the origin of goods, the Commission must not seek criteria defining the origin of goods in the tariff classification of processed products, since the Common Customs Tariff has been conceived to fulfil special purposes and not in relation to the determination of the origin of products. On the contrary, in order to meet the purposes and requirements of the regulation in question the determination of the origin of goods must be based on a real and objective distinction between raw material and processed product, depending fundamentally on the specific material qualities of each of those products.

However, when the Commission takes the change of tariff heading for processed products only as a basic rule, justified on the one hand by the need for legal certainty and on the other hand by the problems of definition in multiple economic circumstances and when it supplements and adapts that basic rule in order to take into account the particular features of specific working or processing operations, it is not adopting a method which is in itself incompatible with the general criteria provided by Article 5 of Regulation No 802/68.

3. Regulation No 749/78 on the determination of the origin of textile products falling within Chapters 51 and 53 to 62 of the Common Customs Tariff is invalid in so far as it provides that the processes of dyeing, accompanied where appropriate by mercerizing and gassing, are not to confer on unbleached cotton yarn the status of a product originating in the country where those processes took place, while it considers that dyeing accompanied by finishing operations is sufficient to confer that status on knitted and crocheted fabrics.

It appears contradictory and discriminatory for Regulation No 749/78 to provide substantially more severe criteria for the determination of the origin of cotton yarn than for the determination of the origin of cloths and fabrics. Although the Commission possesses a discretionary power for the application of the general criteria contained in Article 5 of Regulation No 802/68 to specific work or processing operations it cannot however, in the absence of objective justification, adopt entirely different solutions for similar working or processing operations.

In Case 162/82

REFERENCE to the Court under Article 177 of the EEC Treaty by the Tribunal de Police [local court with minor criminal jurisdiction], Strasbourg, for a preliminary ruling in the criminal proceedings pending before that tribunal against

PAUL COUSIN AND SOCIÉTÉ WOEHL ET CIE, Strasbourg,

JOSEPH DELTOUR,

PIERRE ALLENBACH AND SA ALLENBACH, Andlau-Barr,

PAUL LECLAIRE AND SA ÉTS. TRICOTAGE MÉCANIQUE DE MARMOUTIER, Marmoutier,

JEAN SCHMITT AND SOCIÉTÉ HEPPNER, Strasbourg,

JEAN-DANIEL SEEGMULLER AND SA TRANSPORTS SEEGMULLER ET CIE, Strasbourg,

and

WOLFGANG HASENACK AND WUPPERTALER GARNBLEICHEREI UND FÄRBEREI EDUARD GOEBEL, Wuppertal,

on the interpretation of Article 30 of the EEC Treaty and the validity of Commission Regulation (EEC) No 749/78 of 10 April 1978 on the determination of the origin of textile products falling within Chapters 51 and 53 to 62 of the Common Customs Tariff (Official Journal L 101, p. 7),

THE COURT

composed of: J. Mertens de Wilmars, President, U. Everling (President of Chamber), Lord Mackenzie Stuart, O. Due and Y. Galmot, Judges,

Advocate General: Sir Gordon Slynn
Registrar: P. Heim

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the observations submitted pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and written procedure

1. Articles 84 and 95 of the French Code des Douanes [Code of Customs Law] provide that in respect of all goods imported into France a detailed

declaration must be made containing all the information necessary for the application of customs rules and the compilation of statistics for customs purposes. In particular, the declaration must state the origin of the goods.

Failure to comply with those provisions constitutes an infringement of customs law punishable by a fine.

Article 5 of Regulation (EEC) No 802/68 of the Council of 27 June 1968 on the common definition of the concept of the origin of goods (Official Journal, English Special Edition 1968 (I), p. 165) provides that:

"A product in the production of which two or more countries were concerned shall be regarded as originating in the country in which the last substantial process or operation that is economically justified was performed, having been carried out in an undertaking equipped for the purpose, and resulting in the manufacture of a new product or representing an important stage of manufacture."

Commission Regulation (EEC) No 749/78 of 10 April 1978 on the determination of the origin of textile products falling within Chapters 51 and 53 to 62 of the Common Customs Tariff (Official Journal L 101, p. 7), which was adopted on the basis of the regulation quoted above, provides in Article 1 that:

"Textile products falling within Chapters 51 and 53 to 62 of the Common Customs Tariff shall be considered as originating in the country in which they have undergone one complete process as specified in Article 2 or in the Community if they have undergone such process there."

Article 2 provides that:

"The following shall be considered as complete working or processing:

(a) working or processing as a result of which the products obtained receive a classification under a tariff heading other than those covering the various products utilized except, however, working or processing specified in List A, where the special provisions of that list shall apply;

(b) working or processing specified in List B."

Cotton yarn not put up for retail sale, under tariff heading 55.05, appears in the List A referred to in subparagraph (a) of the above provision, which mentions "Manufacture from products falling within heading No 55.01 or 55.03" as being "working or processing that confers the status of originating products". Cotton yarn is not mentioned in List B.

The third paragraph of Article 2 of Regulation No 749/78 lists in addition certain working or processing which "shall in any event be considered as insufficient ... to confer the status of originating products irrespective of whether or not there is a change of tariff heading", including operations to ensure the preservation of products during transport and storage, simple operations consisting of removal of dust, sifting, screening or washing and change of packaging.

2. Between 1978 and October 1980 Établissements Tricotage mécanique de Marmoutier SA and Allenbach SA both established in France, purchased cotton yarn not put, up for retail sale, coming under tariff heading 55.05 B II, from Wuppertaler Garnbleicherei und Färberei Eduard Goebel (hereinafter referred to as "Goebel") whose principal offices are in Wuppertal in the Federal Republic of Germany, and its representative in France, Mr Deltour.

The customs import declaration forms for the goods were prepared by customs

agents, namely Woehl et Cie, Transports Heppner and Transports Seegmuller, acting on instructions given by Goebel. They gave the Federal Republic of Germany as the country of origin.

In the course of a subsequent investigation the French customs authorities determined that Goebel were finishers, primarily of lisle thread, who had purchased unbleached cotton yarn, mainly in Egypt and the United States, which was then put into free circulation in the Federal Republic of Germany. To that yarn Goebel applied the following processes:

Gassing, where that had not already been performed prior to purchase by Goebel;

Mercerizing, in which the cotton is treated under tension with strong detergent, the purpose of the operation being to give the yarn a lustre similar to that of silk and to improve its resistance to breakage;

Spooling on dyeing cones and dyeing, the latter operation being performed in special apparatus which enables the dye to remain fast in washing of temperatures above 90°, and even resistant to boiling;

Re-spooling of the yarn for immediate use in high quality knitwear.

The customs authorities considered that such processing did not enable the Federal Republic of Germany to be regarded as the country of origin of the imported cotton yarn under Regulation No 749/78 because it did not have the effect of bringing the cotton yarn under a different tariff heading, and brought criminal proceedings for false customs declarations against the various undertakings and persons who were considered responsible for the customs declarations.

The proceedings formed part of a whole series of actions brought before various local courts for false indication of origin on the importation of cotton yarn sold by Goebel. In one case, the Tribunal de Police in Troyes dismissed the charges against the accused, holding that the processing carried out by Goebel had given the yarn material properties which enabled it to be used for a purpose for which it could not have been used before, and that the third paragraph of Article 2 of Regulation No 749/78 could be interpreted to the effect that the processing carried out by Goebel, being more extensive than that described in the paragraph, was capable of determining the origin of the product. In another case the Tribunal de Police in Tourcoing imposed 106 fines of FF 300 each on the customs agents concerned and 106 fines of FF 200 each on Goebel and its director, Mr Hasenack, and dismissed the charges against the French importers.

3. Before the Tribunal de Police in Strasbourg the customs authorities claimed that it was the duty of all the parties concerned to make reasonable efforts to ascertain the true origin of the goods and that in the circumstances of that case all the importers, who had been put on notice by the price differentials, could easily have ascertained that the origin of the imported yarn was not the Federal Republic of Germany. They pointed out that the requirements concerning the indication of origin had been held by the Court of Justice in its judgments of 15 December 1976 (Case 41/76 *Suzanne Criel, née Donckerwolcke*

[1976] ECR 1921) and 28 March 1979 (Case 179/78 Rivoira [1979] ECR 1147) to be compatible with Article 30 of the EEC Treaty, even in the case of goods in free circulation in another Member State.

The customs agents contended that they were not at fault in having failed to conduct enquiries concerning the indication of origin which had been given to them. Goebel, Mr Hasenack and Mr Deltour maintained that requiring an indication of the country of origin solely for statistical purposes, when it was not disputed that the goods could be imported freely and without customs duties, amounted to a measure equivalent to a quantitative restriction, that, moreover, the products exported by Goebel had undergone in the Federal Republic of Germany substantial processing within the meaning of Article 5 of Regulation No 802/68, and that Regulation No 749/78 constituted an obstacle to the implementation of Article 30 of the EEC Treaty. The French importers likewise claimed that the true place of origin of the product was the Federal Republic of Germany and that in any case the instructions for customs clearance had been given to the carriers by the German supplier.

The Tribunal de Police in Strasbourg considered that, *prima facie,* the customs authorities could require an indication of the first origin of the imported goods without thereby infringing Community law. However, as regards the determination of that origin there was a difficulty in interpreting Commission Regulation No 749/78, and especially Article 2 thereof, which defines the extent of the working and processing in relation to the tariff heading, and not merely in relation to the treatment of the goods within the meaning of Regulation No 802/68 of the Council of 27 June 1968 and Regulation (EEC) No 1039/71 of the Commission of 24 May 1971 on determining the origin of certain woven textile products (Official Journal, English Special Edition 1971 (I), p. 274). The question therefore arose whether the exceptions defined by Article 2 of Regulation No 749/78 amounted to a measure of the kind prohibited by Article 30 of the EEC Treaty.

Accordingly, the Tribunal de Police in Strasbourg decided by a judgment of 15 March 1982 to stay the proceedings and refer the following question to the Court for a preliminary ruling pursuant to Article 177 of the EEC Treaty:

"On a proper interpretation of the EEC Treaty, in particular Article 30 thereof, must the requirement laid down in Articles 1 and 2 of Commission Regulation (EEC) No 749/78 of 10 April 1978 for conferring upon certain textile products the legal status, in relation to the customs provisions, of products originating in a Member State of the EEC be regarded as a measure equivalent to a quantitative restriction?"

4. The judgment containing the reference was lodged at the Court Registry on 28 May 1982.

Pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC written observations were submitted by Wuppertaler Garnbleicherei und Färberei Eduard Goebel, Wolfgang Hasenack and Joseph Deltour, represented by Jean-Claude Woog and Jean-François Durand of the Paris Bar; by Pierre Allenbach and Allenbach SA, and Paul Leclaire and Établissements Tricotage mécanique de Marmoutier SA, represented by Daniel Ohl of the Strasbourg Bar; by Paul Cousin and Société Woehl, Jean Schmitt and Société Heppner and Jean-Daniel Seegmuller

and Transports Seegmuller, represented by E. Girard of the Paris Bar; by the Government of the Italian Republic, represented by Aldo Linguiti, Avvocato dello Stato; and by the Commission of the European Communities, represented by Rolf Wägenbaur, its Legal Adviser.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General the Court decided by an order of 28 October 1982 to assign the case to the Fifth Chamber in accordance with Article 95 of the Rules of Procedure and to open the oral procedure without any preparatory inquiry. However, it requested Goebel and the Commission to reply in writing before the hearing to a number of questions concerning the processing carried out by Goebel and the considerations underlying the adoption of Regulation No 749/78.

II — Written observations submitted to the Court pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC

1. Observations submitted by Wuppertaler Garnbleicherei und Färberei Eduard Goebel, Mr Hasenack and Mr Deltour

WGF, Mr Hasenack and Mr Deltour submit that according to Article 5 of Regulation No 802/68 the origin of products which are made in a country from imported products is primarily an economic question, which depends on the application of substantial processing or working, and a processing which is economically justified. In the case of textiles, and lisle thread in particular, the Commission considered those conditions fulfilled if the products had been subjected to a complete process representing a stage in the manufacture of the product, which would be the case if the result was to bring the product under a tariff heading different from that governing each of the products used.

The considerations set out in the preamble to Regulation No 749/78 indicate that the Commission wished to make some exceptions to the rule contained in Article 5 of Regulation No 802/68. An examination of the provisions contained in Regulation No 749/78 reveals that the cases in which working or processing is not to be considered complete are far more numerous than those in which the opposite may be said. In particular, the large number of products covered by List A, including cotton yarn not put up for retail sale, is subject to a special set of different rules which impose far more severe conditions for permitting the Community to be regarded as the place of origin.

Such special conditions are particularly harsh and unwarranted in view of the fact that the working of the yarn carried out by Goebel was very extensive. For the purposes of Article 5 of Regulation No 802/68, gassing, mercerizing and dyeing constitute a "substantial operation" "representing an important stage of manufacture". That is borne out by the terms of Regulation No 1039/71 of the Council of 24 May 1971 on determining the origin of certain woven textile products (Official Journal, English Special Edition 1971 (I), p. 274), which states in particular that "dyeing, if it is accompanied by any finishing operation which has the effect of rendering the

dyed product directly usable" confers a fresh origin on the product. Goebel is an undertaking especially equipped for dyeing, gassing and mercerizing. These are very complicated and highly technical operations, resulting in the creation of a textile product of greater technical worth and higher market value, ready for immediate use, which is not the case before such working.

Regulation No 749/78 and List A thereof thus have the arbitrary effect of preventing the product exported by Goebel from qualifying as a product originating in the Community in order to satisfy national protectionist requirements which are contrary to the spirit of the Treaty.

The description in the third paragraph of Article 2 of Regulation No 749/78 of the processes which are not capable of conferring a new origin on a product, moreover, shows that they have nothing in common with the treatment applied to textile yarns by Goebel, a fact which might be taken as an indication that those products, by contrast, may indeed be considered to have undergone processing sufficient to confer upon them Community origin.

Regulation No 749/78 satisfies neither the aims nor the requirements of Regulation No 802/78, on which it is based, inasmuch as it fails to have regard to the specific material characteristics of the product which is obtained by processing. The Commission adopted new measures more restrictive than those laid down in Article 5 of Regulation No 802/68 although it had no power to do so, and has distorted the meaning of that provision. Article 2 of Regulation No 749/78 and the annexes to the regulation must therefore be invalid.

The regulation also amounts to a measure having an effect equivalent to a quantitative restriction on imports. In the first place, contrary to what was stated by the Court in its judgment of 15 December 1976 (Case 41/76 *Criel, née Donckerwolcke*, [1976] ECR 1921), it has the effect of requiring the importer to declare with regard to origin something other than what he might reasonably be expected to know. In the second place, it enables the national customs authorities to apply restrictive measures on import. As a result of the regulation the entry of such products into French territory is subject to obtaining an import licence (D1) when in fact they are products in free circulation. It usually takes at least one month to issue the import licence and the goods are put in storage by the customs authorities for between two and six weeks; debts are therefore incurred in the form of warehouse charges and marketing cannot be done with the speed which is particularly essential in the textile industry.

Goebel, Mr Hasenack and Mr Deltour therefore suggest the following reply to the question which has been raised:

1. The Commission acted *ultra vires* in adopting in Regulation No 749/78 measures which, though ostensibly implementing measures, were more restrictive than those contained in Regulation No 802/68 which the Commission was to implement; therefore Regulation No 749/78, in particular Articles 1 and 2 thereof, is not valid.

2. The restrictive provisions imposed by the Commission in Regulation No 749/78 were adopted in breach of Regulation No 802/68 of the Council; they create a material, commercial and financial obstacle to the free movement of goods and, therefore, constitute measures having an effect equivalent to quantitative restrictions which are prohibited by Article 30 of the Treaty.

2. *Observations submitted by Pierre Allenbach and Allenbach SA, and by Paul Leclaire and Établissements Tricotage mécanique de Marmoutier SA*

Allenbach SA and Établissements Tricotage mécanique de Marmoutier SA, the French importers of cotton yarn supplied by Goebel, and their directors observe, first, that according to the case-law of the Court the requirement that the country of origin be indicated on the customs declaration form does not constitute a measure equivalent to a quantitative restriction if the goods in question are covered by measures of commercial policy adopted by the importing Member State in conformity with the Treaty. However, during the period in question France did not request application of Article 115 of the EEC Treaty to yarn from Egypt and the United States of America. Checks introduced under national rules are therefore unlawful and contrary to Article 30 of the EEC Treaty. Measures of protection to be adopted in the future cannot form the legal basis for imposing on importers a general and permanent obligation to apply for a licence or an obligation to indicate the country of origin of the imported product.

Furthermore, Regulation No 749/78 has the effect in practice of requiring the importer, contrary to the terms of the judgment of the Court in *Donckerwolcke,* to make statements concerning the origin which go beyond what he knows or might reasonably be expected to know. Whilst he may know that the basic product was worked in Germany, it would be impossible or extremely difficult for him to ascertain in what state the basic product itself was supplied to Goebel, and it is not for him to carry out inquiries at Goebel's factory. In creating extreme difficulties for the importer in inquiries into the origin, the rules concerning the origin of cotton yarn have the effect, if not the purpose, of restricting trade. Such rules must not be devised with a view to shielding trade or constitute an instrument of a protectionist nature. In this case, furthermore, France has adopted a measure having an effect equivalent to a quantitative restriction, namely the import licence requirement.

As far as the criteria for determining origin are concerned, the Commission used the concept of "complete process" in Regulation No 749/78 whereas Regulation No 802/68 of the Council required only a "substantial process or operation". The restriction is therefore clearly a far more stringent one. Of the alternative criteria mentioned in Article 5 of Regulation No 802/68 the Commission deliberately chose only that of the "manufacture of a new product". Such a restrictive concept of origin and the reference to the Common Customs Tariff as the decisive criterion (a doubtful one in the light of the reference

to "substantial process") are contrary to Article 5 of Regulation No 802/68 of the Council which is a superior rule of law.

According to the judgment of the Court of 26 January 1977 (Case 49/76 *Gesellschaft für Überseehandel mbH* [1977] ECR 41) it is unsatisfactory and insufficient to apply the general criteria laid down in Regulation No 802/68 on the purely abstract basis of customs nomenclature. The work carried out by Goebel amounts to a substantial processing inasmuch as the procedures are fairly complex, play an important rôle in the manufacturing process for yarn and result in an alteration of the appearance and the intrinsic properties of strength and durability of the finished product. The processing is the last applied to the product prior to its sale in that form, and it is an economically justified process without which the yarn would be unsuitable for use. The processing is carried out in an undertaking specially equipped for the purpose. In taking into account solely the basic product used in the manufacture of cotton yarn Regulation No 749/78 fails inevitably to comply with the terms of Article 5 of Regulation No 802/68.

Mr Allenbach and Allenbach SA and Mr Leclaire and Établissements Tricotage mécanique de Marmoutier SA therefore suggest the following reply to the question which has been raised:

On the basis of the Treaty of Rome and in particular Articles 9 *et seq.*, 110 and 115 thereof, and other provisions of Community law, it must be considered that the principle of requiring the origin of goods to be stated on clearing customs is unlawful and constitutes a measure having an effect equivalent to a quantitative restriction.

In any case, the criteria for determining the origin of goods laid down by Regulation No 749/78 are contrary to the general rules contained in Regulation No 802/68 and constitute measures having an effect equivalent to quantitative restrictions.

3. Observations submitted by Mr Cousin and Société Woehl et Cie, Mr Schmitt and Société Heppner, and Mr Seegmuller and Transports Seegmuller

The customs agents, Mr Cousin and Société Woehl, Mr Schmitt and Société Heppner and Mr Seegmuller and Transports Seegmuller, maintain that the customs authorities in their contentions before the Tribunal de Police, attempted to deprive the word "reasonable", which was used by the Court in the *Donckerwolcke* judgment in particular, of any meaning by compelling the customs agent to inquire into the accuracy of his instructions and by creating absolute liability regardless of whether it was possible for him to discover the legal origin of the merchandise. That approach is contrary not only to the judgment of the Court in *Donckerwolcke* but also to the assurances given by the French customs authorities in a letter to the Fédération des Commissionnaires en Douanes [Customs Brokers' Federation] which stated that the latter would in most cases, in the absence of personal misconduct, not be brought into proceedings. It is likewise in conflict with the principle of legal certainty stated by the Court in its judgment of 9 July 1981 (Case 169/80 *Administration des Douanes* v *SA Gondrand Frères* [1981] ECR 1931).

The provisions of Regulation No 749/78 barely disguise the derogations from the principle in Article 5 of Regulation No 802/68 which they introduce. Whereas Regulation No 802/68 laid down two alternative conditions, namely the manufacture of a new product or an operation representing an important stage of manufacture, Regulation No 749/78 makes those conditions cumulative by requiring the products to have undergone complete processing representing a stage in the manufacturing process. Goebel has considerably increased the value of the imported yarn and the product is a new one for commercial purposes inasmuch as it is for sale to a different sector of business.

The fact that Regulation No 749/78 effects such derogations needs to be taken into consideration in a review of its lawfulness: either Regulation No 749/78 was meant to apply Regulation No 802/68 and must not contain any rule derogating from Article 5 of the latter, or the provisions do derogate from those of Regulation No 802/68, in which case they could have been properly adopted only in application of Article 235 of the EEC Treaty.

Furthermore, if Regulation No 749/78 did not constitute a measure having an effect equivalent to quantitative restrictions, the national practices adopted by the French authorities do amount to such a measure, which is prohibited inasmuch as prosecutions were instituted against persons acting in good faith and not in a position to know what the true origin of the goods was.

Mr Cousin and Société Woehl, Mr Schmitt and Société Heppner and Mr Seegmuller and Transports Seegmuller therefore suggest the following reply to the question which has been raised:

Regulation No 749/68 is unlawful because it was adopted by an authority without the power to adopt it and in disregard of the correct procedure laid down by Article 235 of the EEC Treaty.

Regardless of the origin of the goods which, being in free circulation, are placed on the market in another Community country, the application of criminal sanctions in respect of a requirement that the true or reputed first origin of the goods must be indicated amounts to a measure having an effect equivalent to a quantitative restriction where the person charged with the offence was given precise instructions and information upon which he was entitled to rely. The obligation to check the accuracy of information in order to make a declaration of the origin of the goods does not oblige the author of the declaration to determine the extent of the processing carried out in the country from which the goods are exported.

4. Observations submitted by the Government of the Italian Republic

The Government of the Italian Republic observes thath the problem which has arisen has already been resolved in a previous case before the Court (judgment of 15 December 1976, Case 41/76 *Donckerwolcke* [1976] ECR 1921). It has now to be considered in a more specific context, namely in relation to the provisions of Regulation No 749/78.

The requirement of a declaration of the country of origin has been recognized as lawful. In the textiles sector the declaration of origin has decisive importance for the smooth running of Community policy which is based on the introduction of voluntary export restraint quotas shared out strictly among the various Member States, and for facilitating recourse to protective measures

provided for in Article 115 of the EEC Treaty. If, however, the importer was asked to declare more than he knew or could reasonably have been expected to know the requirements might then be incompatible with Article 30.

It is therefore not clear how Articles 1 and 2 of Regulation No 749/78 could come into conflict with Article 30. On the contract, by establishing precise criteria, applicable throughout the Member States, for identifying the place of origin, the provisions help to create better conditions for compliance with the obligation to make a declaration. If the obligation were in any way a disproportionate one it could never be as a result of the application of the regulation, but only as a result of special circumstances which would have to be evaluated in the individual case.

In reply to the question raised, therefore, the principles laid down in the judgment of 15 December 1976 should be confirmed and it should be stated that the provisions of Regulation No 749/78 do not give rise to a situation of the kind prohibited by Article 30 of the Treaty.

5. Observations submitted by the Commission of the European Communities

The Commission states that in view of the different interpretations to which the necessarily general terms of Regulation No 802/68 might give rise, it became necessary to adopt implementing rules. Regulation No 749/78 was adopted as a result of the need to specify, by means of an interpretation of Article 5 of Regulation No 802/68 the types of processing which would enable each textile product to acquire the origin of a country or of the Community. The choice of the system adopted in Regulation No 749/78 was dictated by the fact that it had already been used in connection with the application of generalized preferences in favour of developing countries, that is to say, in Commission Regulation No 2966/77 of 23 December 1977 on the definition of the concept of originating products for purposes of the application of tariff preferences granted by the European Economic Community in respect of certain products from developing countries (Official Journal L 350, p. 1).

In this instance the processing consisted in "gassing, mercerizing, spooling prior to dyeing and re-spooling" the cotton yarn, which does not make of it an "originating product".

The question raised by the Tribunal de Police in Strasbourg is concerned solely with the interpretation of Article 30; in particular, it does not concern the compatibility of Regulation No 749/78 with Article 5 of Regulation No 802/68. Since the Tribunal did not raise any question concerning Regulation No 802/68, it is not necessary to examine more closely the question of the interpretation of Article 5 of that regulation. Nevertheless, the Tribunal's attention should be drawn to the possibility that Article 5 of Regulation No 802/68 was applicable to goods imported prior to the entry into force of Regulation No 749/78 on 1 May 1978.

The Court has recognized that the Community institutions must be given a certain latitude in exercising their legislative functions if the measures concerned are part of a general framework favourable to free trade. Even if the economic criteria laid down in Regulation No 802/68 might be taken to

indicate that certain processing or other working confers on the product the origin of the Member State in question whereas the specific rule in Regulation No 749/78 excludes that possibility, that is not sufficient to make the latter regulation contrary to Article 30. It is a measure designed to implement Article 5 of Regulation No 802/68, as the general criteria laid down in that article have been interpreted in different ways. No doubt the definition introduced by means of Regulation No 749/78 betrays a certain absence of flexibility. Nevertheless, the regulation fully satisfies its aim of clearly establishing legal certainty. Consequently the Commission has not failed to have regard to the limits placed upon the exercise of its duties.

The Commission points out, moreover, that it is not clear in what respect the change in the legal situation brought about by the adoption of Regulation No 749/78 amounts to an obstacle to trade. Imports into France of cotton yarn not put up for retail sale, in free circulation in Germany but originating in the United States or Egypt, are free and not subject to customs duties, since France has not introduced protective measures based on Article 115 of the EEC Treaty.

Accordingly, the Commission suggests the following reply to the question raised by the Tribunal de Police in Strasbourg:

Article 30 of the EEC Treaty is to be interpreted as not being applicable to Commission Regulation No 749/78, adopted pursuant to Regulation No 802/68 of the Council and applicable from 1 May 1978, according to which cotton yarn not put up for retail sale (under tariff heading 55.05) is not to be regarded as originating in a particular country unless it was manufactured from products coming under headings 55.03 of the Common Customs Tariff.

III — Answers to questions put by the Court

1. Goebel, in answer to questions put by the Court, gave the following further details of the work which it performs:

The gassing of the unbleached yarn is a finishing process in the course of which small pieces of fluff and fibres standing out from the twisted yarn are burnt off. The cotton yarn thus becomes smoother and softer to the touch and acquires a better appearance. Gassing is applied to the moving yarn by gassing burners.

Mercerizing is the treatment of the cotton in concentrated lye whilst under tension. The purpose is to give the yarn a lustre similar to silk and to increase its resistance to breaking.

The dyeing effected by Goebel is performed by one of the most modern dyeing systems, which makes it possible to dye up to 800 kg with the help of a computer so as to guarantee continual consistency of colour; this makes it possible to obtain resistance to washing at 80° or even at boiling point. By this treatment Goebel is in a position to attain the highest values as regards resistance to sweat and chafing. The colouring programme which it offers is unique in Europe.

The increase in the value of the finished product, as compared with the unbleached yarn, which this treatment brings about amounts to 159%. The dyeing processes alone increase the value by 99%.

These finishing processes bring about a decisive change in the unbleached yarn as regards optical appearance, resistance to use and cleaning qualities. The unbleached yarn in itself has no specific use. It is only after the finishing

processes that the yarn may be used, for example for the production of stockings, T-shirts or polo sweaters.

2. The Commission, in answer to a question put by the Court, explained as follows the reasons which induced it to decide the Community tariff classification for the purposes of Regulation No 749/78 and to exclude processes such as gassing, mercerizing, dyeing and re-spooling from the category of processes conferring the status of originating products:

Article 5 of Regulation No 802/68 makes necessary an interpretation of the criteria used, of which the regulation itself does not give any details. Several methods were therefore conceivable for applying measures of implementation, each of which had already been used in the past for certain cases. A first method consists in proceeding by a detailed description of the performance of the substantial process or operation; a second method involves fixing the percentage of value added deemed indispensable to constitute a substantial process or operation; the third method is that of changing the tariff heading, supplemented where appropriate by additional criteria. The last of these methods was the one selected by the Commission in Regulation No 749/78.

The choice of this system was not made on grounds of an economic nature but by reason of the practical advantages which it offers. A similar system has been in use since 1971 for the application of generalized preferences in favour of developing countries and is consequently familiar to traders (cf. Commission Regulation No 2966/77 of 23 December 1977 on the definition of the concept of originating products for purposes of the application of tariff preferences granted by the European Economic Community in respect of certain products from developing countries — Official Journal L 350, p. 1). A textile product imported from a developing country must comply at one and the same time with the provisions of the textile agreements, including the rules of Regulation No 749/78 on origin, and the conditions for preferential access to the terms of the system of generalized preferences, including the rules of origin. Moreover the system selected is simple to apply and provides legal certainty for traders.

Regulation No 749/78, in the second recital in the preamble, refers to the concept of "one complete process constituting a stage of manufacture". In the field of textiles the customs tariff is drafted in such a way that a fresh tariff heading corresponds to each stage of manufacture (Cotton, not carded or combed — Cotton, carded or combed — Yarn — Fabric — Articles of apparel). The Commission took the view that gassing, mercerization and dyeing did not involve a really "substantial" operation since the product was cotton yarn both before and after. In any event it is impossible to speak in this regard of "complete processing", the term by which Regulation No 749/78 defines the words "substantial process or operation" in Article 5 of Regulation No 802/68.

IV — Oral procedure

At the sitting on 9 February 1983 oral argument was presented by the following: Mr Cousin, Société Woehl,

Mr Schmitt, Société Heppner, Mr Seegmuller and Société Seegmuller, represented by F. Girard, Mr Allenbach, Société Allenbach, Mr Leclaire and Établissements Tricotage mécanique de Marmoutier SA, represented by Mr Bollecker, Mr Hasenack, Wuppertaler Garnbleicherei und Färberei Eduard Goebel and Mr Deltour, represented by Mr Woog and Mr Durand, and the Commission of the European Communities, represented by Mr Wägenbaur.

The Advocate General delivered his Opinion at the sitting on 9 February 1983.

Decision

1 By a judgment of 15 March 1982 which reached the Court on 28 May 1982 the Tribunal de Police [local court with minor criminal jurisdiction], Strasbourg, pursuant to Article 177 of the EEC Treaty referred to the Court of Justice for a preliminary ruling a question concerning the interpretation of Article 30 of the EEC Treaty and the validity of Commission Regulation (EEC) No 749/78 of 10 April 1978 on the determination of the origin of textile products falling within Chapters 51 and 53 to 62 of the Common Customs Tariff (Official Journal, L 101, p. 7) to enable it to assess the compatibility with Community law of criminal proceedings for false declarations of origin on the importation of cotton yarn.

2 Those proceedings were brought against a German supplier of cotton yarn and its representative in France, two French customers of that supplier and also the customs agents who had been entrusted with carrying out the customs formalities for various imports of cotton yarn from the Federal Republic of Germany into France, for infringement of the provisions of French customs legislation which, for the compilation of customs statistics, require a declaration in customs forms of the origin of imported goods.

3 The supplier of cotton yarn, Wuppertaler Garnbleicherei und Färberei Eduard Goebel [hereinafter referrred to as "Goebel") of Wuppertal in the Federal Republic of Germany, made deliveries over a period of several years and in particular between 1978 and October 1980 of cotton yarn not put up for retail sale falling under Tariff Heading 55.05 B II of the Common Customs Tariff, to various French customers including Établissements Tricotage mécanique de Marmoutier SA and Allenbach SA, both established

in France. The customs declaration forms were prepared by customs agents including Woehl, Heppner and Seegmuller, companies acting on the instructions of Goebel. The gave the Federal Republic of Germany as the country of origin.

4 In the course of a subsequent investigation the French customs authorities established that Goebel, an undertaking in the textile finishing industry, had purchased unbleached cotton yarn, mainly in Egypt and the United States, and after it had been put into free circulation in the Federal Republic of Germany, subjected it to various finishing processes namely dyeing and usually also gassing and mercerizing prior to selling it to the consumers. The French customs authorities took the view that these processes did not enable the Federal Republic of Germany to be regarded as the country of origin of the cotton yarn under Commission Regulation (EEC) No 749/78 and brought proceedings before various Tribunaux de Police against Goebel and the various companies and persons connected with the imports in question.

5 In one such case, the Tribunal de Police, Troyes, held that the processes carried out by Goebel were substantial processes which gave the yarn German origin and therefore discharged the accused. The Tribunal de Police, Tourcoing, in another prosecution, imposed 106 fines of 200 French francs each on Goebel and its director for each case of importation of yarn, and 106 fines of 300 francs each on the customs agents concerned, for which, moreover, Goebel and its director were declared jointly liable, whilst the charges against the French importers were dismissed.

6 The Tribunal de Police, Strasbourg, which also had before it such a prosecution within the framework of the principal proceedings, submitted the following question to the Court for a preliminary ruling:

"On a proper interpretation of the EEC Treaty, in particular Article 30 thereof, must the requirement laid down in Articles 1 and 2 of Commission Regulation (EEC) No 749/78 of 10 April 1978 for conferring upon certain textile products the legal status, in relation to the customs provisions, of products originating in a Member State of the EEC be regarded as a measure equivalent to a quantitative restriction?"

The relevant Community rules

7 Article 5 of Regulation (EEC) No 802/68 of the Council of 27 June 1968 on the common definition of the concept of the origin of goods (Official Journal, English Special Edition 1968 (I), p. 165) provides that:

"A product in the production of which two or more countries were concerned shall be regarded as originating in the country in which the last substantial process or operation that is economically justified was performed, having been carried out in an undertaking equipped for the purpose and resulting in the manufacture of a new product or representing an important stage of manufacture."

Article 14 of that regulation gives the Commission the power to adopt the necessary provisions for the implementation of the said Article 5, in accordance with a procedure laid down in paragraphs (2) and (3) of that article and following an opinion of the Committee on Origin.

8 In exercise of that power, the Commission provided by Regulation No 749/78 that the textile products alluded to in that regulation were to be considered as originating in a country or in the Community if they had undergone one complete process as specified in Article 2. That article provides:

"The following shall be considered as complete working or processing:

(a) working or processing as a result of which the products obtained receive a classification under a tariff heading other than those covering the various products utilized except, however, working or processing specified in List A, where the special provisions of that list shall apply;

(b) working or processing specified in List B."

9 That provision is supplemented by the two lists A and B annexed to the regulation. List A enumerates the working or processing operations which result in a change in tariff heading without conferring on the products undergoing them the status of originating products or conferring that status only subject to certain conditions. On the other hand, List B sets out the working or processing operations which do not lead to a change in tariff heading but which do confer on the products undergoing them the status of

originating products. The product in issue, namely cotton yarn not put up for retail sale under Heading 55.05 of the Common Customs Tariff, appears only in List A with the supplementary condition to the basic rule for conferring origin: "Manufacture from products falling within Heading No 55.01 or 55.03", namely cotton or cotton waste (including pulled or garnetted rags), not carded or combed.

10 Cotton yarn not put up for retail sale whether unbleached yarn or gassed, mercerized and dyed yarn all fall under Tariff Heading 55.05 of the Common Customs Tariff. It follows that the processes of gassing, mercerizing and dyeing do not have the effect of placing the product thereby obtained under a tariff heading other than that relating to the basic product. Since such processes carried out on unbleached yarn do not appear in Annex B to Regulation No 749/78 that regulation therfore prevents such processes from conferring a new origin on cotton yarn.

11 It should be added that, as appears from Goebel's observations, the German origin of cotton yarn delivered by it was never disputed prior to the entry into force of Regulation No 749/78, and that it was only after it came into force that the French authorities brought proceedings under that regulation for false declarations of origin.

12 In this context, as appears from the judgment of reference, the question put by the Tribunal de Police, Strasbourg, in essence seeks to establish, first, whether Commission Regulation (EEC) No 749/78 is valid inasmuch as it prevents the processes of gassing, mercerizing and dyeing from conferring Community origin on unbleached cotton yarn imported from non-member countries, and, secondly, whether Article 30 of the EEC Treaty is to be interpreted as meaning that proceedings brought pursuant to that regulation for false declarations of origin constitute measures having an effect equivalent to quantitative restrictions on imports and that it imposes limits on the penalties which may be imposed in such proceedings.

The validity of Regulation No 749/78

13 According to the persons accused, Commission Regulation No 749/78 is invalid inasmuch as it precludes the acquisition of Community origin as a result of the processes in issue. On the one hand that provision is said to be contrary to Article 30 of the EEC Treaty and, on the other hand, by adopting it, the Commission has exceeded the powers which it derives from Regulation (EEC) No 802/68 of the Council.

14 The Commission, supported by the Italian Government, claims that it has made a legitimate and correct use of its power to interpret the vague terms of Article 5 of Regulation No 802/68 by adopting a simple and clear criterion which, moreover, is in conformity with the criteria laid down in Commission Regulation (EEC) No 2966/77 of 23 December 1977 (Official Journal, L 350, p. 1), on the definition of the concept of originating products for purposes of the application of tariff preferences granted by the European Economic Community in respect of certain products from developing countries. Regulation No 749/78 involves no obstacle to trade in products in free circulation within the Community and is not therefore contrary to Article 30 of the EEC Treaty.

15 On this matter it must first be pointed out, as the Court has stated in its judgments of 31 January 1979 (Cases 34/78 *Yoshida Nederland* v *Kamer van Koophandel en Fabrieken voor Friesland* [1979] ECR 115 and 114/78 *Yoshida* v *Industrie- und Handelskammer Kassel* [1979] ECR 151), that in adopting implementing provisions pursuant to Article 14 of Council Regulation (EEC) No 802/68, the Commission is obliged not to exceed the powers which the Council has conferred upon it for the implementation of the rules which it has promulgated in that regulation and, more precisely, that it must define specific criteria of origin which comply with the objective criteria of Article 5 of Regulation (EEC) No 802/68 of the Council which is the legal basis of the implementing regulation and the source of the powers which the Commission exercises in adopting it.

16 Since the specific criteria of origin adopted by the Commission in Regulation No 749/78 were drawn, in the first instance, from the tariff classification of

processed products it should be borne in mind, as the Court has stated in its judgment of 26 January 1977 in Case 49/76 *Gesellschaft für Überseehandel* v *Handelskammer Hamburg* [1977] ECR 41, that for the purposes of the application of Regulation No 802/68 it is not sufficient to seek criteria defining the origin of goods in the tariff classification of processed products, since the Common Customs Tariff has been conceived to fulfil special purposes and not in relation to the determination of the origin of products. On the contrary, in order to meet the purposes and requirements of Regulation No 802/68 the determination of the origin of goods must be based on a real and objective distinction between raw material and processed product, depending fundamentally on the specific material qualities of each of those products.

17 However, those principles do not prevent the Commission, in exercising the power conferred upon it by the Council for the implementation of Article 5 of Regulation No 802/68, from having a margin of discretion which allows it to define the abstract concepts of that provision with reference to specific working or processing operations. The Commission has taken the change of tariff heading only as a basic rule, justified on the one hand by the need for legal certainty and on the other hand by the problems of definition in multiple economic circumstances. It has supplemented and adapted that basic rule by Lists A and B, mentioned earlier, in order to take into account the particular features of specific working or processing operations. The choice of such a method is not in itself incompatible with Article 5 of Regulation No 802/68.

18 In this case, it is common ground that Regulation No 749/78 prevents the operations in issue, when carried out on unbleached yarn, from conferring on it the status of an originating product. On the other hand List B, which sets out the working or processing operations which confer on the product undergoing them the status of originating products without a change in the tariff heading, includes "printing or dyeing accompanied by finishing operations (bleaching, dressing, ... impregnating, sanforizing, mercerizing) of unbleached fabrics including knitted and crocheted fabrics". Similarly Regulation (EEC) No 1039/71 of the Commission of 24 May 1971 on determining the origin of certain woven textile products (Official Journal, English Special Edition 1971 (I), p. 274) whose provisions have been replaced by those of Regulation No 749/78, had already provided that

"dyeing, if it is accompanied by any finishing operation which has the effect of rendering the dyed products directly usable" would be an operation conferring the status of originating products on fabrics including knitted and crocheted fabrics.

19 That appraisal relating to dyeing accompanied by other cloth and fabric finishing operations is in stark contrast with the rigorousness of the criteria for determining the origin for cotton yarn. In fact, not only does cotton yarn not appear in List B, but it is mentioned in List A in such a way that, to enable it to be regarded as originating in a country, it must even have been made there from cotton or cotton waste which has not been carded or combed.

20 The Commission has provided no explanation relating to the nature of the products and the processes in question which might justify such a difference in treatment between the process of dyeing and other finishing operations carried out on cloth and fabrics on the one hand and on cotton yarn on the other.

21 In these circumstances, it appears contradictory and discriminatory for Regulation No 749/78 to provide substantially more severe criteria for the determination of the origin of cotton yarn than for the determination of the origin of cloths and fabrics. Althought the Commission possesses a discretionary power for the application of the general criteria contained in Article 5 of Regulation No 802/68 to specific working or processing operations it cannot however, in the absence of objective justification, adopt entirely different solutions for similar working or processing operations.

22 It is therefore necessary to declare that Commission Regulation (EEC) No 749/78 of 10 April 1978 on the determination of the origin of textile products falling within Chapters 51 and 53 to 62 of the Common Customs Tariff is invalid in so far as it provides that the processes of dyeing, accompanied where appropriate by mercerizing and gassing, are not to confer on unbleached cotton yarn the status of a product originating in the country where those processes took place.

23 In those circumstances it is no longer necessary to consider whether that regulation is compatible with Article 30 of the EEC Treaty.

24 Furthermore, in so far as the question put by the Tribunal de Police, Strasbourg, seeks the interpretation of Article 30 of the EEC Treaty in order to determine whether procedings brought by the national authorities under Regulation No 749/78 are compatible with that article and whether it imposes limits on the penalties which may be imposed in such proceedings, that question is devoid of purpose, regard being had to the fact that the declaration that the regulation is invalid, in so far as the working or processing operations in issue are concerned, prevents its application by the national authorities within the limits of the scope of that declaration of invalidity. It is therefore no longer necessary to reply to that part of the question submitted.

Costs

25 The costs incurred by the Italian Government and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main procedings are concerned, in the nature of a step in the prosecution pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Fifth Chamber),

in answer to the question put to it by the Tribunal de Police, Strasbourg, in a judgment of 15 March 1982, hereby rules:

Commission Regulation (EEC) No 749/78 of 10 April 1978 on the determination of the origin of textile products falling within Chapters 51 and 53 to 62 of the Common Customs Tariff (Official Journal, L 101, p. 7) is invalid in so far as it provides that dyeing processes, accompanied

where appropriate by mercerizing and gassing, are not to confer on unbleached cotton yarn the status of a product originating in the country where those processes took place.

Mertens de Wilmars Everling

Mackenzie Stuart Due Galmot

Delivered in open court in Luxembourg on 23 March 1983.

J. A. Pompe
Deputy Registrar

J. Mertens de Wilmars
President

OPINION OF ADVOCATE GENERAL SIR GORDON SLYNN DELIVERED ON 9 FEBRUARY 1983

My Lords,

The Tribunal de Police at Strasbourg, France, has referred to the Court under Article 177 of the EEC Treaty the following question:

"On a proper interpretation of the EEC Treaty, in particular Article 30 thereof, must the requirement laid down in Articles 1 and 2 of Commission Regulation No 749/78 of 10 April 1978 (Official Journal L 101, 14. 4. 1978, p. 7), for conferring on certain textile products the legal status, in relation to customs provisions, of products originating in a Member State of the EEC, be regarded as a measure equivalent to a quantitative restriction?"

Regulation No 749/78 was adopted pursuant to Article 14 of Council Regulation (EEC) No 802/68 of 27 June 1968 (Official Journal L 148, p. 1, English Special Edition 1968, p. 165) for the purpose of applying Article 5 of that Regulation to textile products falling within Chapters 51 and 53 to 62 of the Common Customs Tariff ("CCT"). It was adopted by the Commission because the Committee on Origin to which a draft was submitted was not able by a majority to approve it, and because the Council did not act upon the Commission's proposal within the time prescribed.

Article 5 of Regulation No 802/68 provides as follows: