THE COURT,

in answer to the questions referred to it by the College van Beroep voor het Bedrijfsleven by order of 10 March 1978, hereby rules:

1. **Article 1 of Commission Regulation No 2067/77 of 20 September 1977 concerning the determination of the origin of slide fasteners (Official Journal L 242 of 21 September 1977, p. 5) is invalid.**

2. **There is therefore no further need to interpret that regulation.**

Kutscher Mertens de Wilmars Mackenzie Stuart Donner Pescatore

Sørensen O'Keeffe Bosco Touffait

Delivered in open court in Luxembourg on 31 January 1979.

A. Van Houtte
Registrar

H. Kutscher
President

OPINION OF MR ADVOCATE GENERAL CAPOTORTI DELIVERED ON 13 DECEMBER 1978 [1]

Mr President,
Members of the Court,

1. The concept of the origin of goods is relevant in the Community context for the purposes of the application of certain provisions concerning trade, and in particular of certain rules laid down in the Common Customs Tariff, as well as for the purposes of the issue of certificates of origin for goods exported to third countries. The Council therefore provides by Regulation (EEC) No 802/68 of the Council of 27 June 1968 for the introduction of a common definition of that concept to solve the

1 — Translated from the Italian.

difficulties hitherto caused by the absence of any international definition and by the differences between national rules for the determination, verification and certification of origin.

It is obvious that there is difficulty in establishing the origin when two or more countries have been concerned in the production of goods. For such cases, Article 5 of the above-mentioned regulation provides that the product "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". This is the provision of fundamental importance in the present cases.

Article 14 of the same regulation then provides that the further provisions for applying Articles 4 to 7, 9 and 10 (and therefore also Article 5) must be adopted. The procedure to be followed for this purpose requires the Commission to seek, with regard to any draft provisions, the opinion of a special Committee on Origin (consisting of representatives of the Member States, with a representative of the Commission acting as Chairman); if the opinion is favourable, the Commission adopts the relevant provisions; if the opinion is unfavourable or no opinion is delivered, the proposal is submitted to the Council; if, finally, the latter has not acted within three months, the provisions are adopted by the Commission.

The third possibility occurred in the case of the subject-matter which is of interest to us in these cases. Consequently, on 20 September 1977 the Commission adopted Regulation (EEC) No 2067/77, Article 1 of which provides that "slide fasteners" mentioned under tariff heading 98.02 of the Common Customs Tariff originate in the country in which the following operations took place: "Assembly, including placing of the scoops or other interlocking elements onto the tapes accompanied by the manufacture of the slider and the forming of the scoops or other interlocking elements".

In the recitals of the preamble to that regulation, the Commission considers *inter alia* that "a slide fastener consists essentially of two parallel tapes, scoops or other interlocking elements, slider and end pieces" and that the operation of assembling a slide fastener from its constituent parts neither constitutes a substantial process or operation nor results in the manufacture of a new product nor represents an important stage of manufacture within the meaning of Article 5. However, "the processes or operations which may together be considered as the last substantial process or operation and which result in the manufacture of a new product or represent an important stage of manufacture consist of the forming and placing of the scoops or other interlocking elements onto the tapes and the manufacture of the slider by processes such as stamping or moulding". The manufacture of the end pieces does not, according to that recital of the preamble to the regulation, constitute a substantial process or operation within the meaning of Article 5.

2. The cases to which my opinion today relates concern two companies which produce slide fasteners, Yoshida Nederland B.V., having its registered office in Sneek in the Netherlands, and Yoshida GmbH, having its registered office in Mainhausen in the Federal Republic of Germany, which are subsidiaries of a Japanese company of the same name. In the Netherlands and in Germany the two companies produce most of the parts of which the fasteners are composed, except however for the sliders which are produced in Japan and supplied by the parent company.

Until the entry into force of the above-mentioned Commission regulation, the competent national authorities normally issued the certificate of Community origin in respect of the products of the two Yoshida companies. The German authorities relied upon the criterion according to which the value of the raw material of the slide fastener parts originating in Japan (or of any other third country) was not exceed 40% of the production cost of the finished product in order for the product to be classified as being of Community origin. However, it is a fact that the value of the slider is not generally more than 20% of the price of the product in question.

However, as a result of the entry into force of Commission Regulation (EEC) No 2067/77, the Netherlands and German authorities were obliged to refuse the issue of certificates of Community origin in respect of slide fasteners produced by the above-mentioned companies on the ground that the sliders which those companies used were manufactured in a third country.

Yoshida Nederland B.V. then brought proceedings against the Kamer van Koophandel en Fabrieken voor Friesland (the Chamber of Commerce and Manufacture of Friesland) before the College van Beroep voor het Bedrijfsleven for the annulment of the decision of refusal. By decision of 10 March 1978 the Netherlands court referred to the Court of Justice the following questions for a preliminary ruling:

"1. Must Article 1 of Commission Regulation (EEC) No 2067/77 concerning the determination of the origin of slide fasteners be interpreted as meaning that a country in which not all the processes listed in the third column in Article 1 of the regulation were carried out, in particular a country in which the slider was not made, can in no circumstances be considered the country of origin of the slide fastener?

   If so, is that article also applicable to slide fasteners which are not closed by means of interlocking metal scoops but by means of interlocking nylon spirals?

2. If the first part of Question 1 is answered in the affirmative, which means that the slide fasteners involved in the case cannot be issued with certificates of origin within the meaning of Articles 9 and 10 of Regulation (EEC) No 802/68 of the Council on the common definition of the concept of the origin of goods, is Regulation No 2067/77 invalid as being in conflict with:
   (a) Article 5 of Regulation No 802/68?
   (b) or Article 30 of the Treaty?
   (c) or Article 110 of the Treaty?

3. If Regulation No 2067/77 is not held to be invalid for any of the reasons set out under (a), (b) or (c), must the regulation be regarded as being invalid for one of the reasons listed by the appellant set out under numbered paragraphs (4) to (9) inclusive in the body of this judgment, or else as being in conflict with any other provision or principle of Community law which has not yet been mentioned by the appellant?"

In parallel, the German company, Yoshida GmbH, brought proceedings before the Verwaltungsgericht Kassel against the Industrie- und Handelskammer (Chamber of Commerce and Industry) of that town, contesting in its turn the refusal to issue the certificate of Community origin. Within the context of these proceedings, the German court referred to the Court of Justice, by order of 28 April 1978, the following question for a preliminary ruling:

"Does Commission Regulation (EEC) No 2067/77 of 20 September 1977 (Official Journal L 242 of 21 September 1977, p. 5) conflict with Article 5 of Regulation No 802/68 of 27 June 1968 (Official Journal, English Special Edition 1968 (I), p. 165) and Articles 30 and 110

of the EEC Treaty and with other provisions or principles of Community law, in particular essential procedural requirements, in that it refuses to recognize that the production of slide fasteners by the plaintiff determines the origin of the goods if sliders originating in a third country (in the present instance, Japan) are used?

3. The first question raised by the Netherlands court concerns the interpretation of Article 1 of Commission Regulation No 2067/77. In fact, I do not consider that serious doubts can arise in this connexion. According to the plaintiff company, the circumstance that the slider is manufactured in the country of origin cannot imply that in all other cases the fastener does not originate in that country; however, such an argument is contrary to the wording and the very function of Regulation No 2067/77. That regulation stipulates, as shown by the heading of the table contained in Article 1, the "working or processing that confers the status of originating products when the following conditions are met". This stipulation is absolute: on the basis of the regulation in question, a slide fastener can in no case be considered as being of Community origin if all the operations mentioned in the third column, including that of the manufacture of the slider, are not carried out in the Community.

With regard once more to the interpretation of Regulation No 2067/77, the German Yoshida company maintains however that that regulation does not cover slide fasteners with a fastening consisting of nylon spirals; Article 5 of Regulation No 802/68 is the only provision applicable with regard to that type of product. It seems to me that this point of view is incorrect: it is sufficient to consider the fact that Article 1 of the above-mentioned Regulation No 2067/77 indicates the products referred to by mentioning tariff heading 98.02 of the Common Customs Tariff which also covers fasteners consisting of nylon spirals instead of metal scoops.

4. The main question which arises in both cases is that of determining whether the specific criterion of origin laid down in Regulation No 2067/77 in respect of slide fasteners is compatible with the general criterion laid down in Article 5 of Regulation No 802/68 of the Council. In view of the very broad wording of that article, the Commission undoubtedly has a certain margin of discretion in the exercise of the power to adopt implementing provisions within the meaning of Article 14 of that regulation. It is necessary therefore to examine whether the Commission has kept within the limits of its discretionary power.

The starting-point is in the expression used in the above-mentioned Article 5 to describe the country of origin: the place of the "last substantial process or operation". The rule adds two further details: the substantial process or operation must be performed "in an undertaking equipped for the purpose" and must result in the manufacture of a new product or at least represent an important stage of manufacture.

I would observe first of all that, as results from the wording of the article, the factors which must be taken into consideration are of a technical and not economic nature. In substance, it points out the basic function of specific technical operations within the context of the operations which go together to manufacture the product, not the greater economic value of certain operations in comparison with others. This reflects a change of direction as regards the economic criterion adopted by the German authorities as was said at the outset. In addition, during these proceedings, the German Government showed that it attached determining importance to the economic value of the

constituent parts of the product. It stated in fact that the Commission regulation would be justifiable only if the putting together of the pieces constituted a mere assembly operation and pieces manufactured elsewhere formed a very high percentage of the total value of the finished product. It is possible easily to reply that Article 1 of Regulation No 2067/77 does not prevent this possibility or the opposite possibility from occuring and that the appraisal of the validity of the measure (by its general and abstract nature) cannot vary according to the case which actually occurs. It is however important especially to emphasize that the economic criterion, as the Netherlands Yoshida company has acknowledged, raises considerable difficulties and its use as the principle factor would at any rate be inadvisable.

The difference in production costs, which are dependent *inter alia* on the burden of wages, tax systems, interest rates and other factors which vary from State to State, the fluctuations in certain cost factors and the difficulty of verifying the accuracy of the relationship between the values added as a result of the various operations make the economic criterion extremely unreliable in its application. There is the risk that it may result in considering that, in the case of certain products whose conditions and place of manufacture are the same, some do and some do not originate in the Community, according to the variable economic and monetary circumstances.

The Commission was therefore right to prefer, for the purposes of determining the origin of the slide fasteners, technical criteria which have a greater degree of objectivity and consistency. Recourse should be had to the economic criterion only in cases in which, because of the characteristics of the product, the exclusive or chief use of the technical criterion would be impossible or would give rise to serious difficulties.

There are in fact many branches of industry (particularly those relating to radio and television sets and tape recorders) in which assembly may consist of procedures which are of varying degrees of complexity according to the type of set, the means used and the way in which such assembly is carried out. The diversity of assembly operations therefore makes it impossible to determine in accordance with a criterion of a technical nature the cases in which such operations constitute an important stage of manufacture.

Having regard to situations of this nature, the Commission has established the origin of the product on the basis of the economic criterion of the value added as a result of such operations. Thus as far as radio and television receivers are concerned, Regulation No 2632/70 of 23 December 1970 acknowledged Community origin only if assembly operations had been carried out in the Community which had caused the product to acquire an increase in value corresponding to at least 45% of the ex-works invoice price of the apparatus concerned (Article 1). If the value of the assembly carried out in a country of the Community turns out to be less than that percentage, the equipment is treated as originating in the last country of origin of the parts which have indirectly constituted an important stage in the manufacture of that apparatus (Article 2 (1)). This seems to imply the return to a technical criterion; however, immediately afterwards the regulation lays down a criterion of value to the effect that it considers that the above-mentioned condition is satisfied when the ex-works invoice price of the parts in question represents more than 35% of the ex-works invoice price of the apparatus. Finally, when that percentage is reached in two countries concerned in the production of the apparatus and it is not

possible to determine in which of them the last working or processing referred to in Article 5 of Regulation (EEC) No 802/68 took place, Article 2 (2) of the above-mentioned Regulation No 2632/70 provides that the apparatus must be treated as originating in the country of origin of the parts representing the highest percentage value.

An analogous attitude was adopted as regards the determination of the origin of tape recorders within the meaning of Regulation (EEC) No 861/71 of the Commission of 27 April 1971. This does not however mean in fact that the use of the economic criterion is the normal or preferable method of applying the principle laid down in Article 5 of Regulation No 802/68. On the contrary, the considerations mentioned above and deduced from the two Commission regulations, Regulation No 2632/70 and Regulation No 861/71, show clearly that only the impossibility of reaching a satisfactory result according to a criterion based on technical characteristics induced the Commission to make use of criteria of economic value.

5. In order to interpret correctly the expression "last substantial process or operation" contained in the above-mentioned Article 5 of Regulation No 802/68, it is necessary once more to ask whether that expression necessarily refers to a single operation or whether it may indicate a series of interconnected operations. Apparently, the most logical solution is the first one: the text of the provision leads one to consider that, of the numerous processes or operations which occur in the course of the manufacture of a product, it is necessary to identify those which are of substantial importance and, of those, the last operation: that which is nearest to the end of the manufacturing process. However, there are good reasons for taking the view that the expression concerned may also refer to a series of interconnected operations.

I shall begin with the observation that, at the end of Article 5, the last substantial process or operation which does not immediately result in the creation of the product is identified with an important stage of manufacture and the concept of "stage of manufacture" is doubtless broad enough to include a series of connected operations. I would add that in the case of substantial operations which do not succeed one another in a specific and necessary chronological order but may occur contemporaneously it may become inevitable to consider them jointly in so far as they represent as a whole the last important stage of manufacture. Finally, it may occur that the last operation in sequence of time (for example, assembly) is not *per se* "substantial" and that therefore it is necessary to take into account substantial operations which precede it and which however assume importance only in view of the final operation (as occurs in the case of the manufacture of parts which have no functional capacity separately but acquire it as soon as they are assembled).

An example of the compound concept of "last substantial process or operation" outside the present case is supplied by Regulation No 964/71 of the Commission of 10 May 1971 on determining the origin of meat and offals. Taking the view that slaughter and related operations (such as evisceration, skinning, cutting and refrigeration) cannot be regarded *per se* as constituting a substantial process or operation within the meaning of the above-mentioned Article 5, the Commission made the origin of those products dependent upon the place of slaughter considered however in conjunction with the action

of fattening the animal in the same country for a specific minimum period immediately before that.

We have also seen in the above-mentioned Regulations Nos 2632/70 and 861/71 on the origin of radio and television sets and tape recorders that the Commission referred to "parts" (in the plural) which indirectly constituted an important stage in the manufacture of that apparatus (Article 2 (1)). This confirms that in previous cases and in relation to products of different types the Commission had already considered that it was not sufficient to take into consideration a single operation for the purpose of identifying the last substantial process or operation within the meaning of Article 5.

6. We shall now consider the technical factors which occur in the present case.

According to the statements made by the Netherlands court in the order for reference, the production of the slide fasteners, as carried out at the Netherlands Yoshida subsidiary (and the same probably applies in the case of its German sister company), consists of the following main operations:

(a) the weaving of the tapes from yarn and where necessary the trimming of the tapes with thread, followed by the dyeing of the tapes;

(b) the forming of the metal scoops or the production of the spirals from nylon thread;

(c) the attaching of the metal scoops or of the nylon spirals to the tapes and the subsequent joining of the tapes;

(d) the attaching of bottom stops and top stops to the tapes;

(e) the insertion and where necessary the colouring of the sliders;

(f) the drying and cleaning of the continuous slide fasteners which are finally cut to size.

It is evident that the list of such operations is completed by adding thereto the manufacture of the sliders (which in the present case takes place, as we know, in Japan) and the manufacture of the end pieces.

According to the Commission, three operations are relevant for the purpose of determining the origin of the product; the forming of the scoops, the attaching of those scoops to the tapes and the manufacture of the slider. The Commission refuses to accept that the manufacture and attaching of the end pieces and the finishing operations (for example dyeing, drying and cutting) come within the concept of last substantial process or operation within the meaning of Article 5 of Regulation No 802/68. Similarly, the Commission refuses to acknowledge that assembly may by itself correspond to this concept, taking the view that a relatively simple operation, although naturally indispensable in order to obtain the finished product, does not have the character of a "substantial" operation from the technical point of view. It therefore considered that it was necessary to go back to the manufacturing process to find the last important stage and identified that stage as being the one in which either the stops or the slider is manufactured.

Neither of these two operations considered *per se* is in the nature of a "substantial process or operation" since both are necessary to give the product its characteristic features. On the other hand, neither of these two operations necessarily precedes the other chronologically. Even if they are considered in conjunction, the two parallel and distinct operations are not however such as to

constitute a new product until the slider has been fitted onto the scoops which have already been affixed to the tapes.

The Commission decided on the basis of that reasoning to take into account for the purposes of determining the origin of the product the two above-mentioned manufacturing operations in conjunction with the attaching of the scoops and the slider and to consider those operations as a whole as corresponding to the concept of "last substantial process" within the meaning of Article 5.

The German Yoshida undertaking maintained however that the two tapes linked by scoops constituted the main part of the slide fastener and referred in this respect to the German provision which defines the above-mentioned product as "a connecting element which may be repeatedly separated". It is however clear that the repeated separations are made possible by the existence of the slider. It is therefore impossible to share the view that the two tapes with scoops attached represent the predominant components unless the economic point of view is used as the starting-point, since the value of the tapes with the scoops attached is higher than that of the slider. I have already said at the outset that the system of Regulation No 802/68 clearly gives the technical criterion priority over the economic criterion.

More generally, I would observe that if the intention were in the present case to attach importance to the economic consideration of the low cost of the slider in relation to that of the finished product this would by implication exclude the need to refer to the last substantial process or operation in all cases in which such an operation represented a small percentage of the cost of a product.

An attitude of this kind would however be blatantly contrary to Article 5 of Regulation No 802/68.

I therefore repeat that it does not seem to me to be justified to consider that the two tapes to which the scoops (or spirals) are affixed are the components which should serve to determine the origin of the finished product. Still less can it be the final inspection process intended to ensure the normal functioning of the fastener, as the above-mentioned undertaking seems to suggest, somewhat contradictorily, since however high its cost may be that process is obviously incapable of adding anything substantial to the product as regards its manufacture but merely has the commercial function of preventing defective products from being put on the market.

Finally, I consider that — if we remain on the actual technical level of the Community provisions — in applying Article 5 of Regulation No 802/68 to the product at issue a person interpreting the regulation is faced with these inevitable alternatives: either one acknowledges that the last substantial process or operation is assembly (in other words the assembly of the scoops and the slider onto the tapes) or one goes back to the manufacturing operations which precede assembly and which relate to both the characteristic components of a slide fastener, that is, the scoops and the slider. In my opinion the Commission was correct not to adopt assembly considered in isolation; it is sufficient to take the view that if the Commission had regarded assembly as determining for the purposes of the origin of the product it would have opened the way to the grant of Community classification for all products merely assembled in the Community even if they were made up of parts all manufactured elsewhere. This

observation may be important of course from the point of view of the system upon which Regulation No 802/68 is based, above all Article 5 thereof which in my opinion uses the concepts of "production" and "manufacture" in a sense which cannot generally be reduced to the assembly operation. However, that apart it seems to me that the Commission's point of view (based on a visit to a factory which produces slide fasteners) is convincing; it states that a technically straightforward assembly operation cannot be called "substantial". If this is true, the first of the two above-mentioned solutions must be ruled out and the second solution must be accepted as correct, in other words that adopted by Regulation No 2067/77.

The general observations which I have set out above concerning the validity of the reference to several interconnected operations for the purpose of designating the last substantial process or operation lead me to consider that the solution adopted in the above-mentioned regulation is compatible with Article 5 of Regulation No 802/68 of the Council from this point of view too. Moreover, if the Commission had wished to consider a single operation as substantial, maintaining however its argument that assembly is not substantial in nature, how could it have made a choice between the manufacture of the scoops and the manufacture of the slider in view of the fact that the utility of each of these operations is subject to the performance of the other operation?

It would be possible to object that the woven tapes to which the scoops must be affixed, the metal tapes from which the latter are made and the end pieces are also components essential for the existence of a slide fastener; however, the manufacture of the woven tapes and of the metal tapes is at an opening stage in the production process — and therefore in a stage prior to that in which the scoops are manufactured and attached — whereas the manufacture of the end pieces seems to be an operation of a secondary nature.

Therefore, in spite of the arguments which have been put forward during these proceedings by the two Yoshida subsidiaries and by the Netherlands and German Governments against the validity of Commission Regulation No 2067/77, I do not consider that the Commission exceeded the limits laid down in Article 5 of Regulation No 802/68 of the Council by considering that the manufacture of the sliders was an integral part of the last substantial process or operation in the process of the manufacture of slide fasteners.

7. It is now necessary to examine another aspect of the problem, in other words, whether Regulation No 2067/77 is not vitiated as being *ultra vires.* The Netherlands and German subsidiaries of Yoshida, and with them the German Government, which intervened in Case 114/78, maintain in fact that the Commission exercised the power given to it under Regulation No 802/68 of the Council in order to pursue objectives other than those on the basis of which that power was conferred on it. More precisely, the Commission, they claim, used the power to adopt provisions relating to the determination of the origin of goods for the purpose of adopting a measure of commercial policy with the intention in fact of creating obstacles to trade between the Member States in products manufactured by the Yoshida subsidiaries in the common market.

According to Yoshida, the fact that this was the actual aim of the criticised regulation is shown by the circumstances

which preceded it. It is therefore necessary to recall briefly those circumstances.

In 1973, the Commission had given official notice of the initiation of anti-dumping/anti-subsidies procedures concerning the Japanese slide fasteners exported by the Yoshida parent company. The procedure was terminated a year later because the Yoshida company had given satisfactory assurances concerning its price policy and export policy in the Community. By Regulation No 646/75, the Commission established a system of Community surveillance over imports of that product. It follows from the recitals of the preamble to that regulation that the measures in question were adopted in consideration of the considerable increase in recent years of imports of slide fasteners, particularly of Japanese origin, and of the fact that those developments threatened to cause injury to Community producers of like or directly competing products. Under Article 4 of the above-mentioned regulation, "the origin of the products under Community surveillance shall be established by a certificate of origin". The period of validity of the regulation, initially laid down as being until 30 June 1976, was then extended until 31 December 1978.

Finally, as a result of negotiations between the Italian Government and the Japanese Yoshida company an agreement on voluntary restraint was entered into on the basis of which that company undertook to limit exports to Italy of slide fasteners produced by it. In spite of that agreement imports into Italy of the above-mentioned Yoshida product continued to increase. Having learnt that certain component parts of the slide fasteners produced by the Yoshida subsidiaries in the Community were manufactured in Japan, the Italian Government asked the Commission how the other Member States applied the provisions of Regulation No 802/68 in so far as the determination of the origin of the product in question was concerned. Moreover, in January 1977 five members of the European Parliament addressed a written question to the Commission relating to imports of slide fasteners from Japan.

These actions led the Commission to carry out an examination of the way in which the Member States were applying Regulation No 802/68 in the field of slide fasteners. The Commission stated that it emerged from that examination that the Member States were interpreting and applying the provision laid down in Article 5 of the above-mentioned regulation in different ways. In view of the diametrically opposed view-points which have been adopted during these proceedings by the Italian and French Governments on the one hand and by the Netherlands and German Governments on the other in relation to the problem at issue the above-mentioned statement made by the Commission must be considered to be justified in spite of the reservations expressed by Yoshida.

The circumstances which have been summarized must show, according to the companies concerned, that the Commission, which was already alarmed by the flow of exports of slide fasteners from Japan and under pressure from many quarters, had decided to introduce the definition of origin referred to in Regulation No 2067/77 as a measure of commercial policy directed specifically against products of Japanese origin. It seems to me however that this argument is belied precisely by some of the facts to which reference has been made above. Imports of slide fasteners into the Community were already subject to the system of Community surveillance: therefore the Commission used the appropriate instrument to control the phenomenon. The request of the Italian government concerning the method of the application of Regulation No 802/68 in the other Member States was correctly

followed by an examination of the question. Consequently, prior to the adoption of Regulation No 2067/77 the policies followed thitherto by the national authorities were ascertained. This convinced the Commission that the only method of attaining the uniform application of the basic regulation of the Council on the determination of the origin of the product in question was to introduce precise criteria defined specifically with regard to the goods in question.

Naturally, the argument of excess of powers calls in question the substance and objective of the criterion adopted by the Commission regulation. The two Yoshida subsidiaries and the German Government consider that this is a measure aiming above all to restrict the power of the Yoshida subsidiaries in the Community to export their slide fasteners to other countries of the Community and in particular to States such as France and Italy whose industries were jeopardized to a greater extent by the competition from Yoshida. That however seems to me to be an assumption and not a proven fact. The above-mentioned parties maintain that any measure issued in implementation of Regulation No 802/68 should be neutral from the point of view of commercial policy, but that this was not the case with regard to the criticised Commission regulation which had the effect of restricting trade.

This criterion of neutrality which has been referred to is in fact rather ambiguous, since any choice of one of the criteria which are possible in the abstract for the purposes of determining the origin of a given product is inevitably intended to have more favourable or less favourable effects than those which other choices would have for international trade in products from specific countries or from specific undertakings. In the present case, even supposing that it were acknowledged that the Commission, within the scope of its discretion, could exclude the manufacture of the sliders from the set of factors to be taken into consideration for the purposes of determining origin, it is necessary to bear in mind that that would have equally involved economic repercussions, in this case favourable to Yoshida's trade and unfavourable to their competitors in the Member States. This means simply that no choice could have been neutral with regard to the development of business and trade. However, the Commission had already previously defined in relation to other products (as has been seen with regard to Regulation No 964/71 concerning meat) a compound criterion of "last substantial operation" which was no doubt capable of putting at a disadvantage specific categories of Community slaughterhouses and of forming an obstacle to trade in their products. However, any negative effect of a regulation of the intra-Community trade of certain undertakings is insufficient to show that the fundamental objective of the regulation itself was to prejudice those undertakings.

It does not however seem to me that it is possible to consider as a misuse of power the fact that the Commission chose, for the purposes of determining the origin of the slide fasteners, criteria which, according to the Yoshida company, prejudiced it.

8. From the point of view of the obstacles which the measure in question might possibly create for trade within the Community, the test of its validity is constituted by Article 30 *et seq.* of the EEC Treaty. These provisions are addressed to the States; however, their fundamental principle — I refer to the prohibition on quantitative restrictions and measures having an equivalent effect — no doubt also binds the Community

institutions in the adoption of measures which have repercussions on trade.

The infringement of such provisions alleged by Yoshida is said to follow from the fact that the criterion laid down by Regulation No 2067/77 is an obstacle to trade between the Member States as far as slide fasteners manufactured in the Netherlands and in Germany are concerned to which sliders of Japanese origin or originating in other third countries have been attached. It is necessary to bear in mind that according to the above-mentioned Article 4 of Regulation No 646/75 the origin of the products in question must be justified by means of the appropriate certificate. However, the slide fasteners produced under the conditions which have been described by the subsidiaries of Yoshida in the Community cannot obtain the certificate of Community origin; hence the alleged obstacle to their movement in the other Member States.

The explanations given by the German Yoshida undertaking however lead one to consider that the difficulties arising from the lack of a certificate of Community origin for the slide fasteners which they manufacture are either merely potential or at any rate not a direct consequence of the Community rules. In fact, the product in question may be imported freely from third countries without being subject to quantitative restrictions and may move freely within the Community even without the certificate of Community origin with the sole reservation of the undertakings on voluntary restraint entered into by the Japanese Yoshida company with the Italian government which clearly do not flow from provisions or measures adopted by the Community.

In particular, Yoshida complains of the following difficulties:

(a) the refusal to grant Community origin to the slide fasteners produced by the Netherlands and German Yoshida subsidiaries on account of the Japanese origin of the slider has the effect of "distorting" the statistics on the imports of that product from third countries by adding thereto exports of the products of the Yoshida subsidiaries in the Community to the other Member States;

(b) the outward processing traffic with third countries is jeopardized. The case mentioned is that of German textiles sent to Poland for the manufacture of clothes, together with several accessories including slide fasteners, which are then re-dispatched to Germany; without the certificate of Community origin for the slide fasteners produced by the subsidiaries of Yoshida in the Community those textiles cannot obtain authorization for re-importation into Germany. This forms an obstacle to sales by the German subsidiary of Yoshida on the Polish market of clothes manufactured from German textiles intended to be re-imported into the Community as well as on other similar markets in other Eastern European countries;

(c) Finally, unspecified difficulties arose for a German trader who has a leather manufacturing plant in Italy in which it uses fasteners supplied to it in Germany by the German Yoshida undertaking.

In my opinion, none of the three situations briefly described reveals an infringement of Article 30 of the EEC

Treaty. With regard to the first of those situations it seems to me that the statistical repercussions of the refusal of a certificate of Community origin cannot be considered as the source of actual obstacles to intra-Community trade. As far as the alleged damage caused to the outward processing traffic in German textiles is concerned, it cannot be denied that in fact a restriction on the sales markets of the subsidiaries of Yoshida in the Community may have occurred; however, as the Commission observes, this may have been caused not by the Community rules but by the rules in force in the Federal Republic relating to processing traffic with the Eastern European countries. On the other hand, Article 30 is not *per se* applicable to relations with third countries, as was stated also in the judgment of this Court of 15 June 1976 in Case 51/75, *EMI Records Ltd* v *CBS (United Kingdom) Ltd* [1976] ECR 811, in particular in paragraph 17 of the decision. Finally, as regards the difficulties of Yoshida's German customer who owns a factory in Italy, these presumably arise from the undertaking on voluntary restraint voluntarily entered into by Yoshida with that Member State. In this case too therefore the cause of any obstacles cannot be found in Commission Regulation No 2067/77.

The setting-up in Italy by the Yoshida Group of a slider factory certainly cannot alter the legal situation which has been analysed above or represent, as Yoshida would wish, evidence of the existence of restrictions on imports as a result of Commission Regulation No 2067/77. The setting-up of a new Yoshida plant in Italy might simply have been motivated by the interest of the parent company in escaping the quantitative restrictions which it accepted in respect of exports of its products to Italy.

In conclusion, I cannot see any incompatibility between the application of Article 5 of Regulation No 802/68 of the Council by the Commission in the above-mentioned Regulation No 2067/77 and the provisions of Article 30 *et seq.* of the EEC Treaty.

For similar reasons it seems to me that the alleged incompatibility of Regulation No 2067/77 with the principle of the development of world trade and the progressive abolition of restrictions on international trade laid down in Article 110 of the Treaty must similarly be rejected. Moreover, it is appropriate to recall that the value of that provision, whose contents are very broad and general, is purely that of a programme and does not seem capable of creating alone *per se* personal rights which individuals may assert before the national courts.

9. I do not consider that the other grounds of invalidity put forward by Yoshida are well-founded. I would refer above all to the complaint of the failure on the part of the services of the Commission to accept the invitation extended by Yoshida to visit its production plants in the Community. I have already recalled that for the purposes of ascertaining the fundamental technical aspects of the process of the production of slide fasteners the service of the Commission visited other undertakings in the sector. It does not follow that the manufacturing process differs substantially from one undertaking to another. It is therefore impossible to see why a visit to Yoshida's plants must be considered essential with regard to the adoption of a measure which, we should not forget, is not in fact in the nature of

an individual decision addressed to Yoshida but constitutes a legislative measure the addressees of which are all undertakings which produce slide fasteners.

As regards the alleged differences in the six official languages between the text of Regulation No 2067/77 in relation either to the proposal sent to the Committee on Origin or to the proposal sent afterwards to the Council, it is sufficient to observe that there are no differences which affect fundamental parts of the legislative content or of the statement of the reasons upon which the measure is based.

As regards the arguments which Yoshida bases on certain apparent discrepancies between the versions of the regulation in the various official languages, the Commission has explained exhaustively and in my opinion wholly convincingly the reasons of a purely linguistic nature which, in order precisely to keep the same meaning of the legislative provision in the various languages, made it impossible to translate the regulation literally into English.

Finally, Yoshida expressed the opinion that the above-mentioned regulation was vitiated by a defect in the statement of the reasons upon which it was based. However, the extracts from the statement of reasons upon which that regulation was based which I quoted at the outset in my opinion show clearly the logical train of thought followed by the Commission in order to reach the adoption of the contested criterion of origin.

10. For all the preceding reasons, I conclude by suggesting that the Court should reply to the first question put by the College van Beroep voor het Bedrijfsleven in Case 34/78 by ruling that:

1. Article 1 of Commission Regulation (EEC) No 2067/77 must be interpreted as meaning that the country of origin of a slide fastener is in every case that in which all the operations mentioned in the third column are carried out, including the manufacture of the slider.

2. That article applies also to slide fasteners closed by means of nylon spirals.

In reply, then, to the question relating to the validity of the above-mentioned Commission regulation which have been put forward both in Case 34/78 and in Case 114/78, I propose that Commission Regulation (EEC) No 2067/77 does not, in view of the observations made by the Courts making the references and the parties to the proceedings, reveal any element of invalidity.