OPINION OF MR ADVOCATE GENERAL CAPOTORTI DELIVERED ON 16 OCTOBER 1980 [1]

Mr President,
Members of the Court,

1. This reference for a preliminary ruling raises a customs question concerning the extension of the power given by Community law to the national authorities of verifying the origin of imported goods where such goods have enjoyed preferential tariff treatment.

Let me briefly summarize the facts. Between 1971 and 1972 the Italian customs admitted various lots of radios and transistors imported from Hong Kong by Ciro Acampora to the benefit of the preferential system which the Regulation of the Commission No 1371 of 30 June 1971 provides for such products originating in developing countries. After the import those same customs authorities arranged for verification of the certificates of origin produced by the importer and sought confirmation from the Hong Kong Department of Trade and Industry; the answer was negative. As a result Acampora was required to pay the unpaid duties.

Acampora objected on the ground that the decision of the customs was unlawful because verification of the origin of the goods had taken place after they had been given customs clearance and were no longer at the disposal of the importer. The objection was upheld by the Tribunale di Genova by judgment dated 21 February 1975 and confirmed by the Corte d'Appello, Genova, by judgment dated 13 June 1977. It is pertinent to observe that both courts have based their judgments substantially on Italian law and in particular Article 164 of the customs regulations approved by Regio Decreto No 65 of 13 February 1896 (and on the Testo Unico No 330 of 9 April 1911 concerning the settlement of customs disputes) inferring that the customs could challenge the classification of origin of goods only so long as the goods had not been given customs clearance (unless security had been required and lodged). According to the Corte d'Appello, Genova, the Community rules cannot derogate from that principle by making the position of the importer more onerous, since they aim to facilitate trade especially with developing countries.

Before the Corte di Cassazione the Amministrazione delle Finanze maintained its contention that the subsequent verification provided for by Article 13 of the said Regulation (EEC) No 1371/71 can be made even after preferential tariff treatment has been accorded to the imported goods and without reservations having been made. By order dated 27 June 1979 in those proceedings the Corte di Cassazione (pursuant to Article 177 of the EEC Treaty) asked this Court:

1 — Translated from the Italian.

"May an importing State, pursuant to Article 13 of Regulation (EEC) No 1371/71 of 30 June 1971 — after having permitted, without reserve, the final importation of goods in application of the preferential tariff treatment granted to products originating in developing countries — require the State benefiting from the exportation to verify the certificate of origin on Form A relating to those goods, and then, if the outcome of that verification is negative, demand payment of the duty which was not paid at the time of importation?"

2. Article 13 (1) of the said Regulation No 1371/71 of the Commission states that the "subsequent verifications" of the certificates of origin for which it provides "shall be carried out at random or whenever the competent customs authorities in the Community have reasonable doubt as to the authenticity of the document or the accuracy of the information regarding the true origin of the goods in question or their components". Article 13 (2) states that for the purpose of implementing the provisions of paragraph (1) "the competent customs authorities in the Community shall return the certificate ... to the customs authorities of the exporting State, giving, where appropriate, the reasons of form or substance for an inquiry". The second subparagraph thereof adds that "if the competent customs authorities in the Community decide to suspend application of the provisions relating to tariff preferences referred to in Article 1 while awaiting the results of the verification, they shall offer to release the goods to the importer subject to any precautionary measures judged necessary".

Ciro Acampora claims to see in that last rule the statement of a principle corresponding to that accepted in Italian law to the effect that when the customs authorities wish to challenge the declaration of the importer and to arrange verification of the origin of the goods they must suspend the importation or at the very least allow it only after taking the necessary precautions. To be able to maintain that argument Ciro Acampora understands the words "*subsequent* verification" in Article 13 (1) to mean verification subsequent to the issue of the certificate of origin and not subsequent to customs clearance; the verification must be made "while the goods are still at the disposal of the customs" and thus before the importer has been given preferential tariff treatment.

There is no support for that interpretation in the wording of the provision in question; it contradicts the sense and is out of keeping with the context of Article 13 and indeed the system of Regulation No 1371/71.

From a logical point of view, I would say that if the undertaking's contention were accepted the word "subsequent" would be quite superfluous: verification of certificates can take place only when they have been issued and produced! When the draftsman of the regulation stipulated that the verification was "subsequent", that stipulation cannot be understood as confirmation of what is obvious, namely that verification comes after the issue of the certificate.

As regards the context of Article 13 it must be pointed out that the second subparagraph of Article 13 (2), on which Ciro Acampora relies as supporting its point of view, simply states a hypothesis, that in which the customs authorities decide to suspend application of the

provisions on tariff preference while awaiting the results of the verification of the certificate. The hypothetical nature of that subparagraph clearly shows that the alternative remains open; the customs authorities need *not* suspend the grant of the tariff preference while awaiting the results of the verification (in other words, the fact that the result is not yet known or simply that it is uncertain whether there will be verification does not prevent customs clearance). A reading of Article 6 is sufficient to show that the latter is the normal case; Article 6 lays down that originating products within the meaning of the regulation "shall enjoy the benefit of the provisions on tariff preferences in the Community" on simple production of a certificate of origin signed by the authorities in the exporting country. The same article adds: "subject to the latter country's assisting the Community, through the customs authorities of the Member States, in verifying the authenticity and regularity of the certificates". The normal system is thus clear: the goods are imported and given customs clearance on the basis of the certificate accompanying them and enjoy the preferential tariff system laid down by the regulation: verification of the certificate may if necessary be arranged and made later ("subsequently"), that is after customs clearance. The provision in the last subparagraph of Article 13 is an exception to that system.

On what basis may the subsequent verification take place? It is stated in Article 13 (1): at random or whenever the customs authorities "have reasonable doubt" as to the authenticity of the document or the accuracy of the information therein. It must be pointed out that in both cases the verification is "subsequent"; it is thus to be assumed that in both cases preferential tariff treatment has been granted to the importer pursuant to the aforesaid Article 6. It seems reasonable to suppose that the exceptional case in which the grant of preferential tariff treatment is suspended (the last subparagraph of Article 13 (2)) is intended to cover the position where not only is there doubt about the authenticity and accuracy of the certificate but such doubt existed when the certificate was produced to the customs authorities. On the other hand there would be no justification for derogating from the principle of Article 6 simply where there is random verification. It may thus be said that the very concept of sampling, which by its nature is random and intermittent, presupposes that tariff preference is granted to all importers who produce a certificate of origin subject to "subsequent" verification: it would otherwise be quite arbitrary to hold up certain goods pending the results of verification and give customs clearance to others simply on the basis of random verification and certificates which give rise to no particular doubts.

3. Of relevance in the system of the said Regulation No 1371/71 is Article 30 which contains matters supporting the interpretation which I have given of the concept of subsequent verification. The second paragraph of that article provides: *"For the purpose of subsequent verification* of certificates of origin on Form A, the competent governmental authority of the exporting country must keep the export documents, or copies of

certificates used in place thereof, for two years." The purpose of that provision is certainly to allow the customs authorities of the Member States an opportunity to make "subsequent" verification within a period of two years from the issue of the certificate of origin. Evidence therefor is provided by the first paragraph of the same Article 30 according to which "where an application for subsequent verification is made in application of the provisions of Article 13 of Title 1 the verification shall be made and the results communicated to the competent customs authorities in the Community within a maximum period of three months". The authorities of the exporting countries thus have a short period to make the verifications and that period runs from each demand addressed to them by the customs authorities of the Community; should the system require that the application for verification be made on importation (thus suspending customs clearance of the goods) there would be no reason to require preservation of the certificates of origin for longer than three months from importation. *Conversely* the requirement to preserve the certificates of origin for two years confirms that subsequent verification may be requested some time after importation of the goods.

4. Ciro Acampora attempts to counter the results of the interpretation based on the logic, wording and system of the provisions which I have analysed, by referring to the requirement to safeguard the expectations of the importer in good faith. Its argument basically maintains that when the customs authorities have allowed importation without any specific reservations, they have in so doing created on the part of the importer a legitimate belief in the regular and definitive nature of the customs clearance and they cannot afterwards, by requiring subsequent verification, impose unexpected burdens on him.

The first and fundamental objection to this argument is that an importer can have no legitimate expectation where a rule clearly reserves to the customs authorities the possibility of requiring subsequent verification and in particular random verification. When the authorities in application of such a rule give customs clearance to the goods their conduct can in no way nourish the conviction that the grant of the tariff preference is henceforth definitive whether or not the authenticity of the certificate of origin is verified because there is a general reservation of the right to verification, in the regulation which makes specific reservation superfluous.

In the second place, and still with particular reference to the random verification, I do not see what benefit that importer would have if the authorities made a reservation in that respect, that is what influence such a reservation might have on his commercial conduct. If the importer is in good faith and thus convinced of the perfect regularity of his transaction he will be likely to behave *vis-à-vis* the customs authorities in exactly the same way whether or not there is a specific reservation of verification on the part of those authorities.

It may be that the importer has difficulties in going back if necessary to his supplier who has falsified the certificate of origin. It does not however

appear that the Community intended to protect him from such inconveniences or to save him from all the prejudicial consequences of irregularities committed by his supplier with regard to the declaration of origin of the goods. The financial burden of fraud committed by third parties against an importer can certainly not fall upon the Community and cannot depend on whether the competent customs authorities have warned the importer of the possibility of subsequent verification of his certificate of origin.

5. For the reasons I have thus explained I conclude by proposing that the Court should in answer to the reference for a preliminary ruling made by the Italian Corte di Cassazione by order of 27 June 1979 rule as follows:

"Pursuant to Article 13 of Regulation (EEC) No 1371 of 30 June 1971 the national customs authorities may require verification of the accuracy of certificates of origin subsequent to the importation of the goods which, without any express reservation, have been given the benefit of preferential tariff treatment granted by the Community to products originating in developing countries; the importer is liable for all the consequences of such verification."