In the course of the oral procedure, the plaintiffs in the main proceedings referred to their first argument and stated that they were also prepared to accept the Commission's line of reasoning which, in their view, leads to the same result as that proposed by them.

16 The French customs authorities raised two objections to the arguments advanced by the Commission and the Italian Government. In the first place they maintain that the question as formulated by the Commission and the Italian Government was not submitted by the Cour de Cassation and that the Court of Justice should confine itself to replying to the questions which have been referred to it for a preliminary ruling. They further state that it would be incompatible with the sovereignty of Member States in customs matters to impose on them determinations made by foreign customs authorities and therefore it is not possible to restrict the application of the rules of the French Customs Code solely to the assessment of the customs value of the finished product at the time of its importation with a view to determining the basis for the assessment of the customs duty payable. The customs authorities must also assess the value of the component parts of a finished product with a view to establishing its origin and, in consequence, to decide whether it qualifies for the preferential treatment under the free-trade Agreement or whether it must be subject to the general rules of the Common Customs Tariff.

17 Regardless of the views put forward by the various parties concerning the factors to be taken into consideration in order to determine the customs treatment of products imported from Switzerland into the Community, the reply to the questions submitted by the Cour de Cassation must be given in the light of the whole system established by the free-trade Agreement and Protocol No 3. Thus it is necessary first to refer to the relevant provisions of those instruments, particularly because the Protocol was amended after the entry into force of the Agreement.

18 The Agreement between the EEC and the Swiss Confederation applies, according to Article 2 thereof, subject to certain specifications, "to products originating in the Community or Switzerland". Article 11 of the Agreement provides that "Protocol No 3 lays down the rules of origin". Title II of that Protocol, consisting of Articles 8 to 17, was amended by Decision No 1/77 of the EEC/Switzerland Joint Committee of 14 December 1977, implemented in the Community by Council Regulation No 2933/77 of 20 December 1977 (Official Journal 1977, L 342, p. 27).Thus it was brought into force shortly after the importation which is at the origin of these proceedings. However it does not seem necessary to determine whether the dispute, throughout its various stages, is governed by the former rules or by the new rules, since the relevant provisions are in substance equivalent in the

two successive versions of the Protocol, even though the terms of the new version are more explicit.

19 According to Article 1 (2) of the Protocol, the following products are to be regarded as originating in Switzerland:

"(a) products wholly obtained in Switzerland,

(b) products obtained in Switzerland in the manufacture of which products other than those referred to in (a) are used, provided that the said products have undergone suffient working or processing within the meaning of Article 5."

20 Under Article 5 (1), *inter alia*, "(b) working or processing specified in List B" is to be considered as "sufficient". List B, which constitutes Annex III to the Protocol, includes at the top of the third column, a rule concerning, *inter alia*, ballpoint pens coming under tariff heading 98.03. That rule, as amended and supplemented by Decision No 3/74 of the Joint Committee of 31 October 1974, implemented in the Community by Regulation (EEC) No 3288/74 of the Council of 2 December 1974 (Official Journal 1974, L 352, p. 31), states as follows: "Incorporation of non-originating materials and parts . . . in the products contained in heading (No) . . . 98.03 does not make such products lose their status of originating products, provided that the value of these products does not exceed 5 % of the value of the finished product."

21 The determination of the elements of value which are to be taken into account in calculating the 5% value limit is governed by the following provisions of the Protocol.

22 Article 6 (1) of the Protocol provides in that connection as follows:

"Where the Lists A and B referred to in Article 5 provide that goods obtained in the Community or in Switzerland shall be considered as originating therein only if the value of the products worked or processed does not exceed a given percentage of the value of the goods obtained, the values to be taken into consideration for determining such percentage shall be:

on the one hand,

as regards products whose importation can be proved: their customs value at the time of importation;

as regards products of undetermined origin; the earliest ascertainable price paid for such products in the territory of the Contracting Party where manufacture takes place;

and on the other hand,

the ex-works price of the goods obtained, less internal taxes refunded or refundable on exportation."

23 According to Article 8 (1) of the Protocol, originating products within the meaning of Article 1 of the Protocol, on import into the Community or into Switzerland, are to benefit from the provisions of the Agreement upon submission of a movement certificate. That certificate is now the EUR 1 certificate which was substituted for the A.CH. 1 certificate provided for in the original version of Protocol No 3 by Decision No 10/73 of the EEC/Switzerland Joint Committee of 12 December 1973, implemented in the Community by Regulation (EEC) No 3600/73 of the Council of 27 December 1973 (Official Journal 1973 L 365, p. 135).

24 According to Article 10 of the Protocol, the certificate, which is issued by the customs authorities of the exporting country when the goods to which it relates are exported, serves as the documentary evidence for the purpose of implementing the preferential treatment provided for in the Agreement.

25 Finally Articles 16 and 17 of the Protocol afford the Community customs authorities the widest scope for resolving, in cooperation with the Swiss customs authorities, any problems that may be caused by the determination of origin and the issue of movement certificates.

26 It follows from all those provisions that the determination of the origin of goods according to Protocol No 3 is based on a division of powers between the customs authorities of the parties to the free-trade Agreement inasmuch as origin is established by the authorities of the exporting country and the proper working of that system is monitored jointly by the authorities

concerned on both sides. That system is justified by the fact that the authorities of the exporting State are in the best position to verify directly the facts which determine origin; moreover, it has the advantage of producing certain and uniform results regarding the identification of the origin of goods and of thereby avoiding deflections of trade and distortions of competition in trade.

27 However, that mechanism can function only if the customs authorities of the importing country accept the determinations legally made by the authorities of the exporting country. Recognition of such decisions by the customs authorities of the Member States is necessary in order that the Community can, in turn, demand that the authorities of other countries with which it has concluded free-trade agreements accept the decisions taken by the customs authorities of the Member States concerning the origin of products exported from the Community to those non-member countries.

28 There is no danger that the application of those provisions may encourage abuses, in view of the fact that Articles 16 and 17 of Protocol No 3, in particular in their new version, have set out in detail the methods of cooperation between the customs authorities concerned, where the origin is contested or where the exporters or importers have acted fraudulently.

29 The functioning of that system — based, as has been stated above, on a division of duties between the customs authorities of the parties to the free-trade Agreement and on the reliance which must be placed on the acts of those administrations in the exercise of their powers — does not encroach on the fiscal autonomy of the Community and its Member States or of the non-member countries concerned, since the rules laid down in Protocol No 3 were established on the basis of reciprocal obligations placing the parties on an equal footing in their dealings with each other.

30 It follows from all the foregoing that since the goods in question were assembled in Switzerland, it is for the Swiss authorities, in accordance with Protocol No 3, to establish the origin of products intended to be exported to

the Community. In consequence, the customs rules and the exchange rules of the Swiss Confederation applied to the determination of the elements involved in the calculation of the values used to establish whether or not the product in question could be considered to be a product originating in Switzerland. In particular, it was for those authorities to determine the customs value of components imported from a third country, at the time referred to in the first indent of Article 6 (1) of Protocol No 3, namely the time of the importation of those components into Switzerland and, at the same time, to carry out the exchange operations in accordance with their national rules. The issue of the EUR 1 movement certificate for the product in question by the Swiss customs authorities certifies that the Swiss origin of the product has been established correctly, in accordance with the provisions of the Protocol.

31 In the light of the provisions of Protocol No 3, the country importing such a product has the power only to assess, at the time of importation, the customs value of the finished product, for the purposes of applying the preferential treatment provided for in the free-trade Agreement.

32 In reply to the questions submitted by the French Cour de Cassation, it must therefore be stated that the Agreement concluded between the European Economic Community and the Swiss Confederation of 22 July 1972 and, more particularly, Protocol No 3 thereto must be interpreted as meaning that the assessment of the elements used in determining the origin of a product and, accordingly, in determining whether it is eligible for the preferential treatment provided for by the Agreement is the responsibility of the customs authorities of the State exporting the finished product which applies to components imported from third countries, at the time of their importation, its own rules on customs value and exchange.

Costs

33 The costs incurred by the Government of the Italian Republic and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable.

34 As these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the national court, costs are a matter for that court.

On those grounds,

THE COURT (Fourth Chamber)

in answer to the question referred to it by the Cour de Cassation de la République Française by judgment of 29 June 1983, hereby rules:

The Agreement between the European Economic Community and the Swiss Confederation of 22 July 1972 and, more particularly, Protocol No 3 annexed thereto concerning the definition of the concept of "originating" products and methods of administrative cooperation must be interpreted as meaning that the assessment of the elements used in determining the origin of a product and, accordingly, in determining whether it is eligible for the preferential treatment provided for by the Agreement is the responsibility of the coustoms authorities of the State exporting the finished product which applies to components imported from third countries, at the time of their importation, its own rules on customs value and exchange.

Koopmans Bahlmann

Pescatore O'Keeffe Bosco

Delivered in open court in Luxembourg on 12 July 1984.

For the Registrar

H. A. Rühl

Principal Administrator

T. Koopmanns

President of the Fourth Chamber