OPINION OF ADVOCATE GENERAL POIARES MADURO delivered on 13 July 2006 [1]

1. Good wine is a good familiar creature if it be well used. [2] It is astonishing, however, 'that men should put an enemy in their mouths to steal away their brains', [3] when the enemy in question, unlike good wine, is as ferocious as virtually pure ethyl alcohol. Yet, it turns out from information submitted by the Finnish Government in the course of the present proceedings that consumer demand for spirits with an extremely high alcohol percentage is by no means theoretical. Finnish law forbids the retail sale of substances containing more than 80% of undenatured ethyl alcohol ('spirits'). Their commercial use for industrial purposes or as a raw material is subject to a licensing scheme. The Korkein oikeus (Supreme Court) of Finland has requested a preliminary ruling from this Court on the question whether the requirement of a licence for the importation, from another Member State, of substances containing more than 80% of undenatured ethyl alcohol, is compatible with Articles 28 and 30 EC. The issue arose in the context of criminal proceedings against Mr Ahokainen and Mr Leppik, who are charged with smuggling undenatured ethyl alcohol from Germany into Finland.

I — National legal framework

2. The purpose of the alkoholilaki No 1143/1994 ('the Alcohol Act'), according to Article 1 thereof, is to control the consumption of alcohol so as to prevent harmful effects to health and to society caused by alcoholic substances.

3. The Alcohol Act distinguishes between 'alcoholic drinks' and 'spirits'. According to Article 3(2), as amended by Law No 1/2001, 'alcoholic drink' means a drink intended for consumption which contains up to 80% by volume of ethyl alcohol; 'spirits' means ethyl

1 — Original language: Portuguese.

2 — William Shakespeare, *Othello*, Act II, Scene III.

3 — Ibid.

alcohol or an aqueous solution of ethyl alcohol which contains more than 80% by volume of ethyl alcohol and which is not denatured.

4. Article 8 regulates the commercial importation of alcoholic drinks and spirits. Pursuant to Article 8(1), alcoholic drinks may be imported without an import licence for personal use and for commercial or other economic purposes. By contrast, the import of spirits requires a licence. Pursuant to Article 8(2), a trader may import spirits if he has obtained an import licence from the product supervision agency (tuotevalvontakeskus). Article 8(3) says that the product supervision agency may grant an import licence 'to a person who is considered to have the qualifications and the reliability necessary for the [import] activity'.

5. In addition, Article 8(2) provides that a person may import spirits for his own use if he has obtained a special licence to use spirits from the product supervision agency pursuant to Article 17, after having notified that agency of his activity as importer. Article 17 essentially limits the persons eligible for such a licence to those who need spirits for professional use or as a raw material. Article 17(3) provides that, in order to obtain the licence, the applicant, who must be qualified and reliable, must specify a justifiable use.

6. Under Article 82 of Law No 459/1968 — which the Alcohol Act replaced, except in matters of sanctions — anyone who unlawfully imports or exports an alcoholic drink or spirits, or attempts to do so, is criminally liable for smuggling an alcoholic substance.

II — Facts and reference for a preliminary ruling

7. On 1 August 2002, customs authorities in Finland discovered 9 492 litres of a clear liquid, packaged in litre bottles, in a lorry arriving from Germany. According to the consignment documents, the load was 32 pallets of sesame oil. An analysis performed by the customs laboratory revealed that the clear liquid was pure spirits (96.4%-96.5% of undenatured ethyl alcohol).

8. The Raaseporin käräjäoikeus (Raasepori District Court) found Ahokainen and Leppik guilty of unlawfully importing the 9 492 litres of spirits. By judgment of 21 November 2001, the court sentenced both Ahokainen and Leppik to imprisonment for the organised smuggling of an alcoholic substance. It ordered that the spirits be forfeited to the State. By judgment of 30 May 2003, the Helsingin hovioikeus (Helsinki Court of Appeal) confirmed the judgment of the Raasepori District Court.

9. Ahokainen and Leppik lodged an appeal before the Korkein oikeus (Supreme Court), which, by decision of 6 October 2004, referred the following questions to the Court of Justice:

'(1) Is Article 28 EC to be interpreted as precluding legislation of a Member State under which undenatured ethyl alcohol of over 80% (spirits) may be imported only by a person who has obtained a licence to do so?

(2) If the above question is answered in the affirmative, is the licence system to be regarded as permitted under Article 30 EC?'

10. The Virallinen Syyttäjä (public prosecutor) and the Governments of Finland, Sweden and Portugal, as well as the Commission, have submitted written observations to the Court. On 17 May 2006 he Court heard oral argument from the Finnish Government and the Commission.

III — Appraisal

A — *The first question*

11. First, the referring court asks whether Article 28 EC precludes legislation which requires a licence for the import, from another Member State, of substances containing more than 80% undenatured ethyl alcohol ('spirits').

12. The Portuguese Government, which was the only party to submit extensive observations on this point, argues that this question should be answered in the negative. It is of the view that Article 28 EC does not preclude a system of prior import authorisation for spirits, such as the one provided for under Finnish law. According to the Portuguese Government, the requirement at issue amounts to a simple declaration by a trader, which allows the authorities to monitor products subject to excise duty and to ensure

the payment of excise duties. The Portuguese Government submits that this is in conformity with Council Directive 92/12/EEC of 25 February 1992.[4] It concludes that the system of prior import authorisation constitutes neither a quantitative restriction on imports, nor a measure having equivalent effect.

13. To my mind, however, the case-law of the Court points towards the opposite conclusion. Ever since its judgment in *Dassonville*,[5] the Court has held that the prohibition set out in Article 28 EC covers all measures which are capable of hindering, directly or indirectly, actually or potentially, intra-Community trade.[6] Moreover, the Court has repeatedly stated that Article 28 EC precludes national legislation which, even as a pure formality, requires a licence for the introduction into its territory of goods from another Member State.[7]

14. Besides, contrary to what the Portuguese Government contends, the prior authorisation procedure for the import of spirits into Finland falls outside the framework of Directive 92/12. In fact, the procedure applies in addition to the arrangements flowing from that directive.

15. Therefore, the answer to the first question of the referring court must be that Article 28 EC precludes national legislation which requires a licence for the import, from another Member State, of substances containing more than 80% by volume of undenatured ethyl alcohol.

B — *The second question*

16. The referring court asks if the system of prior authorisation for the import of spirits could, however, be justified under Article 30 EC.

17. The Governments of Finland and Sweden both argue that the requirement of an

4 — On the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products (OJ 1992 L 76, p. 1).

5 — Case 8/74 *Procureur du Roi* v *Dassonville* [1974] ECR 837, paragraph 5.

6 — Case C-41/02 *Commission* v *Netherlands* [2004] ECR I-11375, paragraph 39; Case C-320/03 *Commission* v *Austria* [2005] ECR I-9871, paragraph 67; Case C-366/04 *Schwarz* [2005] ECR I-10139, paragraph 28.

7 — Joined Cases 51/71 to 54/71 *International Fruit* [1971] ECR 1107, paragraph 9; Case 124/81 *Commission* v *United Kingdom (UHT milk)* [1983] ECR 203, paragraph 9; Case 40/82 *Commission* v *United Kingdom* [1984] ECR 283, paragraph 24; Case C-304/88 *Commission* v *Belgium* [1990] ECR I-2801, paragraph 9; Case C-235/91 *Commission* v *Ireland* [1992] ECR I-5917, paragraph 5. See also the judgment of 16 December 1994 of the EFTA Court in Case E-1/94 *Restamark*, paragraphs 49 and 50.

import licence is justified on grounds of public health and public policy.

18. The Swedish Government submits that in Finland, as in Sweden, a tradition exists of consuming strong alcoholic drinks. In order to prevent the consumption of substances containing more than 80% alcohol, it is necessary to regulate the trade in spirits. Whether a system of import licences is necessary and proportionate in order to protect public health is for the national court to assess, in light of the social practices and consumer habits in the Member State concerned.

19. For the most part, the submissions of the Finnish Government proceed along the same lines. The system of prior authorisation for the import of spirits forms an integral part of the general policy in Finland concerning alcohol. The Finnish Government submits that the consumption of alcohol poses a major risk to public health; it is related to violence and criminality, and to a high number of deaths among people of working age in Finland. Moreover, in Finland, many are prone to drinking only minimally diluted spirits in their search to become inebriated. In fact, before the Alcohol Act defined 'spirits' by expressly referring to an ethanol content of 80%, the product supervision agency received queries from restaurant owners about the possibility of serving customers substances with an ethanol content of 96% as drinks. The Finnish Government emphasises that the consumption of spirits is particularly dangerous to human health. Even when consumed in relatively small quantities, spirits can lead to serious, and possibly lethal, intoxication. The risks are especially high for young people, who tend to consider spirits a cheap alternative to strong alcoholic drinks. In light of this, the Finnish Government contends that the system of prior import authorisation is an appropriate and necessary means of avoiding the use of spirits for private consumption.

20. I have no hesitation in accepting the general hypothesis that the consumption of immoderate amounts of alcohol has a multitude of adverse effects on human health and public order. Indeed, this has been common knowledge since at least as far back as the time of the Old Testament. [8] More recently,

8 — '[S]trong drink shall be bitter to them that drink it' (Isaiah 24:9). See also: Leviticus 10:9; Judges 13:4, 7, 14; Proverbs 20:1; 23:32; 31:4-5; and Isaiah 5:22.

the Court acknowledged it in its judgment in *Heinonen*. [9] Article 30 EC expressly mentions public policy and the protection of human health as grounds of interest which may allow a restriction on the free movement of goods to escape the prohibition laid down in Article 28 EC. [10] In principle, therefore, in the absence of harmonisation, Member States are free to adopt national measures aimed at preventing people from drinking alcohol, even where these measures have a negative impact on the free movement of goods within the internal market. [11] This is especially true in the present case, where the legislation at issue distinguishes between alcoholic drinks for consumption and spirits for industrial purposes, and aims to prevent people from drinking the latter.

21. However, the exceptions to the fundamental principle of the free movement of goods must be construed strictly. [12] The Member State concerned must demonstrate that the measure at issue is appropriate to the aim pursued [13] and that it does not go beyond what is necessary to achieve that aim. [14]

22. The Commission argues that Finland has failed to demonstrate why the import licensing scheme for spirits is necessary. Referring to *Commission* v *Belgium*, the Commission maintains that, as a rule, a system of prior import authorisation is a disproportionate measure, since less restrictive measures, such as the requirement of an import declaration, should suffice in order to protect the Member State's legitimate interests. [15] The Commission notes that, in *Franzén*, the Court rejected the argument of the Swedish Government that the system of prior import authorisation for alcoholic beverages under consideration in that case was proportionate in relation to the objective of protecting public health. [16] Moreover, given the fact that Finnish law completely excludes spirits from the market for private consumption, the Commission doubts whether a system of prior import authorisation for spirits intended for commercial use can contribute directly to the protection of human health and public policy. Finally, the Commission points out that trade in alcohol between Member States is already strictly monitored in the framework of Directive 92/12, which provides for Community checks regarding the collection of excise duties. The Finnish system of prior import authorisation, though

9 — Case C-394/97 [1999] ECR I-3599, paragraph 33.

10 — Joined cases C-1/90 and C-176/90 *Aragonesa de Publicidad Exterior and Publivía* [1991] ECR I-4151, paragraph 13.

11 — See, as regards rules restricting the advertisement of alcoholic beverages, *Aragonesa*, cited in footnote 10, paragraphs 15 and 16; Case 152/78 *Commission* v *France* [1980] ECR 2299, paragraph 17; Case C-405/98 *Gourmet International Products* [2001] ECR I-1795, paragraph 27; and, in the context of the freedom to provide services, Case C-429/02 *Bacardi* [2004] ECR I-6613, paragraph 37.

12 — Case C-205/89 *Commission* v *Greece* [1991] ECR I-1361, paragraph 9.

13 — Case 120/78 *Rewe-Zentral ('Cassis de Dijon')* [1979] ECR 649.

14 — Case C-189/95 *Franzén* [1997] ECR I-5909, paragraph 76; Case C-270/02 *Commission* v *Italy* [2004] ECR I-1559, paragraph 22.

15 — Cited in footnote 7, paragraph 14.

16 — *Franzén*, cited in footnote 14, paragraphs 76 and 77.

imposing an extra burden on traders, does not appear to produce any additional advantages for combating traffic in undenatured ethyl alcohol.

23. Before examining these arguments, it is worth expanding on the workings of the principle of proportionality in the context of Article 30 EC. Essentially, the principle of proportionality entails a consideration of the costs and benefits of a measure enacted by a Member State in the light of the different interests which Community rules deem worthy of protection. [17] Once a national measure is in principle prohibited by Article 28 EC it is for the Member State to demonstrate that the benefit of that measure for the public interest recognised by Community law outweighs the costs arising from the restriction imposed on free movement. Thus, in order for the system of prior import authorisation to be compatible with the Treaty, Finland must demonstrate that the benefits of that system to public policy and the protection of human health justify the costs it imposes on the free movement of goods in the internal market. However, instead of immediately verifying the Member State's overall assessment of the relevant costs and benefits, the Court, when reviewing the proportionality of a measure enacted by a Member State, in practice applies one or more of three sub-tests. [18]

24. The first is a test of suitability: the measure at issue must indeed contribute to achieving the aim pursued. For instance, in *Aragonesa* the Court held that legislation restricting the advertising of alcoholic beverages is apt to protect public health. [19] By contrast, in *Commission* v *United Kingdom (UHT milk)*, the Court found that a regulation which required a second heat treatment in the United Kingdom for imported UHT milk was not an appropriate means of protecting public health. [20] The Court noted that the United Kingdom had accepted some imports without requiring a second heat treatment and observed that 'it ha[d] not been shown that public health in the United Kingdom ha[d] been affected in the slightest by such imports'. [21] The question to be determined in applying the suitability test is whether the measure has any benefits at all for the legitimate interests on which the Member State relies. When this is not the

17 — On the question *which* measures should be subject to such an assessment by the Court, see my Opinion in Joined Cases C-158/04 and C-159/04 *Trofo Super-Markets* [2006] ECR I-8135, in particular points 40, 41 and 46.

18 — See, to the same effect: Opinion of Advocate General Van Gerven in Cases C-312/89 *Sidef Conforama* and C-332/89 *Marchandise and Others* [1991] ECR I-997, at point 14. See also: Jacobs, F.G., 'Recent developments in the principle of proportionality in European Community law', and Tridimas, T., 'Proportionality in Community law: searching for the appropriate standard of scrutiny', in: *The Principle of proportionality in the laws of Europe*, 1999, pp. 65-84; De Búrca, G., 'The principle of proportionality and its application in EC law', *Yearbook of European Law*, Vol. 13 (1993), pp. 105-150; Jans, J.H., 'Proportionality revisited', *Legal Issues of Economic Integration*, Vol. 27 (2000), No 3, pp. 239-265.

19 — *Aragonesa de Publicidad Exterior and Publivía*, cited in footnote 10, paragraph 15. See also *Schwarz*, cited in footnote 6, paragraphs 34 to 36.

20 — Case 124/81, cited in footnote 7.

21 — Paragraph 32 of the judgment. See also C-270/02 *Commission* v *Italy* [2004] ECR I-1559, paragraph 24.

case, the measure infringes by definition the principle of proportionality.

25. The second test concerns the necessity of the measure. To put it more precisely: it concerns the question whether an alternative measure is realistically available that would protect the Member State's legitimate interests just as effectively, but would be less restrictive of the free movement of goods. In other words: could the Member State, by directing a similar amount of its resources into an alternative measure, achieve the same result at a lower cost to intra-Community trade? Again, the judgment in *UHT milk* provides an illustration. The United Kingdom sought to justify a system of specific import licences for UHT milk on grounds of safeguarding animal health. However, the Court held that the licensing system resulted 'in an impediment to intra-community trade which ... could be eliminated without prejudice to the effectiveness of the protection of animal health and without increasing the administrative or financial burden imposed by the pursuit of that objective'. [22] Of course, if a Member State can demonstrate that adopting the alternative measure would have a detrimental effect on other legitimate interests (for instance, on fundamental rights), then this would have to be taken into consideration. [23] Yet, typically, failure to opt for the less restrictive alternative amounts to an infringement of the principle of proportionality. [24]

26. Academic writings frequently refer to the third test as 'proportionality *stricto sensu*'. [25] This aspect of the assessment of proportionality can be expressed as the following rule: the greater the degree of detriment to the principle of free movement of goods, the greater must be the importance of satisfying the public interest on which the Member State relies. [26] Thus, the Member State must demonstrate that the level of protection it decides to afford to its legitimate interests is commensurate with the degree of interference this causes in intra-Community trade. [27] The difference with the second test is that, as a result of the third test, a Member State may be required to adopt a measure that is less restrictive of intra-Community trade, *even if this would lead to a lower level of protection of its legitimate interests.* Under this test, the Court usually allows the Member State a certain amount of discretion in choosing the

22 — *Commission* v *United Kingdom (UHT milk)*, cited in footnote 7, paragraph 18.

23 — Though the alternative measure may be less restrictive of free movement and equally appropriate to pursue the initial aim of the national legislation, it might create new costs with regard to other legitimate interests Community law recognises. See, to that effect, Case C-62/90 *Commission* v *Germany* [1992] ECR I-2575, paragraphs 24 and 25.

24 — When Member States intend to introduce a measure with a drastic impact on free movement, they are under 'a duty to examine carefully the possibility of using measures less restrictive of freedom of movement', failing which the Court will establish that there was a breach of the principle of proportionality, without the need for the Court itself to give a ruling on the existence of alternative means: *Commission* v *Austria*, cited in footnote 6, paragraph 87.

25 — For example: Van Gerven, W., 'The effect of proportionality on the actions of Member States of the European Community: national viewpoints from continental Europe', in: *The Principle of proportionality in the laws of Europe*, 1999, p. 38.

26 — Alexy, R., 'On balancing and subsumption. A structural comparison', *Ratio Juris*, Vol. 16 (2003), No. 4, p. 436.

27 — See, to that effect, Case C-169/91 *Stoke-on-Trent* [1992] ECR I-6635, paragraph 15, and Case C-112/00 *Schmidberger* [2003] ECR I-5659, paragraph 81.

desired level of protection to be afforded to the public interest at issue. [28] Hence, different Member States may attribute different values to the legitimate interests they consider worth protecting. It is only in areas where Community law already clearly identifies a common level of protection of the legitimate interest under consideration, that the Court applies the test more strictly. In such cases, Member States have a higher burden to overcome when seeking to justify measures restrictive of free movement. For instance, in a series of cases concerning consumer protection, the Court, in effect, found an infringement of the principle of proportionality *stricto sensu*. [29] Notably in its ruling in *Estée Lauder*, the Court held that Member States, when they adopt measures affecting intra-Community trade for the purpose of consumer protection, should adjust the level of protection to 'the presumed expectations of an average consumer who is reasonably well informed and reasonably observant and circumspect'. [30] The majority of the Court's decisions on proportionality, however, concentrate on the first and second tests.

27. A measure which does not satisfy the overall proportionality review constitutes, in the words of Article 30 EC, 'a disguised restriction on trade between Member States'. Such restrictions are plainly forbidden.

28. However, the review under Article 30 EC does not stop here. In addition to the assessment of proportionality described above, a measure enacted by a Member State which falls within the scope of Article 28 EC must satisfy a final requirement. The measure is not to 'constitute a means of arbitrary discrimination'. [31] This, again, requires an assessment of proportionality, but seen from a different perspective.

29. The ruling in *Conegate* provides a clear illustration. [32] The Opinion of the Advocate General informs us that the case concerned 'Love Love Dolls', 'Miss World Specials', 'Rubber Ladies' and 'Sexy Vacuum Flasks'. One might wonder exactly what those are. However, leaving unwarranted curiosity aside, for the purposes of my present analysis it suffices to know that the United Kingdom authorities regarded the products as indecent or obscene and hence banned their importation. The Court accepted that grounds of public morality could justify such a ban, but it held that the United Kingdom could not rely on those grounds 'in order to prohibit the importation of goods from other

28 — See, for example, Case C-36/02 *Omega* [2004] ECR I-9609, in particular paragraphs 32, 37 and 39.

29 — Jans, J.H., op. cit., at pp. 251-252; Davies, G., *Nationality discrimination in the European internal market*, 2003, pp. 35-36.

30 — Case C-220/98 *Estée Lauder* [2000] ECR I-117, paragraph 27. See also: Case C-358/01 *Commission* v *Spain* [2003] ECR I-13145, paragraphs 53 and 58; Case C-99/01 *Linhart and Biffl* [2002] ECR I-9375, paragraph 31; Case C-3/99 *Ruwet* [2000] ECR I-8749, paragraphs 50 to 53.

31 — Second sentence of Article 30 EC. See, most recently, *Schwarz*, cited in footnote 6, paragraph 37.

32 — Case 121/85 [1986] ECR 1007.

Member States when its legislation contains no prohibition on the manufacture or marketing of the same goods on its territory'.[33] By only banning the *importation* of obscene products, the United Kingdom's prohibition amounted to discrimination. This discrimination was arbitrary, and therefore impermissible, because there was no objective justification for it — or if there was, the United Kingdom was not able to show that the differential treatment of imported goods and domestic goods was proportionate.[34]

30. Discrimination is not 'arbitrary' when it is justified and proportionate.[35] In *Deutscher Apothekerverband*, the Court found that German legislation prohibiting the direct sales of medicine by pharmacies over the internet had a greater impact on pharmacies established in other Member States, because 'for pharmacies not established in Germany, the internet provides a more significant way to gain direct access to the German market'.[36] Nevertheless, the Court held that the prohibition, despite its differential impact, could be saved by Article 30 EC, in so far as it applied to *prescription* medicines:

'Given that there may be risks attaching to the use of these medicinal products, the need to be able to check effectively and responsibly the authenticity of doctors' prescriptions and to ensure that the medicine is handed over either to the customer himself, or to a person to whom its collection has been entrusted by the customer, is such as to justify a prohibition on mail-order sales. ... Furthermore, the real possibility of the labelling of a medicinal product bought in a Member State other than the one in which the buyer resides being in a language other than the buyer's may have more harmful consequences in the case of prescription medicines.'[37]

In other words, some degree of differential treatment or disparate impact on imported products may be accepted if it is proportionate to the objective differences between domestic and imported products. Here, the

33 — *Conegate*, cited in footnote 32, paragraph 16.

34 — See also, by analogy (in the context of free movement of workers), Case 41/74 *Van Duyn* [1974] ECR 1337. The ruling in *Conegate* can be contrasted with Case 34/79 *Henn and Darby* [1979] ECR 3795.

35 — Case 4/75 *Rewe-Zentralfinanz* [1975] ECR 843, paragraph 8; Case 34/79 *Henn and Darby*, cited in footnote 34, paragraph 21.

36 — Case C-322/01 [2003] ECR I-14887, paragraph 74.

37 — *Deutscher Apothekerverband*, cited in footnote 36, paragraph 119.

proportionality test serves the purpose of distinguishing between acceptable discrimination and arbitrary discrimination.

31. Consequently, the review under Article 30 EC of a measure enacted by a Member State requires the application of one or a combination of the following methods of assessment: the suitability test; the necessity test; a review of proportionality *stricto sensu*; and an examination of whether the measure constitutes a means of arbitrary discrimination, which, in turn, entails an assessment of the proportionality of the discriminatory impact of the measure.

32. In the framework of the preliminary reference procedure, the final assessment of proportionality is often left to the referring court. [38] It is the responsibility of the Court of Justice, however, to furnish the referring court with the normative criteria it should employ. In this regard, it is important for the Court of Justice to draw attention to particular enquiries the referring court might need to make in order properly to exercise the review of proportionality with which it is entrusted.

33. In the present case, the referring court must verify whether, in the light of the existence of other relevant legislation on alcohol trade and consumption, the import licensing scheme for spirits for commercial use is of added value as regards the aim of avoiding the private consumption of spirits. This will help it verify whether the measure is indeed necessary or if its aim can also be achieved by alternative measures less restrictive of intra-Community trade.

34. In addition, the referring court should make sure that the import licensing scheme does not give rise to arbitrary discrimination within the meaning of Article 30 EC. At the hearing, the Finnish Government pointed out that traders or manufacturers who want to purchase spirits for commercial use from domestic producers, must also obtain a licence. It is for the referring court to verify, on 'a comprehensive view' [39] of the relevant national rules and administrative practice, if the licensing scheme for imported spirits is equivalent to the licensing scheme for domestically produced spirits. In so far as there are any differences — for example as to the costs or conditions of obtaining a licence — those differences must be objectively justified and proportionate.

38 — See, for example, Case C-20/03 *Burmanjer* [2005] ECR I-4133 and Case C-441/04 *A-Punkt Schmuckhandel* [2006] ECR I-2093.

39 — *Henn and Darby*, cited in footnote 34, paragraph 21.

IV — Conclusion

35. In light of the foregoing considerations, I suggest that the Court give the following answers to the questions referred by the Korkein oikeus:

(1) Article 28 EC precludes national legislation which requires a licence for the import of substances containing more than 80% by volume of undenatured ethyl alcohol ('spirits') from another Member State.

(2) It is for the referring court to establish whether the legislation in question complies with the principle of proportionality. In particular, it is incumbent upon the referring court to verify that the legislation in question is appropriate to the aim of avoiding the private consumption of spirits and necessary to achieve that aim, and that it does not give rise to arbitrary discrimination within the meaning of Article 30 EC.