OPINION OF MR ADVOCATE-GENERAL CAPOTORTI DELIVERED ON 19 JANUARY 1977 [1]

Mr President,
Members of the Court,

1. In this case, the Court is required to give a preliminary ruling on the interpretation of the concept of measures having an effect equivalent to quantitative restrictions on exports, which are prohibited under Article 34 (1) of the EEC Treaty.

The question has arisen in connexion with the fact that the exportation from France of certain products of the watch- and clock-making industry is still subject to the grant of a customs licence or to the issue by the Centre Technique de l'Industrie Horlogère (hereinafter referred to as 'Cetehor') of a certificate declaring that the products in question conform to certain quality standards. This certificate is accepted in place of the customs licence.

It should be noted that Cetehor was recognized as a Technical Centre for Industry by interministerial decree of 22 April 1949 pursuant to the French Law of 22 July 1948 in which provision was made for the creation of 'public utility institutions' of this type in any branch of industry.

Within the context of the centres' task of promoting technical development and helping to improve productivity and guarantee quality, Cetehor is under a duty to check in its laboratories the quality of watches and movements with lever escapement intended for export on the basis of technical standards which it has itself laid down. As Cetehor is financed by means of a parafiscal levy imposed on undertakings in the industry, the first inspection is made without charge to the exporter but if the goods are of doubtful quality and this calls for a second inspection, the costs incurred are charged to the person conerned. Inspection must not be subject to delay; the time-limit laid down is 48 hours. If the result is satisfactory the exporter is issued with a certificate of approval.

The issue of this certificate exempts exporters from the duty to obtain a customs licence for the products in question, a duty confirmed by announcements published in the French Official Journal of 30 October 1962 and of 24 November 1964. In theory, therefore, the exporter has the choice of a licence or a certificate. Nevertheless, according to the statements made at the hearing by counsel for the undertakings involved and by the representative of the Commission, it appears that for some time the export licence has not in fact been granted without the quality certificate from Cetehor, and that, in any case, it takes so long to obtain a licence that, nowadays, exporters apply simply for the quality certificate.

No certificate of this kind is, however, necessary for the marketing of these products in French territory.

It so happens that the owners of certain French undertakings in the watch- and clock-making industry have been charged with having forged quality certificates received from Cetehor for the purpose of exporting watches, with the result that criminal proceedings have been instituted against the owners of these undertakings before the Besançon court. During the proceedings, the question was raised whether the system of licences and certification described above is lawful under Community law and the French court has submitted the

1 — Translated from the Italian.

following question to the Court under Article 177 of the EEC Treaty:

'Are the words "quantitative restrictions on exports and any measures having equivalent effect" in Article 34 of the EEC Treaty to be understood in the sense that they also apply to the legal rules of a Member State which require in respect of the export of certain goods a licence or a certificate of approval in place of that licence where the above-mentioned certificate does not give rise to the imposition of a charge and may be refused if the quality does not conform to certain standards laid down by the body issuing the certificate which may be substituted for a licence?'

2. The case-law of this Court leaves no room for doubt that the prohibition of measures having an effect equivalent to quantitative restrictions on exports laid down in Article 34 (1) of the EEC Treaty prevents Member States from requiring a customs licence even if it is issued automatically on application and free of charge.

I call the Court's attention to the decision in the *International Fruit Company* case (judgment of 15 December 1971 in Joined Cases 51 to 54/71 [1971] ECR 1107) in which it is stated that, apart from the exceptions for which provision is made by Community law itself, Articles 30 and 34 (1) of the Treaty preclude the application to intra-Community trade of a national provision which requires, even as a pure formality, import or export licences or any other similar procedure. This principle, which was laid down in relation to a case in which the national authorities automatically issued licences or readily granted exemption from the duty to apply for them was recently reaffirmed, in its entirety, in the judgment of 15 December 1976 in the case of *Criel* (née *Donckerwolcke)* (Case 41/76).

There is no question in the present case of the exporter's complying with a mere formality. As we have seen, the exportation of the products concerned is in every case subject, at least in practice, to the issue by a special organization of a certificate declaring that the goods conform to specific quality standards. It is clear from this that the obstacle to the freedom of movement of the goods is more serious than in a case where exports or imports are subject to application for a licence which is then automatically issued.

If the imposition of this simple formality must in any case be regarded as a measure having an effect equivalent to a quantitative restriction prohibited by the Treaty, the same must *a fortiori* apply to the duty to obtain a certificate of quality or a licence which in practice requires the quality of the goods to be checked. The discriminatory nature of this duty is clear from the fact that it affects only goods for export and not products marketed in French territory.

It is scarcely necessary to point out that the derogative provision in Article 36 of the Treaty cannot be relied upon since the imposition of restrictive measures on exports in order to safeguard the quality of a product is not among the restrictions on imports or exports exceptionally authorized by that clause. Nevertheless, the question arises whether the public interest which the inspection in question is designed to serve may enable its legality to be acknowledged on other grounds.

In my opinion in the case of *Criel* (née *Donckerwolcke)* (Case 41/76) I stated that to treat as contrary to Article 30 of the Treaty any measure whatsoever which has a restrictive effect on intra-Community trade or which makes it more difficult or cumbersome would be to underestimate the importance of the purpose of the individual measures or, to be more precise, the relationship between the restrictive effects and any purpose which may be in accordance with a Community interest. In this

connexion I referred to the fact that in the *Kramer* case, the Court held that national measures involving a limitation of fishing activities with a view to conserving the resources of the sea do not constitute measures having an effect equivalent to a quantitative restriction, even if the immediate effect of such measures is to reduce the volume of output and therefore of trade (judgment of 14 July 1976 in Joined Cases 3, 4 and 6/76).

In the light of these recent decisions the question arises whether the same answer should not apply to commercial rules designed to guarantee the high quality of national products intended for export. According to the representative of the French Government, the object of the rules at issue is not to restrict French exports but to guarantee the quality of the product exported and to protect the reputation of national products abroad while at the same time providing the Community consumer with a guarantee.

In the case-law of the Court an interesting precedent is to be found in the judgment of 26 February 1975 in Case 63/74 *(Cadsky* v *Istituto Nazionale per il Commercio Estero* [1975] ECR 290) concerning a pecuniary charge imposed on exporters in connexion with a quality control carried out by a Member State on products for export alone, coupled with a prohibition on the export of products which did not meet the standard of quality provided for by national law. In that decision, the Court recognized the possibility that, in the absence of Community rules as to quality, an obstacle of this kind to the free movement of goods might be considered legal. However, apart from the merely hypothetical nature of such a possibility, it must be borne in mind that that case involved a control relating to fruit and vegetable products and that in that field Community provisions on the organization of the markets usually include common rules as to quality which apply to the marketing of all products subject to them, whether intended for export or for internal consumption in the country where they are produced. The special features of the rules in the agricultural sector and the maintenance of national legislation until it is replaced by a common organization may explain why the Court indicated that, pending Community rules, a quality control might be lawful. But it would be quite contrary to the tenor and the context of the decision quoted to interpret it as recognizing outside the special field of agriculture and despite the absence of Community rules as to quality, the legality of compulsory national quality controls solely on products for export.

In saying this I have, of course, no intention of denying the usefulness of rules as to quality. Even if they were applied merely to exports, this might be perfectly compatible with the Treaty if they were applied so as to leave the exporters and producers concerned free to undergo inspection voluntarily in order to enhance the reputation of their products in the same way as was seen in the case of the application of the national quality mark referred to in the above mentioned *Cadsky* case (opinion of Mr Advocate-General Trabucchi, [1975] ECR 296). But a compulsory inspection on the outcome of which the State makes the exportation of the product dependent cannot be permitted, at least in cases where this inspection is not also applicable to all products intended to be marketed within the country. Any difference in the treatment of products on the basis of their destination conflicts with the fundamental unity of the common market.

3. Nor, finally, is there any substance in the other argument of the French Government that exports of clocks and watches from France have recently shown an annual increase of 30 % in value and 20 % in quantity, a fact from which the Government concludes that

the quality control measures have encouraged exports.

According to the established case-law of this Court, for a provision to be classified as a measure having an effect equivalent to a quantitative restriction prohibited by the Treaty, it is not necessary to prove that it has in fact constituted an obstacle to trade in the products to which it applies. It is enough to establish that it is capable of constituting an obstacle to intra-Community trade. In addition to the judgment of 11 July 1974 in Case 8/74, *Procureur du Roi* v *Benoît and Dassonville* and 30 October 1974 in Case 190/73, *Officier van Justitie* v *van Haaster,* which I have already quoted recently in this context in the opinion in Case 41/76, *Criel* (née *Donckerwolcke),* reference may also be made to the judgment of 20 February 1975 in Case 12/74, *Commission* v *Federal Republic of Germany* ([1975] ECR 181). According to paragraph 14 of the grounds of the latter judgment, for the purposes of the prohibition on measures having an effect equivalent to quantitative restrictions it is not necessary to show that such measures actually restrict imports of the products concerned but that they may merely hinder imports which could otherwise take place. There can be no doubt that this principle also applies to exports.

The States may, of course, maintain measures relating to the marketing of the products even though, because of differences between the relevant national provisions, this may result in obstacles to the free movement of goods. However, in any case as stated in Commission Directive No 70/50/EEC of 22 December 1969 (OJ, English Special Edition 1970 (I), p. 17), the measures must be applicable equally to domestic and imported products. The directive is essentially concerned with the problem of discrimination against imported products, which is the subject of Articles 30 and 31 of the Treaty. However, the same principle holds good in the case of the restrictions on exports prohibited under Article 34. The underlying reason for the latter is again the unity of the common market which, as I have just stated, is incompatible with different treatment of the same product by a Member State on the basis of its destination, even when it results only in obstacles to the movement of products originating in that State.

4. For the foregoing reasons, I suggest that, in its reply to the question from the Tribunal de Grande Instance, Besançon, the Court should rule that the prohibition laid down in Article 34 of the EEC Treaty on quantitative restrictions on exports and on measures having equivalent effect applies to the rules laid down by a Member State which, for the export of specific goods, requires a customs licence or a certificate of approval issued on the basis of a quality control which is not required for the same products marketed within that State.