OPINION OF ADVOCATE GENERAL SIR GORDON SLYNN
delivered on 27 February 1986

My Lords,

Council Regulation (EEC) No 3420/83 of 14 November 1983 (Official Journal 1983 L 346/6) on import arrangements for products originating in State-trading countries, not liberalized at Community level, provides by Article 2(1): 'The putting into free circulation of the products listed in Annex III originating in State-trading countries shall be subject to quantitative restrictions in the Member States as indicated in that Annex against those products.' Czechoslovakia is specified as such a country. Before goods can be put into circulation an import authorization must be obtained from the competent authorities in the Member State concerned (Article 2(2]. By Article 6: 'The importation into the Member States of products not subject to the import arrangements provided for in Article 2 shall not be liable to any quantitative restrictions.'

Annex III provides that goods falling under Common Customs Tariff heading No 93.07 B II (a) and under Nimexe (1983) headings 93.07-45 and 49, shall be 'partially under quantitative restrictions. For exact descriptions of the product, see note on page 82'.

Both the CCT headings and the Nimexe headings (relating to the statistics of trade between Member States and with third countries) refer to both 'sporting and target shooting cartridges' though the Nimexe headings further subdivide into 'centre-fire: for shot-guns' and 'rim-fire: for shot-guns'. (Council Regulations No 3333/83 of 4 November 1983, Official Journal 1983, L 313/1 and 3407/82 of 16 December 1982, Official Journal 1982, L 366/1.) The French text refers to 'cartouches de chasse et de tir' and the Dutch to 'Patronen voor het jagen en voor de schietsport.'

On the other hand the exact description of the product given in the Note to the aforesaid Annex III in respect of Nimexe headings 93.07-45, 49 for Benelux is 'sporting cartridges'; in the French text 'cartouches de chasse'; in the Dutch text 'Jachtpatronen'.

By Council Decision No 83/675/EEC of 19 December 1983 (Official Journal 1983 L 381/1) Member States were to open the import quotas given in the annexes thereto. Annex VI, concerning imports from Czechoslovakia for the period 1 January to 31 December 1984, gave a quota of 120 000 units for 'le numéro du tarif douanier commun, 93.07 B ex II, cartouches de chasse pour armes à canon lisse, Jachtpatronen, voor wapens met gladde loop'.

Article 2 of Netherlands order No 576 of 26 August 1981 provided that the import of goods from, *inter alia,* Czechoslovakia was prohibited without a licence.

Handelsonderneming J. Mikx BV ('Mikx') is a private limited company established in the Netherlands. On 14 September 1984 it requested a licence for the importation into the Netherlands of one million sporting shot-cartridges for smooth-bore guns, calibre 12, originating in Czechoslovakia. 500 000 of the cartridges were marked inter alia 'Skeet' and contained shot with a diameter of 2 mm, and the other 500 000 cartridges were marked *inter alia* 'Trap' and contained shot with a diameter of 2.5 mm A licence was granted for the importation of the 500 000 cartridges with a shot diameter of 2mm but by a letter dated 20 September 1984 the Dutch Minister van Economische Zaaken (Minister for Economic Affairs) notified Mikx that its application was rejected in so far as it related to 500 000 cartridges with a shot diameter of 2.5 mm on the ground that the relevant quota allocated to the Benelux countries was exhausted and any new quota would not be available before 1 January 1985.

On 2 October 1984 Mikx appealed against that decision before the College van Beroep voor het Bedrijfsleven (Administrative court of last instance in matters of trade and industry), asking the College to annul the decision and order the import licence for the cartridges in question to be granted. The Minister contested the appeal and after argument the College has referred to the Court under Article 177 of the EEC Treaty the following questions:

(1) Must Article 2(1) of Regulation No 3420/83 read together with Annex III thereto, Common Customs Tariff subheading No 93.07 B II (a), Nimexe Code (1983) Nos. 93.07-45 and 93.07-49 and the note pertaining thereto be interpreted as meaning that the import restrictions on cartridges from Czechoslovakia cover all shot-cartridges which are suitable for hunting regardless of whether such cartridges are also suitable for target shooting?

(2) If the first question must be answered in the negative, should the scheme of the provisions referred to therein be interpreted as meaning that, although shot-cartridges are in principle suitable for hunting, they are not subject to the quantitative import restrictions if they are intended to be used in target shooting?

It appears that a quota was fixed for the importation of cartridges from Czechoslovakia to the Benelux countries as early as 1966. At first no distinction was made between different types of cartridge and it was only later, in a notification to Czechoslovakia within the GATT, that the quota related to 'sporting cartridges' (cartouches de chasse). When the Community first took over the administration of these quotas by Decision 74/652/EEC (Official Journal 1974 L 358/1) this later provision was adopted automatically and has been used ever since when fixing the quotas, without it seems the Commission having considered the present question. No reason for the change by Benelux has been suggested other than the possibility that there existed in those countries a more substantial production of sporting, but not target shooting, cartridges which needed to be protected.

The customs duty is the same for both.

Neither the Decision referred to nor the Customs or Nimexe classifications give any indication as to objective differences between the two types of cartridge. The

Commission has told the Court that despite frequent discussions, no distinction could be agreed by experts or officials between the two cartridges, they being in practice indistinguishable. Suggestions that there may be a difference in the metal cap have been rebutted since different makers have different practices.

The Netherlands Government accepts 2 mm as being the dividing line. Cartridges having shot below 2mm are treated as target shooting cartridges and let in freely; cartridges having shot over 2 mm are treated as constituting sporting cartridges and subject to the quota. On the other hand, the Commission has told the Court (1) that sporting authorities in the Netherlands authorize cartridges for target shooting where the shot diameter is 2.5 mm or below, but not above that figure; and (2) that whereas shot above 2.5 mm is only used for sport (hunting), shot below 2.5 mm is used for sport as well as target shooting down to a diameter of 1.75 mm, which I understand to be the smallest made. Thus cartridges containing shot below 2.5 mm are used for rabbits, partridges, waterhens and larks, the smaller the game the smaller the diameter of the shot.

One thing seems to me clear. It is not possible to read the relevant provisions as indicating the intended use of the cartridges, as the company would do. It is quite impossible for the customs authorities at the time of importation to know what will be the use, or even the intended use, of the ultimate purchaser, regardless of the names printed on the cartridges.

Taking the description 'sporting cartridges' in isolation, the right approach would be to interpret it as 'cartridges suitable for use in sport (hunting)' as the Commission, though recognizing the difficulties and putting forward strong arguments to the contrary, proposes. This would mean that any cartridges suitable for use in sport would be subject to the quota. On that basis it would seem, on what the Court has been told, that all cartridges would be subject to the quota. That would not necessarily be a bizarre result if the admission of the larger shot cartridges was inadvertent, or indeed if there was really no difference between the two, and in the absence of other indications, I would have accepted it as being the ordinary meaning of the words.

There is, however, one other indication. The notes to Annex III to Council Regulation No 3420/83 identify some items in the Annex as being 'completely under quantitative restrictions', others as being 'partially under quantitative restrictions'. This note read with the tables in that Annex clearly relates to a Nimexe heading and indicates that in some cases all the products in a heading are subject to a quota; in others only some of the products ('certain products', p. 82) in a heading are subject to a quota. Thus for Italy, everything in the Nimexe heading 93.07-45 and 49 is subject to a quota. For the United Kingdom only ammunition as more specifically defined is subject to a quota. For Benelux it is only 'sporting cartridges' which are subject to a quota.

Since a distinction has to be drawn in order to ensure that only some but not all cartridges are subject to a quota, it seems to me that the scheme can only be given effect

to if the quota is read as applying to cartridges suitable only for 'sport' or 'hunting' and not to those which can equally be used for target shooting.

It is for the national court to decide what cartridges are 'suitable only for use for sport' on such evidence as may be adduced, and not for this Court, which in any event has no objective criteria or sufficient evidence on which it could more precisely define the cartridges falling within the quota.

If this produces an unacceptable result it is for the Council to define more precisely those cartridges subject to the quota as it did in the case of the United Kingdom.

In my opinion, therefore, the question should be answered on the lines that:

Article 2(1) of Regulation No 3420/83, read together with Annex III thereto, Common Customs Tariff subheading No 93.07 B II (a), Nimexe Code (1983) Nos 93.07-45 and 93.07-49 and the note pertaining thereto, are to be interpreted as meaning that the import restrictions on cartridges from Czechoslovakia cover those cartridges which are suitable only for hunting and not for target shooting.

The costs of Handelsonderneming J. Mikx BV fall to be dealt with by the national court: the costs of the Commission on this reference are not recoverable.