OPINION OF MR ADVOCATE GENERAL DARMON
delivered on 30 January 1985 *

Mr President,
Members of the Court,

1. The issue in this action brought against the United Kingdom for failure to fulfil its Treaty obligations is whether the Trade Descriptions (Origin Marking) (Miscellaneous Goods) Order of 2 February 1981 (hereinafter referred to as 'the Order') is compatible with Article 30 of the EEC Treaty.

In the case of four groups of goods:

(i) clothing and textile goods;

(ii) domestic electrical appliances;

(iii) dootwear;

(iv) cutlery,

the Order, which is of general application, requires an indication of origin when those goods are sold by retail, that is to say an indication of the country in which they were manufactured or produced. [1] The goods must be marked with or accompanied by such an indication. [2] That requirement is directed at retailers. The supplier is required to furnish the person to whom the goods are supplied with a written indication of their origin not later than the time of supply, [3] unless they are marked with or accompanied by such indication, [4] in which case, of course, the retailer no longer has to fulfil a requirement which has already been satisfied by the supplier.

2. From this the Commission concludes that the Order provides the retailer with a means of escaping the burden of his obligation by allowing him to pass it up the distribution chain; that burden does not in fact rest on the retailer but on the other traders and, finally, on the manufacturer himself.

In the Commission's view, the Order imposes on exporters to the United Kingdom additional costs ensuing from the marking itself and the need to arrange special runs and carry separate stocks. Therefore, although the Order applies to national and imported products alike, in reality, as far as exporters to the United Kingdom are concerned, it constitutes a measure having an effect equivalent to a quantitative restriction prohibited by Article 30.

The United Kingdom replies in substance that the Order does not apply to imports but only to sale by retail on the United Kingdom market. It denies that the Order has the alleged effect of causing the burden on retailers to be passed up the chain of supply and therefore that it impedes trade. In this regard, it points out in particular that origin-marking as well as the production of special runs and the carrying of separate stocks is common commercial practice at the manufacturing stage and that in any case the extra costs involved are negligible.

In the event that Article 30 does not apply in principle to this case, the United Kingdom alternatively argues that the Order

* Translated from the French.
1 — Article 1 (3).
2 — Article 2 (a).
3 — Article 3 (2).
4 — Article 3 (1) (a).

is justified by the aim of protecting consumers. Referring to the Court's decision in the *Cassis de Dijon* case, [5] the United Kingdom submits that the Order is necessary for achieving that aim, which is a mandatory requirement of public interest which allows derogations from the provisions of Article 30.

Since an exception to the fundamental principle of the free movement of goods is involved, the Commission considers that consumer protection is a concept which must be interpreted narrowly. Therefore, only measures designed to prevent consumers from being misled are allowed. From that point of view, origin-marking cannot be regarded as a prerequisite for such protection.

3. This dispute therefore raises two questions which I will consider in turn:

(1) Does the Order have the effect of impeding imports of the goods to which it applies into the United Kingdom?

(2) If so, is the requirement which it imposes justified in order to satisfy a mandatory requirement relating, in this case, to consumer protection.

I — Hindrance to trade

4. According to a consistent line of decisions of the Court 'all trading rules enacted by Member States which are capable of hindering, directly or indirectly, actually or potentially, intra-Community trade are to be considered measures having an effect equivalent to quantitative restriction'. [6] The Court thus interpreted the concept of hindrance widely. In that regard, it does not matter whether the hindrance arises from a discriminatory measure or from a provision which applies to national and imported products alike, as in this case. [7]

Nevertheless, as Mr Advocate General Reischl pointed out after considering the decisions of the Court, in order for there to be an obstacle, the national measure in question must cause '*specific trade restrictions*'. [8] That criterion seems to me to have been accepted by the Court in its decision in *Blesgen* [9] and confirmed in its decision in *Prantl*. In that case the Court held that 'even national legislation on the marketing of a product which applies to national and imported products alike falls under the prohibition laid down in Article 30 of the EEC Treaty if *in practice* it produces protective effects by favouring typical national products and, by the same token, operating to the detriment of certain types of products from other Member States'. [10]

Therefore, in order to be classified as an obstacle to trade for the purposes of Article 30, a national measure applicable to goods without distinction must be detrimental to the marketing of imported products in relation to national products and consequently have a protective effect on national products. That specific approach demonstrates the intention of the Court to look at what is the *real* adverse

5 — Case 120/78 *REWE Zentral AG* v *Bundesmonopolverwaltung für Branntwein* [1979] ECR 649.

6 — Case 8/74 *Procureur du Roi* v *Benoît and Gustave Dassonville* [1974] ECR 837, paragraph 5 at p. 852.

7 — Opinion of Mr Advocate General Reischl in Case 75/81 *Blesgen* v *Belgium* [1982] ECR 1211 at p. 1235.

8 — Ibid. at p. 1238, (my emphasis).

9 — Case 75/81 *Blesgen* v *Belgium*, cited above, paragraphs 8 to 10 at p. 1229; see also Case 193/80 *Italy* [1981] ECR 3019, paragraph 20; Case 286/81 *Oosthoek* [1982] ECR 4575, paragraph 15.

10 — Judgment of 13 March 1984 in Case 16/83 *Prantl*, paragraph 16 at p. 1641.

effect, direct or indirect, actual or potential, on intra-Community trade.

5. It is therefore for the Commission, since it asks the Court to apply the provisions of Article 30 to a national measure applicable to goods without distinction, to show that it entails a *specific trade restriction.* As it is, no such proof has been adduced.

To support its action the Commission essentially relies on the Court's judgment in the *Irish Souvenirs* case, two cases brought against France for infringement of the Treaty which have since been removed from the Court Register because that State has complied with the Commission's reasoned opinion, and finally on two letters, one from a United Kingdom retailer of domestic electrical appliances and the other from the Groupement des industries françaises des appareils d'equipement menager [French Domestic Appliance Manufacturers' Association].

In my view, the reference to the *Irish Souvenirs* case does not appear relevant in this regard. That case concerned a measure that was discriminatory because it imposed an origin-marking requirement on imported products only by requiring them to bear the word 'foreign'. Moreover, in that judgment, the Court expressly left aside 'the point argued by the Commission' which had maintained 'that it would not be enough to require a statement of origin to be affixed to domestic products as well' [11] for the rules in question to satisfy the requirements of Article 30. For the same reason it seems to me that no useful guidance may be obtained from the two 'French cases', which also concerned imported products only.

As far as the letters produced by the Commission are concerned, the following observations must be made: they concern the products of only *one* of the four sectors referred to by the Order (domestic electrical appliances) imported from only *one* Member State, France.

Furthermore, the letter from the Groupement des industries françaises des appareils d'equipement menager, concerning the effects of the Order, contains only assertions which are not supported by any facts demonstrating the existence of the 'pressure' exerted by the United Kingdom distributors or of the changes imposed on 'all the manufacturers'. The second letter, which the Commission produced at the Court's express request, is even less significant in so far as it came from a single retailer.

The facts meant to persuade the Court really have little substance. Let me be clear. I am not saying that the Order has not had, or might not have, any impeding effect. I am simply saying that, as things stand at the moment, the Commission has by no means proved its allegation that the Order has an impact on trade or *a fortiori* that it has a restrictive effect.

For that reason I believe that the Commission's application must be dismissed. Should the Court not share my view, it will need to consider the United Kingdom's alternative submission.

II — Consumer protection

6. According to the case-law of the Court, 'obstacles to intra-Community trade resulting from disparities between national legislation relating to the marketing of the products in question must be accepted in so far as those provisions may be recognized as being necessary in order to satisfy mandatory requirements relating in particular to . . . the defence of the consumer'. [12]

11 — Case 113/80 *Commission* v *Ireland* [1981] ECR 1625, paragraph 16 at p. 1641.

12 — Case 120/78 *REWE Zentral AG* v *Bundesmonopolverwaltung fiir Branntwein* [1979] ECR 649, paragraph 8 at p. 662.

The question is therefore whether the origin-marking requirement in question is necessary in order to protect consumers.

7. The United Kingdom maintains that such is the case, claiming that only the Member State may decide whether such protection is necessary and that in the present case opinion polls have shown that United Kingdom consumers need to know the origin of the relevant products before making any purchase. Moreover, there is an undeniable link between a product's geographical origin and its intrinsic qualities (Italian shoes and French perfumes, for example). Finally, it claims that the origin-marking requirement is the least restrictive means as far as trade is concerned and therefore conforms with the principle of proportionality.

The Commission maintains that the concept of consumer protection is one which justifies a derogation from the fundamental rule of the free movement of goods and that therefore it must be interpreted narrowly. As such, it may not be left to the appraisal of each Member State. The Commission considers that consumer protection may justify only measures intended to prevent consumers from being misled. In that regard it refers to the opinion given by the Economic and Social Committee on a proposal for a directive on the approximation of laws relating to the indication of origin of certain textile and clothing products in which that committee considered that such an indication did not fill a genuine need on the part of consumers. [13]

13 — Opinion published in OJ C 185 of 27. 7. 1981, p. 32.

8. As I have just stated, referring to the Court's decision in the *Cassis de Dijon* case, in the absence of common rules, Member States may lay down requirements for the marketing of national and imported products within their territory. None the less, the trade barriers which may arise cannot remain a matter for appraisal by each Member State. As far as this point is concerned, the previous decisions of the Court are unambiguous. Such barriers are justified only if they are '*necessary* in order to satisfy mandatory requirements' [14] one of which is consumer protection.

Where a derogation from the principle of the free movement of goods is concerned, the Court has reserved to itself the power to review the application of such a derogation. For example, in the *Irish Souvenirs* case, the Court held that the duty to affix the word 'foreign' could not be justified by the 'interests of consumers' and that those interests 'and fair trading *would be adequately safeguarded* if it were left to domestic manufacturers to take appropriate steps, such as affixing, if they so wished, their mark of origin to their own products or packaging'. [15] In doing so, the Court decided that the necessity for the national measure to protect consumers is not outside the ambit of its review and that indications of origin are not *per se* contrary to Community law, at any rate if they are left to the initiative of manufacturers and traders.

9. In this case it is therefore a question of deciding whether the protection of

14 — Case 120/78 [1978] ECR 649 at p. 662, paragraph 8, (my emphasis).

15 — Case 113/80 [1978] ECR 1625, paragraph 16 at p. 1641, (my emphasis).

United Kingdom consumers *necessitates* a national measure *requiring* all the products concerned, whatever their origin, to indicate the country in which they were manufactured or produced. However, the Court has held that: 'As regards indications of origin in particular, the geographical area of origin of a product must confer on it a specific quality and specific characteristics of such a nature as to distinguish it from all other products'. [16]

As Mr Advocate General Capotorti stated in his Opinion in the *Irish Souvenirs* case, the products concerned must therefore be 'typical products' with regard to which, failing an indication of origin, the purchaser is likely to be misled when deciding whether to buy them. In such a case, Mr Advocate General Capotorti continued, 'it is doubtless necessary, and therefore legitimate under Community law, to afford the consumer an appropriate degree of protection'. [17]

The criterion of a typical product having an individual character owing to its provenance provides, in my view, the guarantee which is absolutely necessary in order for a derogation based on consumer protection to be justified.

However, since the field of application of the Order is particularly extensive, it does not meet that criterion. For example — and many more examples could be cited — under the heading 'clothing and textile goods' a whole range of articles is covered, including 'garments of any material, whether or not textile'. Similarly, all footwear falls within the field of application of the Order, under the heading 'footwear'.

Since it is a provision of such wide scope, the statutory obligation to indicate on goods which do not necessarily possess the above-mentioned characteristics that they originate in the United Kingdom or in any other Member State does not seem to me to be justified by the requirements of consumer protection. Moreover, the composite origin of a number of the products concerned is likely to make an indication of origin useless or even misleading to those whom it is sought to protect. I doubt, therefore, whether a measure of such uncertain effect may be regarded as necessary for providing such protection.

Should the Court decide that the Order is a measure having an effect equivalent to a quantitative restriction, the defence relied upon by the United Kingdom must therefore be rejected.

10. In view of all the considerations I propose that the Court should:

(1) Dismiss the action brought by the Commission against the United Kingdom for maintaining in force an order requiring United Kingdom retailers to indicate the origin of goods marketed by them;

(2) Alternatively, should the Court consider that that requirement constitutes a measure having an effect equivalent to a quantitative restriction prohibited by Article 30 of the Treaty, reject the defence put forward by the United Kingdom Government and founded on the need to ensure the protection of consumers.

16 — Case 12/74 *Commission* v *Germany* [1975] ECR 181, paragraph 7 at p. 194.

17 — Case 113/80 [1981] ECR 1625, at p. 1646.