must however take into account the purpose of that Community provision which is to allow transport costs within the customs territory of the Community which are actually included in the uniform price — but only those transport costs — to be deducted from the price when the customs valuation is determined.

Touffait Pescatore Due

Delivered in open court in Luxembourg on 14 February 1980.

For the Registrar

J. A. Pompe

Deputy Registrar

A. Touffait

President of the Second Chamber

OPINION OF MR ADVOCATE GENERAL REISCHL DELIVERED ON 13 DECEMBER 1979 [1]

Mr President,
Members of the Court,

The reference for a preliminary ruling with which we are concerned today raises questions relating to the interpretation of Regulation (EEC) No 803/68 of the Council of 27 June 1968 on the valuation of goods for customs purposes (Official Journal, English Special Edition 1968 (I), p. 170).

According to Article 1 thereof "For the purpose of applying the Common Customs Tariff, the value for customs purposes of the goods imported shall be taken to be "the normal price" and this "normal price" is defined as "the price which they would fetch, at the time referred to in Article 5 "(that is usually the date of acceptance by the customs authorities of the declarant's statement of his intention that the goods should enter into home use)" on a sale in the open market between a buyer and a seller independent of each other". To determine the normal price it must be assumed according to Article 1 (2) that the goods are delivered to the buyer at the place of introduction into the customs territory of the Community, which under Article 6 (1) (c) in the case of goods carried by road is the place where the first customs office is situated, and that "the seller bears all costs, charges and expenses incidental to the sale and to the delivery of the goods at the place of introduction, which are hence included in the normal price". In connexion with the last point Article 7 of the regulation provides that the "costs, charges and expenses" mentioned in Article 1 (2) (b) include, *inter alia*,

1 — Translated from the German.

carriage and freight". Furthermore according to Article 9 the price paid or payable may also be accepted as the value for customs purposes if that price is adjusted, if necessary, to take account of circumstances of the sale which differ from those on which the normal price is based. According to Article 9 (2) such an adjustment may in particular be required with reference to the costs, charges and expenses mentioned in Article 1 (2). Finally Article 8 (2) provides:

"Where goods are invoiced at a uniform free domicile price which corresponds to the price at the place of introduction, transport costs within the Community shall not be deducted from that price. However, such deduction shall be allowed if evidence is produced to the customs authorities that the free-frontier price would be lower than the uniform free domicile price."

The plaintiff in the main action in the period from March to November 1972 bought 15 consignments of deep-frozen fruit and vegetables from a Hungarian firm. The goods were carried in the supplier's lorries and were declared for home use to the Customs Office at Freilassing-Saalbrücke, the place of introduction within the meaning of Article 6 of Regulation No 803/68, and for this purpose the plaintiff was represented by a firm of forwarding agents. The Customs Office first levied the import duties which were due on the basis of the value of the goods, as declared by the firm of forwarding agents — free at destination — after deducting part of the internal transport costs as calculated in accordance with the Reichskraftwagentarif [German Road Transport Tariff] by the firm of forwarding agents appointed. The Customs Office subsequently amended these provisional assessments of customs duty and claimed further duty from the plaintiff on the ground that whatever the destination of the goods was they had been supplied at the same prices and that consequently the provisions relating to uniform prices within the meaning of Article 8 of Regulation No 803/68 applied. They ruled out the possibility of simply taking into account the internal transport costs which had been calculated and deducting them from the invoice prices.

The plaintiff objected to this assessment. It relied, in order to support its view that a fixed proportion of the transport costs is to be deducted from the invoice prices, on a statement of the general agent of the Hungarian firm of suppliers of August 1972 confirming that a fixed sum of DM 0.062 per kilogram net for carriage within the Federal Republic of Germany was included by the firm of suppliers in the invoice values. It also produced a letter of the Hungarian firm of suppliers of 30 August 1972 which reads:

"We had agreed that our prices should be on a free-at-destination basis in the Federal Republic of Germany when delivery is made by our refrigerated lorries. In order to be able to compete we have reduced prices for the longer distances so that we can proceed on the basis that the same conditions apply to all destinations. In the case of the section in Germany from the frontier we have calculated the additional costs of carriage included in our selling prices at an average of DM 62 per tonne. Our free-at-frontier prices are thus less by this amount than the price agreed on a free-at-destination basis in the Federal Republic of Germany".

The Principal Customs Office however overruled the objection on the ground that the said letter could not be regarded as adequate evidence for the purposes of Article 8 of Regulation No 803/68. On the contrary only documents capable of verification such as, for example, invoices for the cost of carriage or the

computation of the proportion of the costs of internal carriage can be treated as adequate.

The Finanzgericht [Finance Court], Munich, dismissed an action brought against this ruling on the ground that according to the evidence of one customs official the fact that uniform free domicile prices apply to all the customers in the Federal Republic of the Hungarian firm of suppliers can be taken as proved. In such circumstances a deduction of costs of internal carriage and freight is only permissible under Article 8 (2) of Regulation No 803/68 if evidence is produced that the free-frontier price would be lower than the uniform free domicile price. But this evidence has not in fact been produced; in particular it is not to be found in the letter of August 1972 which only contained an assertion prompted after the event which cannot be verified.

Thereupon the plaintiff brought the matter by way of appeal to the Bundesfinanzhof [Federal Finance Court]. As far as the application of Article 8 (2) of Regulation No 803/68 is concerned, the plaintiff pointed out that all that has been established is that the same free domicile price applies to all purchasers in the *territory of the Federal Republic.* The letter of August 1972 states authoritatively that buyers in the Federal Republic of Germany are charged a price lower by DM 62 per tonne for free-frontier purchases. This is not an arbitrary reduction either. The said sum in fact represents statutory transport scheduled charges (Reichskraftswagentarif [German Road Transport Tariff]); it can also be shown that the average amount attributable to internal carriage, which has been fixed by the Frachtprüfungsstelle [Freight Supervision Authority] at DM 70 per tonne, corresponds approximately to this reduction. Further documents are not to be expected since the Hungarian firm has refused to hand over internal documents containing computations.

The Bundesfinanzhof by its order of 24 April 1979 stayed proceedings and, pursuant to Article 177 to the EEC Treaty, referred to the Court of Justice for a preliminary ruling the following questions:

"1. Must the words 'uniform free domicile price' in Article 8 (2) of Regulation (EEC) No 803/68 of the Council of 27 June 1968 on the valuation of goods for customs purposes be interpreted as meaning that such price must be uniform for all destinations within the customs territory of the Community?

2. If the answer to Question 1 is in the affirmative, may the fact that uniform free domicile prices apply to only one Member State be taken into account, and if so how?

3. How is the second sentence of Article 8 (2) of Regulation (EEC) No 803/68 of the Council of 27 June 1968 on the valuation of goods for customs purposes to be interpreted in relation to the requirements with regard to the evidence to be produced?"

My views on these questions are as follows:

1. I share the Commission's opinion that there are no compelling reasons for supposing that the expression "uniform free domicile price" in Article 8 (2) of Regulation No 803/68 is to be interpreted as meaning that this price must be uniform for *all* destinations of the *customs territory of the Community.*

According to the basic rule contained in Article 1 of the regulation on the valuation of goods for customs purposes the normal price shall be determined on the assumption that the goods are delivered to the buyer at the place of introduction into the customs territory of the Community and that the transport costs incurred up to that point are borne by the seller. But that rule only has

something to say about the place of *delivery*. It does not mean that in principle only the price which the goods concerned fetch at the place of introduction is their value for customs purposes. In order to fix the value of goods for customs purposes it is rather the place of purchase and the price there which are determinative; the particular market at the place of destination with its special factors which influence prices may come into play. If transport costs within the Community prove to be included in an invoice price then the proportion of these transport costs, that is of the *actual* costs of carriage and freight from the place of introduction, incurred within the Community, must be deducted in determining the value of the goods for customs purposes, simply because they do not usually affect the price at the place of destination. In cases such as this, when identical prices are charged for several places of destination and are also applicable at the place of introduction — which justifies talking of a uniform price — the assumption must however be that in an area in which prices are uniform and factors affecting prices are the same there has been a composite calculation as far as concerns transport costs. The actual transport costs are not apportioned with reference to the distance from the frontier crossing point or from the place of introduction; on the contrary — this follows from the uniform price formation — part of the transport costs to a distant place of destination is borne by the consignees to whom deliveries are made at a place of destination which is nearer. In such cases the transport costs included in fact in the price, which alone may be deducted since they are not part of the value of the goods for customs purposes, are disallowed, because they indeed depend on the distance of all purchasers from the place of dispatch, on the total quantity of goods delivered and on the fact that different frontier crossing points may be used. For this reason, that is for entirely pragmatic considerations, Article 8 of Regulation No 803/68 has provided that in such a case transport costs may not in principle be deducted unless specific evidence is produced, which I will have to consider later.

However, this is clearly the case if the price free at a place of destination away from the frontier is as high as the price at the place of introduction and if it is beyond all doubt that in this connexion there is an area in which prices are uniform and that there are not therefore different markets. Accordingly it is not material whether the price is just as high at *all the other* places of destination throughout the whole Community. There may be quite a number of price zones in the Community — on this aspect of the matter reference may be made to Opinion XXVII of the Customs Co-operation Council — and there is nothing in Community customs law to support the view that a customs authority might be obliged for the purpose of applying Article 8 of Regulation No 803/68 to *demarcate* an area where prices are uniform if the determination of the individual case does not depend on such demarcation.

The first question of the Bundesfinanzhof should be answered accordingly.

2. If the first question — the Commission is also right on this point — is answered in that way, it is clearly unnecessary to consider the second question, because it has only been asked in case the concept "uniform free domicile price" were interpreted as meaning a uniformity throughout the entire customs territory of the Community.

3. Finally the third question is concerned with the interpretation of Article 8 (2) of Regulation No 803/68 in so far as, according to that provision, a deduction of transport costs within the Community from the invoice price is possible "if evidence is produced to the customs authorities that the free-frontier price would be lower than the uniform free domicile price."

On this question the Commission has in my view convincingly shown that, even if only a deduction of the transport costs from the place of introduction to the place of destination is involved — because of course pursuant to Article 1 (2) (b) of Regulation No 803/68 it has to be assumed that the seller bears all costs, charges and expenses incidental to the delivery of the goods at the place of introduction — that deduction nevertheless properly depends on evidence of a certain free-frontier price, that is a price which includes all costs to the frontier. This is connected with the fact that the actual commercial circumstances of a sale are to be taken into consideration in order to determine the normal price and that for this purpose a fictitious price at the place of introduction is not applicable.

The evidence which has to be produced — and this seems to me to be clear — must also relate to the relevant purchasers in the particular case and their transactions at one particular place of introduction. In this connexion it must be shown, and for this purpose the onus of proof lies on the importer, exactly what transport costs within the Community have been included in invoice price. Accordingly it is also clear that in the case of a composite calculation and, because Article 8 (2) of Regulation No 803/68 is designed to prevent transport costs which are too high being deducted, a reference to general tariffs or quotations of average transport costs are not sufficient. Attention must rather be paid to documents which disclose the actual computation and for this even contracts and invoices relating to deliveries to other purchasers, firm offers, other relevant correspondence or statements made by witnesses may be suitable.

It only remains to be said that Community law is silent about the taking of evidence. On that point reference must be made to the national rules. They have in each case to ensure that there is proper evidence to satisfy the competent authorities that a specific deduction is appropriate, which of course it is also possible to do — if the requirements do not become excessive — with the help of subsequent statements with the co-operation of the supplier.

4. The questions of the Bundesfinanzhof may accordingly be answered as follows:

(a) The concept "uniform free domicile price" in Article 8 (2) of Regulation No 803/68 is not to be interpreted as meaning that this price must be uniform for all the destinations within the customs territory of the Community.

(b) Community law has not prescribed how the evidence mentioned in Article 8 (2) of Regulation No 803/68 is to be furnished. It is for the competent national courts to decide in each case whether evidence has been produced that in the case of the importer concerned the free-frontier price would be lower than the uniform free domicile price. In this matter the possibility of the suppliers assisting after the event is not to be ruled out.