On those grounds,

THE COURT (First Chamber)

in answer to the question referred to it by the Finanzgericht Hamburg by order of 29 October 1982, hereby rules:

The suspension of customs duties provided for in Regulation No 2789/79 may not be applied to goods imported and entered for free circulation before the re-introduction of customs duties if the certificate of origin is produced after the re-introduction has come into effect.

Koopmans O'Keeffe Bosco

Delivered in open court in Luxembourg on 27 October 1983.

P. Heim
Registrar

T. Koopmans
President of the First Chamber

OPINION OF MRS ADVOCATE GENERAL ROZÈS DELIVERED ON 6 OCTOBER 1983 [1]

Mr President,
Members of the Court,

The Finanzgericht [Finance Court] Hamburg seeks an interpretation of Council Regulation No 2789/79 of 10 December 1979 opening preferential tariffs for certain products originating in developing countries, [2] on the basis of which Commission Regulation No 3067/79 of 20 December 1979 on the definition of the concept of originating products for purposes of the application of tariff preferences granted by the European Economic Community in respect of certain products from developing countries [3] was adopted.

1 — Translated from the French.

2 — Official Journal, L 328, 24. 12. 1979, p. 25.
3 — Official Journal, L 349, 31. 12. 1979, p. 1.

I — The preferential system with which those regulations are concerned and which has already been the subject of the *Weidenmann* case [1] may be described as follows:

The tariff preference given by the Community is an instrument of commercial policy of aid to development allowing the countries enjoying the preference to export to the Community finished and semi-finished products free of customs duties. For that purpose the Council suspends for a calendar year, up to a certain quantitative ceiling, the Common Customs Tariff duties applicable to goods originating from the countries concerned. As proof of the origin of the goods a certificate of origin given by the competent government authorities of the exporting country entitled to the preference must be produced. The quantity imported is charged against the ceilings by the Member States and the result is notified to the Commission. If the ceilings are reached the Commission may by regulation re-introduce the levying of customs duties on the importation of the products in question originating from the countries enjoying preference.

On 11 March 1980, in pursuance of the exemption from customs clearance formalities for release for free circulation granted to it under paragraph 40 (a) of the German Customs Law, [2] Volkswagenwerk AG, whose registered office is in Wolfsburg, declared to the customs office in Wolfsburg four consignments of accumulators under heading 85.04 of the Common Customs Tariff imported from Yugoslavia, which during February 1980 it had entered as "exempt" under the preferential tariff scheme and in respect of which it claimed customs exemption under Council Regulation No 2789/79. However, it did not produce the certificates of origin required to establish the provenance of the accumulators until April 1980.

In the meantime Commission Regulation No 545/80 of 3 March 1980 [3] reintroduced the customs duties applicable to electric accumulators from Yugoslavia.

By a notice of re-assessment dated 19 March 1980, the Hauptzollamt charged customs duties of DM 28 914.50 on the accumulators by imposing the rate of 9.5% applicable to non-member countries, on the ground that the certificates of origin had not been produced while the preferential tariff was in force.

When the objection to the notice of reassessment was rejected Volkswagenwerk AG, brought an action before the Finanzgericht Hamburg in which it alleged, essentially, that the conditions for applying the preferential tariff were satisfied at the relevant time, in its view the time when the goods were put into free circulation, that is to say when they were recorded.

The Finanzgericht took the view that the regulations in question did not contain an express provision on the question of the last date by which a certificate of origin may be submitted for goods to enjoy the preferential tariff and that the previous judgments of the Court did not provide a clear answer in that respect; accordingly, by order dated 29 October 1982 it stayed the proceedings and referred the following question to the Court for a preliminary ruling under Article 177 of the Treaty:

"Must Council Regulation (EEC) No 2789/79, especially Articles 2 and 3 thereof, read in conjunction with Commission Regulation (EEC) No 3067/79, especially Articles 7 and 11 thereof, be construed as meaning that the certificate of origin may no longer be validly

1 — Judgment of 10 June 1982 in Case 231/81 [1982] ECR 2259.

2 — Zollgesetz of 14 June 1961, Bundesgesetzblatt I, p. 737.

3 — Official Journal, L 60, 5. 3. 1980, p. 14.

produced after the customs duty has been re-introduced?"

II — In order to answer that question it must first of all be remembered that pursuant to Article 1 of Regulation No 2789/79 the exemption afforded by the regulation no longer applies when, as in the present case, the Commission re-introduces the levying of customs duties by means of regulation in application of the combined provisions of Articles 2 and 4 (2) of the regulation. A feature, however, of the present case is that the import formalities were completed before customs duties were re-introduced, apart from production of the certificate of origin which was not done until after the preferential system was withdrawn.

Article 3 (2) of the aforesaid regulation provides that:

"Goods may be charged against a ceiling or maximum amount only if the certificate of origin ... is submitted before the date on which the levying of duties is re-introduced."

In other words, *charging* is no longer possible when the certificate of origin is produced only on or after the date on which the levying of duties is re-introduced. As the Commission observes, the possibility of charging goods against ceilings or maximum amounts constitutes a logical, and lawful, condition for granting exemption from duties. Therefore goods which can no longer be charged because customs duties have in the meantime been re-introduced can no longer enjoy the exemption from duties provided for in Article 1 (1) of the regulation.

The conclusion that customs exemption can no longer be granted when a certificate of origin is not produced until or after customs duties are re-introduced is also supported, as the Commission emphasizes, by Commission Directive 82/57/EEC of 17 December 1981 [1] which, although it did not as yet apply at the relevant time, implemented Council Directive 79/695/EEC of 24 July 1979 [2] which was in force at the time. The combined provisions of Article 7 (2) and Article 3 (1) (c) of Commission Directive 82/57/EEC show clearly that when a reduced import duty or exemption from duty is applicable to goods released for free circulation only up to a certain ceiling, the goods may be charged to that ceiling only when the document to which the tariff preference is subject is actually produced. Since there is a ceiling, the certificate of origin must therefore, according to the terms of the provision, be produced before the usual import duties are re-introduced.

On the other hand, Article 7 (3) of Directive 82/57/EEC, to which the national court refers, is not relevant. As the Commission also points out, that provision presupposes that "the period for which the reduced or zero rate was set ..." expired without being interrupted by the re-introduction of customs duties.

That view is consistent with the judgment in the *Weidenmann* case. In that case, which concerned the corresponding preferential systems laid down in Council Regulations No 3004/75 of 17 November 1975 [3] and Commission

1 — Official Journal, L 28, 5. 2. 1982, p. 38.
2 — Official Journal, L 205, 13. 8. 1979, p. 19.
3 — Official Journal, L 310, 29. 11. 1975, p. 24.

Regulation No 3214/75 of 3 December 1975, [1] it was held that:

"The system of tariff preferences, whilst it may involve the requirement of a certificate of origin in order to justify the application of preferential rates, must not be understood as authorizing an excessively restrictive administrative measure in the actual machinery for checking the origin of the goods."

In the light of that objective of the regulation and of Article 3 (2) of Regulation No 3004/75, which corresponds to Article 3 (2) of Regulation No 2789/79, the Court held that a certificate of origin may in principle be produced after the customs declaration *provided* — and this is crucial in the present case — *that it is produced before the levying of duties is re-introduced by means of a regulation.* One of the facts on which that judgment was based, however, was that the levying of duties had not yet been re-introduced by the Commission. Consequently the Court held that if the duties had not been re-introduced during the year in question the late production of a certificate of origin could not prejudice the effectiveness of the regulation.

Finally, the operative part of that decision implies that the customs duties had not been re-introduced; the clause "even though the certificate of origin was produced after that regulation ceased to apply" presupposes, as the Commission rightly emphasizes, that the year for applying a preferential tariff expired as foreseen and was not prematurely interrupted by the re-introduction of customs duties.

It cannot be inferred from that judgment that production of a certificate of origin *after* the levying of duties has been re-introduced must also permit exemption from duties.

The principle of the protection of legitimate expectation is no bar to excluding preferential treatment in such a case. There is no ground in the present case for contemplating such protection since Article 3 (2) of Regulation No 2789/79 clearly provides that for the purposes of importation the certificate of origin must be produced before customs duties are re-introduced.

Nor can the importer rely on Articles 7 and 11 of the implementing regulation, Commission Regulation No 3067/79; as the national court observes, those provisions do not make any express derogation from Article 3 (2) of Regulation No 2789/79; they concern only the validity of the certificate of origin and they cannot be interpreted in a sense contrary to their legal basis.

III — My opinion is that the answer to be given by the Court should be as follows:

Regulation No 2789/79 must be interpreted as meaning that there are no grounds for granting exemption from customs duties when the certificate of origin of goods imported into the Community is presented only after the Commission has abolished the customs preferences.

1 — Official Journal, L 323, 15. 12. 1975, p. 1.