grapes of Spanish origin during the part of the year between 1 July and 31 December quantitative restrictions in existence prior to Regulation No 2513/69.

3. It is not for the Court of Justice to assess whether questions referred to it by a national court under Article 177 of the Treaty are relevant to the nature and subject-matter of the action before that court, since in accordance with the structure of the procedure for a preliminary ruling such assessment comes within the jurisdiction of the national court.
4. The requirement by the importing Member State of the indication of the country of origin on the customs declaration document for products in free circulation whose Community status is attested by the Community movement certificate does not in itself constitute a measure equivalent to a quantitative restriction if the goods in question are covered by measures of commercial policy adopted by that State in conformity with the Treaty. Such a requirement would, however, fall under the prohibition contained in Article 30 of the Treaty if the importer were required to declare, with regard to origin, something other than what he knows or may reasonably be expected to know or if the omission or inaccuracy of that declaration were to attract penalties disproportionate to the nature of a contravention of a purely administrative character. Any administrative or penal measure which goes beyond what is strictly necessary for the purposes of enabling the importing Member State to obtain reasonably complete and accurate information on the movement of goods falling within specific measures of commercial policy must be regarded as a measure having an effect equivalent to a quantitative restriction prohibited by the Treaty.
5. The rules relating to control of the quality of products cannot of themselves justify a requirement to produce documents concerning the origin of products, on condition however that when an inspection is carried out the inspector may require proof that the compulsory declarations are in accordance with the facts.
6. Article 8 of Regulation No 158/66 seeks to penalize any infringement, without distinction as to the origin of the product. National measures entailing such distinctions may, where appropriate, be regarded as discriminatory and thereby incompatible with the Treaty, in particular Article 30.

In Case 52/77,

Reference to the Court under Article 177 of the EEC Treaty by the Tribunale of Saluzzo for a preliminary ruling in the proceedings pending before that court between

LEONCE CAYROL

and

GIOVANNI RIVOIRA & FIGLI

on the interpretation of Article 1 of Annex I to the Agreement between the European Economic Community and Spain (Regulation (EEC) No 1524/70 of

the Council of 20. 7. 1970, OJ, English Special Edition Second Series, I. External Relations (1), p. 269) and of Articles 30 and 115 of the EEC Treaty,

THE COURT

composed of: H. Kutscher, President, M. Sørensen and G. Bosco, Presidents of Chambers, A. M. Donner, P. Pescatore, J. Mertens de Wilmars, Lord Mackenzie Stuart, A. O'Keeffe and A. Touffait, Judges,

Advocate-General: J.-P. Warner
Registrar: A. Van Houtte

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 procedure

In December 1970 and December 1971, Mr Leonce Cayrol imported into France various consignments of table grapes of Spanish origin which were dispatched from Italy (where the grapes had been put into free circulation) by the firm Giovanni Rivoira & Figli. The grapes bore the Italian export mark and were accompanied by the certificate of the Istituto Nazionale per il Commercio Estero (ICE) certifying that the goods were in conformity with the quality standards and stating that they were of Italian origin.

Following a check carried out by the French customs authorities on 9 August 1972, Mr Cayrol and Mr Rivoira were charged with having imported prohibited goods (since the quota laid down by France for the importation of grapes from Spain had been exhausted) by means of a false declaration of origin and on the basis of false or inaccurate documents.

In its judgment on that charge delivered on 26 January 1976 the Tribunal de Grande Instance, Montpellier, ordered them jointly *inter alia* to pay a fine of FF 532 435 in lieu of confiscation of the goods seized and a fine amounting to four times the value of the goods liable to confiscation, namely FF 1 064 870. The Tribunal rejected in particular the argument put forward by Mr Cayrol that the grapes had acquired Italian origin by reason of the processes performed in Italy, under Article 5 of Regulation

(ECC) No 802/68 of 27 June 1968 on the common definition of the concept of the origin of goods (OJ, English Special Edition 1968 (I), p. 165).

Following that judgment, Mr Cayrol accepted a proposal from the French customs authorities to settle for an amount of FF 175 000. He then applied to the Tribunale di Saluzzo for a warrant for attachment against the assets of Rivoira with a view to the compensation to which he considers himself entitled — up to an adequate part of the sum paid by him under the settlement with the customs authorities — on the grounds that the penalties imposed by the French authorities were the consequence of the conduct of Rivoira, who had deceived the customs authorities as to the origin of the goods by means of the ICE certificate.

Rivoira contested the claim for a warrant for attachment, arguing *inter alia* that the agreement concluded between the European Economic Community and Spain prohibited France from laying down import quotas for Spanish table grapes.

By an order of 15 April 1977, the President of the Tribunale di Saluzzo decided to stay the proceedings and refer the following questions to the Court of Justice of the European Communities for a preliminary ruling under Article 177 of the EEC Treaty:

1. May Article 115 of the EEC Treaty, which permits derogations from the prohibition on quantitative restrictions referred to in Article 30, be relied upon by Member States in connexion with products originating in a third country which are covered by a Community import system pursuant to a commercial agreement concluded by the EEC with the said third country?
2. Must Article 1 of Annex I to the Agreement between the European Economic Community and Spain referred to in Regulation (EEC) No 1524/70 (Regulation (EEC) No 1524/70 of the Council of 20. 7. 1970. OJ, English Special Edition, Second Series I. External Relations (1), p. 269) be interpreted to mean that from the date of the entry into force of the agreement, that is, 1 October 1970, the Member States were no longer empowered to introduce directly (on the basis of bilateral commercial agreements previously concluded with Spain) quantitative restrictions of whatever nature, including import quotas, with regard to products originating in Spain (and in particular those covered by Article 11 of Annex I to the Agreement between the EEC and Spain, tariff heading 08.04, fresh table grapes) throughout all the months of the year?
3. Does the fact that the importation of products in free circulation is made subject to the production of certificates of origin or other means of identifying the origin of the products referred to above constitute a measure having an effect equivalent to a quantitative restriction, prohibited by Article 30 of the Treaty?
4. If the reply to the question above is in the affirmative: May the Member States derogate from the prohibition laid down in Article 30 and require certificates of origin for all goods coming from other Member States (including goods in free circulation) before the date of the adoption by the Commission of an enabling decision under Article 115 of the EEC Treaty?
5. Do the provisions of Regulation No 58/62 of the Commission of 7 July 1962 (OJ, English Special Edition 1959-1962, p. 204) laying down common quality standards for certain fruit and vegetables, and in particular Annex I/7 (concerning specification of the district of production or definition of the product as 'table grapes'), which impose obligations solely for the protection of the final consumer, compliance with which can be established only at the relevant marketing stage, constitute customs

measures, that is, measures permitting Member States to render intra-Community trade subject to production at the frontier of documents relating to the origin of products in free circulation coming from other Member States?

6. In any event, in the case of a failure to comply with the quality standards laid down in the abovementioned Regulation No 58/62, does the fact that a Member State applies to imported products the penalties prescribed for the infringement of customs law and to domestic products the penalties (which are, moreover, lighter) prescribed for the infringement of commercial rules, constitute a measure having equivalent effect prohibited by Article 30?

The order making the reference was lodged at the Court Registry on 19 April 1977.

Pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted by Rivoira, represented by Giovanni Maria Ubertazzi and Fausto Capelli of the Milan Bar, and by the Commission of the European Communities, represented by its Legal Adviser, Giuliano Marenco, acting as Agent.

After hearing the report of the Judge-Rapporteur and the views of the Advocate-General, the Court decided to open the oral procedure without any preparatory inquiry.

II — Summary of the written observations submitted to the Court

Rivoira examines first of all the problems raised by the second question referred for a preliminary ruling, which, in its submission, are fundamental.

Article 1 of Annex I to the Agreement between the European Economic Community and Spain provides:

'Imports into the Community of products originating in Spain which are covered by the provisions of this Annex, including the products set out in Lists A and B but excluding those listed in Articles 3 and 10, shall be admitted without quantitative restrictions.'

Article 11 of the same Annex states:

'Imports into the Community of the following products originating in Spain shall be subject to the duties in the Common Customs Tariff reduced by the percentages shown below:

.....

08.04	Grapes, fresh or dried:	
	A. Fresh:	
	ex (a) From 1 November to 14 July:	
	— From 1 January to 31 March	50 %

Rivoira submits that, under the combined provisions of the two rules quoted, no quantitative restriction may be applied at any time of the year to imports of table grapes from Spain into the Community.

Article 1 of Annex I lays down the principle of the prohibition of quantitative restrictions in general and absolute terms for a whole range of products which are determined by reference to other articles and other parts of the Agreement. Article 11 of the same Annex states — as regards grapes — the number of the tariff heading and the product, and specifies the time-limits within which the tariff reduction applies. That time-limit concerns only the application of the reduction applicable to the product.

Rivoira considers that there is no real doubt as to the interpretation of the provisions at issue. The argument which it puts forward above — based on literal interpretation — is moreover confirmed by the rule as to effectiveness. Indeed, it is clearly and explicitly stated in paragraph 4 of the preamble to the

Agreement that the EEC is 'anxious' to develop economic and trade relations with countries bordering on the Mediterranean. Should there be any doubt, therefore, the rule as to effectiveness requires that the Agreement should be interpreted not so as to limit Spain's freedom of trade with the Community, but on the contrary so as to extend the scope thereof as far as the provisions will allow.

Furthermore, the interpretation proposed is in accordance with the place which Article 1 of Annex A I occupies in the general scheme of the Agreement. That article enacts a fundamental principle, and it is therefore impossible to interpret it restrictively. In particular, it does not allow of an interpretation restricting the abolition of quantitative restrictions for table grapes imported during the period from 1 January to 31 March each year.

The first provision set out in the Agreement concerns the 'progressive elimination of obstacles to trade between the Community and Spain'. That is then confirmed by the tightly woven network of provisions which are all designed to implement and add to freedom of trade from Spain to the Community. The Annex *inter alia* effects a complete dismantling of customs barriers. It is not confined to the reduction or the abolition of duties; it also covers the immediate abolition of quantitative restrictions and the immediate elimination of charges having equivalent effect.

The fundamental nature of Article 1 of Annex I also determines the interpretation of Article 11. That article in no wise allows of any derogations from the general principle of freedom or any limitation on that principle. If the least doubt remained on this point, Article 11 of the Annex would put an end to any ambiguity. For if the parties to the Agreement had intended to restrict the scope of the statement of principle (Article 1) with regard to the products referred to in Article 11, they would have done so expressly by adding a mere sentence to the text, so as to adjust the prohibition on quantitative restrictions only to the period of the year during which it was provided that duties should be reduced.

The absurdity of allowing any quantitative restriction on imports of table grapes from Spain can also be shown by drawing a comparison with the system instituted by Regulation (EEC) No 2513/69 of the Council of 9 December 1969 on the coordination and standardization of the treatment accorded by each Member State to imports of fruit and vegetables from third countries (JO L 318, p. 6). Article 1 of that regulation — which provides for the abolition of all quantitative restrictions on imports from third countries of the products concerned — makes an exception as regards table grapes for the period from 1 July to 31 January, but, at the same time, care was taken to add a 'standstill' rule to the second subparagraph of paragraph 2. Thus, it cannot be accepted that the agreement concluded with Spain can be so interpreted as to allow of restrictions which Regulation No 2513/69 was already striving to reduce, even in regard to imports from any third State whatever, even those least connected to the Community by economic interests. Moreover, Regulation No 2513/69 supports the argument that derogations from general principles must result from the very letter of the derogatory provision and cannot be deduced by way of extensive or restrictive interpretation. For the limitation of the prohibition against instituting quantitative restrictions is expressly provided for in the last subparagraph of Article 1 (1) of Regulation No 2513/69.

To sum up, as from 1 October 1970, no quantitative restriction, and consequently no quota, could be introduced or maintained in force in respect of imports of fresh table grapes from Spain to each of the Member States. The sole limitation

on such imports could derive only from the application in its entirety of the customs duty which, outside the period from January to March each year, was levied without any reduction. In fact the fundamental instrument of customs protection is not the quota, but the customs duty. And when the Community grants reductions in duties during specific periods, it means that the Community considers that its frontiers are sufficiently protected during the other periods of the year by the application in their entirety of those same duties.

As far as the first question referred for a preliminary ruling is concerned, Rivoira argues that Article 115 of the EEC Treaty is not applicable once there exists an agricultural market organization which sets up a single market and is coupled with a common agricultural policy, or once there is a commercial agreement, such as the one concluded between the Community and Spain.

Recourse to Article 115 of the Treaty cannot be authorized after the establishment of a common organization of the market in fruit and vegetables. That organization has set up a single market and gone far beyond the stage of mere standardization of the different markets of the Member States to which the rules on commercial policy refer. For some time now, the most assiduous interpreters of Community law have ruled out any application of the provisions referred to in Article 115 of the EEC Treaty to common organizations of markets. The argument that that article is inapplicable is confirmed first of all by the fact that, while referring to Article 110 of the Treaty, the 25th Recital to Regulation (EEC) No 1035/72 of the Council of 18 May 1972 on the common organization of the market in fruit and vegetables (OJ, English Special Edition 1972 (II), p. 437) explicitly limits that reference to the 'objectives' set out in Article 110 of the Treaty. Furthermore, reference is made expressly and solely to Article 110, and not to Article 115, of the Treaty. Finally, the common organizations of the markets — and in particular that of the market in fruit and vegetables — have provided appropriate protective measures (see Article 2 of Regulation No 2513/69 and Article 29 of Regulation No 1035/72). Thus the problem of such measures was not ignored; it was settled by other means which — by their specific nature — exclude those of Article 115 of the Treaty, if indeed they were still applicable. In the judgment of 15 December 1971 in Joined Cases 51 to 54/71 *International Fruit Company NV and Others* v *Produktschap voor Groenten en Fruit* [1971] 2 ECR 1107, whilst it allowed that the prohibition against introducing any quantitative restrictions for imports of fruit and vegetables from third countries was not absolute, the Court of Justice let it be clearly understood that the only legitimate protective measures are those based on Regulation No 2513/69, which authorizes them exclusively 'in the case of a threat of disturbance of the markets through imports from third countries'.

Consequently, in this case the French Government could not in any event justify the quota restrictions on Spanish table grapes by relying on Article 115, even if Spain had not concluded any commercial agreement with the EEC. It is even more difficult to accept that Article 115 can still apply, once there is a commercial agreement. First, the measures referred to in Article 115 are provided for in the event of certain deflections of trade in the context of measures of commercial policy taken by Member States *ut singuli* within the framework of and with a view to the implementation of the common commercial policy. That common policy merely standardizes the conduct of each of those States, and does so on the basis of 'common principles'. However, the agreement at issue lays down a body of precise and extremely detailed rules which are binding on the Member States,

the institutions and also private persons, in so far as they are introduced by a regulation having general application.

Furthermore, it cannot be accepted that in concluding a commercial agreement based on reciprocal concessions Spain granted the Community the right to use provisions of its internal legal system which by themselves would enable it to evade the obligations undertaken. Moreover, this conclusion springs from the requirements of common sense and good faith, to which regard must be had in interpreting international instruments.

Finally, Article 11 (1) and (2) of the Agreement in question introduces specific, reciprocal protective provisions. The very existence of those provisions confirms that other forms of protection are no longer applicable. Moreover, if the provisions of Article 11 of the Agreement are compared with those of Article 115 of the Treaty, the particular severity of the conditions applied to the protective measures under the Agreement emerges. It is clear that the Agreement sought to make available to the parties certain 'necessary' protective measures in order to deal with unforeseen and unforeseeable situations.

After the Agreement between the EEC and Spain entered into force, reliance had to be placed exclusively on the protective measures provided for by the same Agreement in order to justify the existence of any bilateral quota against Spain. If it is remembered that for such measures to be applied there have to be 'serious disturbances', which were totally lacking in this case as far as France is concerned, it becomes apparent that the fixing of any quota for Spanish grapes was indefensible on the basis of the Agreement.

For the purposes of the third and fourth questions referred to the Court for a preliminary ruling, Rivoira observes that the whole problem of the legality of the quota in question must be disregarded. For, if the quota was illegal by virtue of the Agreement, it is clear that the French authorities could not even have prevented direct imports from Spain to France, with the consequence that the problem of subsequent action to prohibit indirect imports of grapes in free circulation in Italy also could not have arisen. Thus Rivoira assumes purely for the sake of argument that France was entitled to the quota in question and that it was legal, notwithstanding the Agreement existing between Spain and the EEC.

Analysis of the judgment of the Court of 15 December 1976 in Case 41/76 *Donckerwolcke* v *Procureur de la République* ([1976] ECR 1921) provides everything required to settle the last two questions referred to the Court for a preliminary ruling, and in addition confirms the argument as to the illegality of the quota in question. Paragraphs 21 to 23 of the Decision of the Court in the said case state that the movement certificate DD1 'contains no indication concerning the origin of the products' and 'must, of itself and without the addition of any measure of national law, guarantee to the person holding it the benefit of free circulation for the goods which it is intended to cover'. The Court goes on to state that '... the application of the principles referred to above is conditional upon the establishment of a common commercial policy' (see paragraphs 24 to 26 of the Decision of the Court). With the conclusion of the Agreement between the EEC and Spain in 1970, there was established above all a commercial policy within the meaning of Article 113 of the EEC Treaty, by which goods imported into the Community from Spain are treated in exactly the same way as Community goods. Even allowing that that Agreement permits of the introduction of bilateral quotas, any Member State applying such quotas is in any event unable to oppose the entry into its territory of the goods concerned from other Member States in which they are in free circulation.

As regards the imposition of the obligation to indicate the origin of the goods in respect of products which are in free circulation, the case-law of the Court also provides a decisive answer. When there is a common commercial policy, the Community customs certificate (DD1 or T2) is sufficient to carry out transactions of reciprocal importation of goods between Member States.

The customs authorities cannot demand any further information or any further documents. Such information can at most be asked for on other grounds, such as for example by virtue of the rules on quality standards. However, in the latter case, the absence of a declaration or the fact of the declaration's being incorrect as to the origin of the goods cannot entail consequence in the field of customs.

For the purpose of examining the fourth question referred for a preliminary ruling, Rivoira assumes — still purely for the sake of argument — that France could have recourse to Article 115 of the Treaty to defend the quota in question. On this point, Rivoira relies upon the aforementioned judgment in Case 41/76 *Donckerwolcke,* in which the Court ruled:

'...

National rules making the importation of products coming from and in free circulation in a Member State and originating in a third country subject to the issue of a licence for the purposes of the possible future application of Article 115 of the Treaty in any event constitute a quantitative restriction prohibited by Article 30 of the Treaty.

It follows that for imports effected in 1970 the French authorities could not impose licences with a view to the future application of Article 115; the authorization provided for in that article should already have been granted before the importation. Similarly, the claim of the French authorities was equally illegal in respect of the transactions carried out in 1971, in spite of the existence of Decision No 71/202 of the Commission of 12 May 1971 (OJ, English Special Edition 1971 (I), p. 343). Indeed, under Article 1 of that decision, — the Member State could not use the Community powers to defend the quota until 80 % of that quota had already been utilized. In fact, that did not occur.

As regards the fifth and sixth questions referred for a preliminary ruling, Rivoira submits that it may be deduced from the combined provisions of Regulation No 58/62 of the Commission (Annex 1/7, VI) and of the first basic Regulation No 23 in the fruit and vegetables sector (OJ, English Special Edition 1959-1962, p. 97) that the information relating to the origin of the grapes is designed to protect the interests of the consumer.

Therefore that information does not relate to customs. The absence or the incorrectness of a statement of the origin of the goods in contravention of Regulation No 58/62 may therefore entail administrative or pecuniary penalties, but can never result in the application of penal customs penalties.

In the present case, the French authorities demanded a statement of the origin of the goods and penalized the incorrectness of that statement, solely in order to ensure compliance with the quota in question and consequently for reasons pertaining to customs. The illegal nature of such conduct clearly emerges from the judgment in Case 41/76 *Donckerwolcke,* in particular paragraphs 36 to 39 of the Decision of the Court in that case.

The *Commission* examines the question of the compatibility of quantitative restrictions with Community law in the light of the Community rules on commercial policy and those on the common agricultural policy. As regards the present case, Article 1 of Regulation No 2513/69 — which was applicable at

the material time — is a general provision. Although as a general rule that provision prohibits the application to third countries of quantitative restrictions and measures having equivalent effect, by way of exception it specifically empowers Member States to apply such restrictions or measures to the products referred to in the annex (which include table grapes) for the period of the year stated in the annex in question.

The French Republic availed itself of that power and notified the Commission for the years 1970 and 1971 of a quantitative restriction and a measure having equivalent effect concerning Spanish table grapes.

In relation to the general provision mentioned above, the provisions of the Agreement concluded between the EEC and Spain constitute a *lex specialis* the effect of which is further to limit the freedom of the Member States.

Spanish table grapes — which, under Article 11 of Annex I to the Agreement, enjoy a reduction in customs duties during the first three months of the year — are, together with tomatoes, the only products listed in Article 11 in respect of which the reduction of duties is limited to a part of the year. In the absence of such limitation, the corresponding Community production would be exposed to excessively severe competition during the other periods of the year.

Taking into account the close connexion established by Article 1 of Annex I between the reduction in customs duties and the abolition of quantitative restrictions, the Commission takes the view that the provision in question must be interpreted as meaning that in respect of Spanish tomatoes and table grapes quantitative restrictions are abolished only during the period for which the reduction in customs duties is applied. In accordance with that interpretation, France continued to apply quantitative restrictions to Spanish grapes during a specific period of the year even after the Agreement with Spain entered into force. Similarly, the frontiers of the Belgo-Luxembourg Economic Union (UEBL) are closed to Spanish table grapes during the period between 1 July and 31 December. Furthermore, the said interpretation underlies several decisions based on Article 115 of the Treaty which have authorized the Kingdom of Belgium and the Grand Duchy of Luxembourg to exclude Spanish tomatoes and grapes from Community treatment during the last months of the year.

Moreover, the Commission's interpretation is shared by Spain, as emerges in particular from the Note Verbale of the Spanish mission to the European Communities dated 16 March 1972 (see annex to the written observations), in which Spain deplores the fact of a Member State's applying quantitative restrictions to Spanish tomatoes between 15 April and 14 May.

In order to justify the abolition of restrictions during the period between 15 April and 14 May, Spain relies in the first place not upon the Agreement between the EEC and Spain, but upon Regulation No 2513/69, which empowers Member States to maintain pre-existing quantitative restrictions in force only during the period between 15 May and 31 December (Article 1 and Annex). In the second place, Spain does not protest against restrictions on imports applied by the same Member State to Spanish tomatoes between 15 May and 30 November.

To sum up, on the basis of the combined provisions of Article 1 of Regulation No 2513/69 (currently Article 22 of Regulation No 1035/72) and of Article 1 of Annex I to the Agreement between the EEC and Spain, Member States may continue to apply to table grapes of Spanish origin during the period between 1 July and 31 December each year

quantitative restrictions in existence prior to Regulation No 2513/69.

Since certain Member States have actually exercised that option, it can be established that there are differences between measures of commercial policy applied by the Member States, which is the basic condition for the application of Article 115 of the EEC Treaty. Application of that article cannot be excluded on the grounds that 'under a commercial agreement concluded by the EEC' there is 'a Community system for importation'. For a Community system provided for by such an agreement does not necessarily entail the existence of a uniform system applicable to trade with third countries. Pending the progressive introduction of such a system, an agreement concluded by the Community can provide not only for the power, but also possibly for the duty on the part of Member States to apply differentiated measures to specific imports. Therefore the decisive factor in excluding the application of Article 115 of the Treaty is not the existence of a Community agreement but the content of that agreement and, in the last analysis, the existence of a uniform system.

As regards the questions referred for a preliminary ruling concerning the obligation to produce a certificate of origin for products which have been put into free circulation, the Commission observes that it is not known which documents were required to be produced when the goods in question were brought into France. At all events, since the third question mentions not only certificates of origin but also other means of identifying the origin of the products, it seems appropriate that the Court should reiterate the answer which it gave in its judgment in the *Donckerwolcke* case to the question of the compatibility with Community law of the obligation to indicate the country of origin in the customs declaration.

As to the problem regarding Articles 30 and 115, the Commission also refers to the judgment in the *Donckerwolcke* case, in which the Court defined the measures which may be adopted by a Member State in order to establish the origin of goods in free circulation with a view to the application of Article 115. The conditions laid down by the Court in order for an obligation *to indicate* origin to be lawful do not allow the importation of those goods to be made subject to an obligation to supply *proof* of origin: indication of origin may be demanded only if knowledge of the origin may reasonably be expected and if the absence or inaccuracy of a declaration can give rise to an administrative penalty, which excludes prohibition on importing. To demand a certificate of origin amounts to demanding *proof* of origin. Therefore an obligation to produce a certificate of origin for the purposes of applying Article 115 of the Treaty is incompatible with Article 30.

For the imports carried out in December 1971, account must also be taken of the decision of the Commission of 12 May 1971, adopted on the basis of Article 115 of the Treaty. That decision empowered Member States to adopt interim protective measures with a view to a request that goods put into free circulation in other Member States should be excluded from Community treatment. Under Article 1 (2) of the said Decision, 'a Member State may require an applicant for an import authorization to supply all relevant information concerning the description of the product, its origin ...'. That provision does not allow production of a certificate of origin to be stipulated. Indeed, to require information to be supplied cannot mean to require a certificate to be produced and even less to make imports subject to such certificate.

In December 1971 the quantitative restriction applied by France to Spanish grapes consisted of the fixing of a quota. Therefore, under the second subparagraph of Article 1 (1) of the

decision of 12 May 1971, that Member State could not use the powers provided for in the first subparagraph until 80 % of the quota had been utilized.

Until then, the importer could not even be asked to state the origin of the goods.

The Commission then examines the same question of the lawfulness of the obligation to produce a certificate of origin from the point of view of compatibility with Community legislation on quality standards for fruit and vegetables and with Article 30 of the Treaty, if applicable. Under heading VI C of Annex 1/7 to Regulation No 58, those standards provide, in respect of table grapes, that each package must bear legibly and indellibly marked on the outside — by way of the origin of the produce — a statement of the district of origin, or national, regional or local trade name.

It is clear that in the context of that piece of legislation, the origin of the produce is not to be taken into consideration for the determination of the customs, quantitative or other treatment applicable on importation. The basic problem at which quality standards are directed lies in the area of industrial property and, more precisely, of geographical names which can be protected as trade names or designations of origin. The purpose of the compulsory indication of geographical names provided for by the quality standards is to inform the consumer and at the same time to enhance the value of the produce.

As regards grapes of Spanish origin, cleared through customs in Italy and redispatched to France, the Commission states that a first compulsory inspection must be carried out at the point of customs clearance (cf. the second subparagraph of Article 3 (1) of Regulation No 80/63/EEC, OJ, English Special Edition 1963-1964, p. 39).

Since Spain belongs to the Organization for Economic Cooperation and Development (OECD) system for the application of international standards to fruit and vegetables, grapes are accompanied by the OECD inspection certificate (containing *inter alia* a statement of the country of origin), which allows Article 3 (2) of Regulation No 80/63/EEC to be applied.

After that inspection, Spanish grapes fall under the provisions applicable to Community produce. Under Article 5 of Regulation No 158/66/EEC (JO No 192, p. 3282) quality control is carried out by sampling at all stages of marketing as well as during transport.

Taking the latter provision into account, it is possible for an additional inspection to take place at the time when the grapes in question cross from Italy into France. If at that time the French authorities request proof of origin, the lawfulness of such a request cannot in principle be denied. However, in order to act in such a way, the inspecting administration must have a valid reason to doubt the accuracy of the statement of origin appearing on the packages and the inspection certificate. Furthermore, such reason must be based upon the suspicion that it was intended to usurp a particular geographical name in order wrongfully to enhance the value of the produce for commercial purposes. If the inspecting institution then becomes convinced of the inaccuracy of the statement of origin it should first of all require the goods to be brought into conformity with the standards (cf. Article 3 of Regulation No 93/67/EEC, OJ, English Special Edition 1967, p. 24). That minimum obligation is imposed 'without prejudice to the penalties provided for in Article 8 of Regulation No 158/66/EEC', as stated in Article 3 of Regulation No 93/67/EEC. The nature and extent of those penalties are left to the discretion of the Member State, which must, however, comply with the prohibition on measures having an effect equivalent to a quantitative

restriction. The Member State's refusal to authorize the introduction of the goods into its territory falls under that prohibition, since in the circumstances of this case it is a penalty applicable only to imported products. If the Member State may not prevent the introduction into its territory of grapes for which the statement of origin has proved to be inaccurate, *a fortiori* it cannot make such introduction subject to proof of accuracy, that is to say production of a certificate of origin, without infringing Article 30 of the EEC Treaty.

As regards the application by a Member State of heavier penalties for imported grapes than for domestically-produced grapes in the event of failure to comply with the quality standards, the Commission takes the view that such discrimination is patently contrary to Article 30 of the Treaty. However, it seems unlikely that the case posited in the sixth question referred for a preliminary ruling would arise in the manner stated.

On the other hand, what may happen is that the same act should be prohibited by two different provisions. Thus, if an inaccurate statement of origin appears both on the customs declaration and on the packaging of the grapes, it is lawful to apply a penalty complying with the criteria defined in the judgment in the *Donckerwolcke* case in respect of the inaccurate customs declaration in addition to the penalty laid down for non-conformity with the quality standards. It is clear that for an incorrect statement concerning a domestic product, only the second penalty could fall to be imposed.

The Commission submits that the questions referred by the Tribunale di Saluzzo should be answered as follows:

1. The basic condition governing the applicability of Article 115 of the Treaty is the absence of a uniform Community system applicable to trade with a specific third country, regardless of the existence of an agreement concluded by the Community with that country.
2. The combined provisions of Article 1 of Regulation (EEC) No 2513/69 and Article 1 of Annex I to the Agreement between the European Economic Community and Spain allowed Member States to continue to apply in 1970 and 1971 to table grapes of Spanish origin during the part of the year between 1 July and 31 December quantitative restrictions in existence prior to the entry into force of Regulation (EEC) No 2513/69.
3. The requirement by the importing Member State of the indication of the country of origin on the customs declaration document for products in free circulation whose Community status is attested by the Community movement certificate does not in itself constitute a measure equivalent to a quantitative restriction if the goods in question are covered by measures of commercial policy adopted by that State in conformity with the Treaty.
   Such a requirement would, however, fall under the prohibition contained in Article 30 of the EEC Treaty if the importer were required to declare, with regard to origin, something other than what he knows or may reasonably be expected to know, or if the omission or inaccuracy of that declaration were to attract penalties disproportionate to the nature of a contravention of a purely administrative character.
4. For a Member State to make the introduction into its territory of products in free circulation in the Community subject to production of a certificate of origin constitutes a measure having an effect equivalent to a quantitative restriction prohibited by Article 30 of the Treaty, whether that measure is applied with a view to the application of Article 115 of the Treaty or whether it is applied in the context of the inspections provided for by Community legislation relating to quality standards for fruit and vegetables.

5. In the case of failure to comply with the common quality standards applicable to fruit and vegetables, the application of heavier penalties to products from other Member States than to domestic products constitutes a measure having an effect equivalent to a quantitative restriction prohibited by Article 30 of the Treaty.

III — Oral procedure

At the hearing on 11 October 1977 the defendant in the main action and the Commission of the Communities submitted oral argument.

The Advocate-General delivered his opinion at the hearing on 9 November 1977.

Decision

1 By an order of 15 April 1977, which was received at the Court on 19 April 1977, the President of the Tribunale di Saluzzo referred to the Court of Justice for a preliminary ruling six questions concerning the interpretation of Articles 115 and 30 of the Treaty, of the Agreement concluded between the European Economic Community and Spain on 29 June 1970, which was the subject of Regulation No 1524/70 of the Council of 20 July 1970 (OJ, English Special Edition, Second Series, I. External Relations (1), p. 269), and of Regulation No 58/62 of the Commission of 15 June 1962, laying down common quality standards for certain products listed in Annex I B to Regulation No 23 on the progressive establishment of a common organization of the market in fruit and vegetables (OJ, English Special Edition 1959-1962, p. 204).

2 The questions are referred in the framework of proceedings for a warrant for attachment brought by the undertaking Leonce Cayrol (hereinafter referred to as Cayrol) against the undertaking Giovanni Rivoira & Figli, SNC (hereinafter referred to as Rivoira).

3 It appears from the case that in December 1970 and December 1971 Cayrol imported into France various consignments of table grapes of Spanish origin which were dispatched from Italy (where the grapes had been put into free circulation) by Rivoira and that the said consignments were accompanied by the certificate of the Istituto Nazionale per il Commercio Estero (ICE) certifying that the goods were in conformity with the quality standards and stating that they were of Italian origin.

4 Following a check carried out by the French customs authorities on 9 August 1972 (thus after the marketing of the grapes) Cayrol and Rivoira were charged

with having imported prohibited goods by means of a false declaration of origin and on the basis of false or inaccurate documents, since the quota fixed by France for imports of Spanish grapes had been exhausted.

5 In its judgment on that charge the Tribunal de Grande Instance, Montpellier, ordered Cayrol and Rivoira jointly *inter alia* to pay a fine in lieu of confiscation and a fine amounting to twice the value of the goods liable to confiscation, and rejected the argument put forward by the defendants that the grapes had acquired Italian origin by reason of processing in Italy.

6 Cayrol discharged the fine by paying the amount of a settlement which was proposed to him and applied to the Tribunale di Saluzzo for a warrant for attachment against Rivoira, on the grounds that the penalties applied were caused by the conduct of Rivoira, who had deceived the French customs authorities as to the origin of the goods by means of the ICE certificate. This led the President of the Tribunale to ascertain whether the action of those authorities was compatible with the provisions of Community law.

7 The first two questions concern the effect on the present case of the commercial agreement concluded between the Community and Spain on 29 June 1970.

8 First, it is asked whether Article 115 of the Treaty may be relied upon by Member States in connexion with products originating in a third country which are covered 'by a Community import system pursuant to a commercial agreement concluded by the EEC with the said third country'.

9 Then, it is asked whether Article 1 of Annex I to the agreement in question must be interpreted 'to mean that from the date of the entry into force of the agreement, that is, 1 October 1970, the Member States were no longer empowered to introduce directly (on the basis of bilateral commercial agreements previously concluded with Spain) quantitative restrictions of whatever nature, including import quotas, with regard to products originating in Spain (and in particular those covered by Article 11 of Annex I to the Agreement between the EEC and Spain, tariff heading 08.04, fresh table grapes) throughout all the months of the year'.

10 These two questions should be considered together.

11 As regards the interpretation of the Agreement, in its observations Rivoira relied on Articles 1 and 11 (under heading 08.04 of the Common Customs Tariff) together of Annex I to the Agreement, to argue that those provisions prohibit quantitative restrictions on imports of fresh grapes.

12 It was argued that, in fact, since Article 11 provides that imports of the product into the Community shall be subject to customs duties reduced by 50 % during the period between 1 January and 31 March, Article 1, according to which 'Imports into the Community of products originating in Spain which are covered by the provisions of this Annex ... shall be admitted without quantitative restrictions', prohibits quota restrictions such as those invoked by the French authorities.

13 However, in its observations, the Commission argued that the said Article 1 must be interpreted as meaning that quantitative restrictions are prohibited only *in so far* as the provisions of the Annex apply to the products referred to, and that consequently, as far as fresh table grapes are concerned, that prohibition operates only during the part of the year between 1 January and 31 March.

14 Although at first sight the broader interpretation put forward by Rivoira may appear acceptable, the interpretation suggested by the Commission is more in accordance with both the general scheme and the objectives of the Agreement.

15 Indeed, certain provisions of Annex I to the Agreement — and as far as fresh grapes are concerned, Article 9 (2) thereof — provide for quota restrictions, and therefore quantitative restrictions, so that it must be concluded that Article 1 is not intended to prohibit all quantitative restrictions.

16 However, where the Agreement provides for reduced duties on imports at certain periods, it is normal for it to stipulate that that advantage may not be fettered by quantitative restrictions.

17 On the other hand, it cannot be concluded that for the rest of the year, in this case for the period between 1 April and 31 December, such restrictions are also prohibited, as the fact that the reduced customs duty applies only for three months of the year is in itself an indication that other considerations may prevail outside that period.

18 Moreover, that interpretation is confirmed by the settled practice of the parties to the Agreement, as it emerges from the documents produced by the Commission.

19 Furthermore, Article 1 of Regulation No 2513/69 of the Council of 9 December 1969 on the coordination and standardization of the treatment accorded by each Member State to imports of fruit and vegetables from third countries (JO L 318, p. 6) provides that:

'1. Subject to Community Provisions to the contrary and to exceptions decided upon by the Council acting in accordance with the voting procedure laid down in Article 43 (2) of the Treaty on a proposal from the Commission,

— the levying of any charge having an effect equivalent to a customs duty,

— the application of any quantitative restriction or measure having equivalent effect,

on imports from third countries of products falling within heading 07.01 (excluding subheading 07.01 A) and headings 08.02 to 08.09 of the Common Customs Tariff shall be prohibited.

However, without prejudice to the provisions of the second subparagraph of paragraph 2, the provisions of the second indent of the first subparagraph shall not apply during the periods specified in the Annex in respect of the products listed therein.

2. The Council, acting in accordance with the voting procedure laid down in Article 43 (2) of the Treaty on a proposal from the Commission, shall, before 1 January 1973, decide upon the conditions under which the prohibition contained in the second indent of paragraph 1 shall be extended to the products listed in the Annex during the periods specified therein.

Until the entry into force of the measures decided upon pursuant to the first subparagraph, Member States shall apply no quantitative restrictions or measures having equivalent effect other than those which they applied during the marketing year preceding the date of the entry into force of this regulation; nor shall they make such measures more restrictive.

Member States which fulfil the conditions laid down for applying the measures referred to in the second subparagraph, and which propose to apply them, shall notify the Commission thereof before the beginning of the import year.

However, as far as the 1969/1970 import year is concerned, such notification shall be made not later than 15 January 1970.'

20 It emerges therefrom that the Member States were empowered to apply quantitative restrictions for the products referred to in the Annex to Regulation No 2513/69 — which included table grapes — for the period of the year stated in the Annex in question, which for table grapes is the period between 1 July and 31 January.

21 It is not disputed that, making use of the possibility left to the Member States by the provision cited, the French Republic notified the Commission, for the years 1970 and 1971, of a quantitative restriction concerning Spanish table grapes consisting in a limitation of imports thereof to a quota of FF 5 million for the period between mid-November and 31 January.

22 The effect of the agreement between the Community and Spain is further to limit the freedom of the Member States and, consequently, the possibility for the French Republic to extend the notified restriction to the month of January.

23 On the other hand, it results from the foregoing that, having regard to the combined provisions of Article 1 of Regulation No 2513/69 and of Articles 1 and 11 of Annex I to the Agreement between the EEC and Spain, Member States could continue to apply to table grapes of Spanish origin during the part of the year between 1 July and 31 December quantitative restrictions in existence prior to Regulation No 2513/69.

24 Finally, as to the interpretation of Article 115 of the Treaty which has been requested, since certain Member States including the French Republic have actually made use of the possibility of continuing to apply quantitative restrictions to imports of table grapes of Spanish origin, differences arose at the time between the measures of commercial policy applied by the Member States, which is the basic condition for the application of Article 115.

25 It follows from the foregoing that during the part of the year between 1 July and 31 December table grapes were not covered by a Community import system such as to make Article 115 inapplicable to the case.

26 It is not disputed that two Member States obtained the authorization of the Commission which is referred to in the second sentence of the first paragraph of that article, to exclude Spanish table grapes from Community treatment during the last months of the year, which authorization empowered them, by way of derogation from Article 30 of the Treaty, to check the origin of products in trade within the Community.

27 It is important to point out that, according to the information supplied by the Commission, the French Republic neither requested nor obtained such authorization.

28 Be that as it may, the answer should be that, for the years 1970 and 1971 the existence of the commercial agreement between the Community and Spain formed no obstacle to the application to imports of table grapes of Article 115 of the Treaty.

29 Questions 3 to 6 referred to the Court by the President of the Tribunale di Saluzzo seek to ascertain what checks at frontiers within the Community are still compatible with Community law.

30 The third and fourth questions ask whether the fact that the importation of products in free circulation is made subject to the production of certificates of origin or other means of identifying the origin of the products at issue constitutes a measure having an effect equivalent to a quantitative restriction prohibited by Article 30 of the Treaty, and if that question is answered in the affirmative, whether the Member States may derogate from that prohibition

and require certificates of origin for all goods coming from other Member States, before the date of the granting by the Commission of an authorization under Article 115 of the Treaty.

31 Arguing that it does not appear from the case file that the production of certificates of origin was demanded in this instance, the Commission raised the question whether the questions are relevant to the reaching of a decision in the case before the national court.

32 However, it is not for the Court of Justice to assess whether questions referred to it by a national court under Article 177 of the Treaty are relevant to the nature and subject-matter of the action before that court, since in accordance with the structure of the procedure for a preliminary ruling such assessment comes within the jurisdiction of the national court.

33 Member States cannot ignore the origin of goods in free circulation originating in third countries and presented for importation precisely in cases where, because the common commercial policy has not been fully achieved, differences remain between the measures of commercial policy applied by the Member States and where deflections of trade or economic difficulties may be feared.

34 As the Court has already held in its judgment of 16 December 1976 (Case 41/76 *Donckerwolcke* [1976] ECR 1921) within such a context the Member States are not prevented from requiring from an importer a declaration concerning the actual origin of the goods in question even in the case of goods put into free circulation in another Member State and covered by a Community movement certificate.

35 In these circumstances it may be admitted that knowledge of that origin is necessary both for the Member State concerned, so that it may determine the scope of commercial policy measures which it is authorized to adopt pursuant to the Treaty, and for the Commission, for the purpose of exercising the right of supervision and decision conferred on it by Article 115.

36 Nevertheless, the Member States may not require from the importer more in this respect than an indication of the origin of the products in so far as he knows it or may reasonably be expected to know it.

37 In addition, the fact that the importer did not comply with the obligation to declare the real origin of goods cannot give rise to the application of penalties which are disproportionate, taking account of the purely administrative nature of the contravention.

38 In this respect seizure of the goods or any pecuniary penalty fixed according to the value of the goods would certainly be incompatible with the provisions of the Treaty as being equivalent to an obstacle to the free movement of goods.

39 In general terms, any administrative or penal measure which goes beyond what is strictly necessary for the purposes of enabling the importing Member State to obtain reasonably complete and accurate information on the movement of goods falling within specific measures of commercial policy must be regarded as a measure having an effect equivalent to a quantitative restriction prohibited by the Treaty.

40 *A fortiori,* the requirement of an import licence for the introduction into a Member State of goods put into free circulation in another Member State is incompatible with the provisions of the Treaty in so far as the goods are not the subject of a derogation properly authorized by the Commission by virtue of the second sentence of the first paragraph of Article 115.

41 The fifth and sixth questions ask whether the Community legislation relating to quality standards for fruit and vegetables, in particular the provisions of Regulation No 58/62, permits Member States to render intra-Community trade subject to production at the frontier of documents relating to the origin of products in free circulation coming from other Member States and whether, in the case of a failure to comply with those standards, the application to imported products of the penalties prescribed for the infringement of national customs legislation does not constitute a measure having equivalent effect prohibited by Article 30 of the Treaty, when domestic products which fail to comply with the same standards are subject only to the lighter penalties provided for by the national rules.

42 Although it is true that quality standards for fruit and vegetables, and hence for table grapes, were laid down for the first time in Regulation No 58/62, at the time of the imports at issue that field was governed by Regulation No 158/66 of the Council of 25 October 1966 on applying common quality

standards to fruit and vegetables marketed within the Community (JO No 192, 27. 10. 1966, p. 3282/66) which, according to the first recital of its preamble, aims to 'banish products of unsatisfactory quality from the market, to orientate production in such a way as to satisfy consumer requirements, and to promote commercial dealing on the basis of fair competition and common rules'.

43 Article 1 of Regulation No 80/63 of the Commission of 31 July 1963 on quality inspection of fruit and vegetables imported from third countries (OJ, English Special Edition 1963-1964, p. 39) provides that 'Before [certain products] from third countries are accepted for importation into Member States, they shall be subjected to an inspection to establish ... whether these products conform to the common quality standards ... or to standards which are at least equivalent'.

44 Regulation No 93/67 of the Commission of 3 May 1967 laying down initial provisions on quality control of fruit and vegetables marketed within the Community (OJ, English Special Edition 1967, p. 24) and Regulation No 2638/69 of the Commission of 24 December 1969 laying down additional provisions on quality control of fruit and vegetables marketed within the Community (OJ, English Special Edition 1969 (II), p. 611) laid down the rules for quality control.

45 According to Article 3 (1) of Regulation No 158/66, the particulars required by the quality standards — which include a statement of the origin of the goods — must be legibly and indelibly marked on one of the sides of the package, either printed directly onto the package or by means of a label firmly affixed thereto, and Article 3 (2) provides that, as regards goods dispatched in bulk, this information shall be given in a document to accompany the goods or on a form placed where it can be seen inside the means of transport.

46 As far as inspection is concerned, Article 3 of Regulation No 93/67 provides that 'Where the items inspected fail to comply with the rules in force', the inspector shall require the compulsory declarations to be brought into conformity with those rules, or require them to be dispatched to a destination in respect of which the quality standards do not apply.

47 It follows that the rules relating to control of the quality of the products in question cannot of themselves justify a requirement to produce documents

concerning the origin of the products, on the condition however that when an inspection is carried out the inspector may require proof that the compulsory declarations are in accordance with the facts.

48 The second paragraph of Article 8 of Regulation No 158/66 provides that 'Member States shall take all appropriate measures to provide penalties for infringements of this Regulation'.

49 That article does not in general draw any distinction between infringements concerning domestic products and those concerning products from other Member States or between infringements concerning Community products and those concerning non-Community products.

50 It is to be inferred from this that Article 8 seeks to penalize any infringement on the same basis, without distinction as to the origin of the product, and therefore that national measures entailing such distinctions could, where appropriate, be regarded as discriminatory and thereby incompatible with the Treaty, in particular Article 30.

Costs

51 The costs incurred by the Commission, which has submitted observations to the Court, are not recoverable.

52 As these proceedings are, so far as the parties to the main action are concerned, in the nature of a step in the action pending before the national court, costs are a matter for that court.

On those grounds,

THE COURT,

in answer to the questions referred to it by the President of the Tribunale di Saluzzo by an order of 15 April 1977, hereby rules:

1. **For the years 1970 and 1971 the existence of the commercial agreement between the Community and Spain formed no obstacle to the application to imports of table grapes of Article 115 of the Treaty.**

2. Having regard to the combined provisions of Article 1 of Regulation No 2513/69 and of Articles 1 and 11 of Annex I to the Agreement between the EEC and Spain, Member States could continue to apply to table grapes of Spanish origin during the part of the year between 1 July and 31 December quantitative restrictions in existence prior to Regulation 2513/69.

3. Any administrative or penal measures which goes beyond what is strictly necessary for the purposes of enabling the importing Member State to obtain reasonably complete and accurate information on the movement of goods falling within specific measures of commercial policy must be regarded as a measure having an effect equivalent to a quantitative restriction prohibited by the Treaty. The requirement of an import licence for the introduction into a Member State of goods put into free circulation in another Member State is incompatible with the provisions of the Treaty in so far as the goods are not the subject of a derogation properly authorized by the Commission by virtue of the second sentence of the first paragraph of Article 115.

4. The rules relating to control of the quality of products cannot of themselves justify a requirement to produce documents concerning the origin of products, on condition however that when an inspection is carried out the inspector may require proof that the compulsory declarations are in accordance with the facts.

5. Article 8 of Regulation No 158/66 seeks to penalize any infringement, without distinction as to the origin of the product. National measures entailing such distinctions may, where appropriate, be regarded as discriminatory and thereby incompatible with the Treaty, in particular Article 30.

Kutscher Sørensen Bosco Donner Pescatore

Mertens de Wilmars Mackenzie Stuart O'Keeffe Touffait

Delivered in open court in Luxembourg on 30 November 1977.

A. Van Houtte
Registrar

H. Kutscher
President