OPINION OF ADVOCATE GENERAL GULMANN
delivered on 20 April 1994 *

Mr President,
Members of the Court,

1. The High Court of Justice, Queen's Bench Division, has referred questions to the Court for a preliminary ruling in order to be able to decide whether the British authorities are acting in breach of Community law in accepting imports of citrus fruit and potatoes originating from the part of Cyprus to the north of the United Nations Buffer Zone when the products in question are not accompanied by the necessary certificates of origin and plant health issued by the authorities of the Republic of Cyprus.

2. It appears from the order for reference that the applicants in the main proceedings are a number of Cypriot producers and exporters of citrus fruit and the national marketing board for potatoes in Cyprus. The respondent in the main proceedings is the UK Minister for Agriculture who also represents the interests of other authorities in the case.

3. It further appears from the order for reference that in October 1991 the applicants requested confirmation from the respondent that the competent UK authorities would no longer allow the importation into the United Kingdom of citrus fruits or potatoes originating in Cyprus which were not accompanied by movement or phytosanitary certificates issued by the competent authorities in the Republic of Cyprus. The respondent replied in December 1991 that the United Kingdom did not accept documentation, stamps or seals referring to the 'Turkish Republic of Northern Cyprus' and that it only permitted imports of the products in question from Cyprus in accordance with relevant Community legislation. That reply was clarified at the request of the applicants in March 1992, when the respondent *inter alia* stated:

'As far as the UK authorities are aware, any imports which may have entered from the Northern part of Cyprus will have entered the Community in accordance with the Community requirements.'

* Original language: Danish.

4. It is clear from the order for reference that the following facts are undisputed:

— The Republic of Cyprus ('ROC') is a sovereign State, recognized by the United Kingdom and all other Member States of the European Community. The constitution of the Republic of Cyprus was established in 1960. The territory of the Republic of Cyprus comprises the whole of the island of Cyprus apart from the sovereign base areas.

— The United Kingdom does not recognize a 'Turkish Republic of Northern Cyprus' and it is not recognized by other Community Member States.

— There has been a UN Buffer Zone across the island of Cyprus since 1974. The Turkish Cypriot community is almost entirely resident to the north of that Buffer Zone.

— Significant volumes of citrus products and potatoes are imported into the UK from the part of Cyprus to the north of the UN Buffer Zone.

— None of the EUR.1 movement or phytosanitary certificates that accompany citrus products and potatoes imported into the UK from the part of Cyprus north of the UN Buffer Zone are issued by the authorities of the Republic of Cyprus.

— The UK customs authorities, who are responsible for checking EUR.1 movement certificates, have refused to accept certificates issued in the name of the 'Turkish Republic of Northern Cyprus'. They have continued to accept EUR.1 certificates with regard to goods exported from 'the part of Cyprus north of the UN Buffer Zone' which bear a stamp in the name of the Cyprus Customs Authorities even though the certificates do not originate from the authorities of the Republic of Cyprus.

— Similarly, the UK authorities do not accept phytosanitary certificates which are issued in the name of the 'Turkish Republic of Northern Cyprus'. They do accept phytosanitary certificates issued in the part of Cyprus north of the Buffer Zone to accompany products exported from that part. Some of those certificates have been issued in the name of the 'Republic of Cyprus — Turkish Federated State of Cyprus' but, from 1991 in any event, they have been issued in the name of 'Republic of Cyprus — Ministry of Agriculture'.

5. The requirement of a certificate of origin in connection with imports from the Republic of Cyprus dates back to the 1972 Association Agreement between the European Communities and the Republic of Cyprus. [1] The Agreement introduces a preference arrangement for products from Cyprus. [2] The preference is conditional on evidence being furnished that the products originate in Cyprus. The requirement of evidence of origin is contained in a Protocol of 1977 concerning the definition of the concept of 'originating products' and methods of administrative cooperation (referred to hereinafter as the 1977-Origin Protocol [3]). It appears from the Protocol that certificates — the so-called EUR.1 movement certificates (referred to hereinafter as certificates of origin) — are to be issued by the 'customs authorities of the exporting State'.

6. The phytosanitary certificate requirement was introduced by Council Directive 77/93/EEC of 21 December 1976 on protective measures against the introduction into the Member States of harmful organisms of plants or plant products (hereinafter referred to as the 'plant health directive'). [4] Under Article 12(1)(b) the certificates are to be issued by authorities empowered for this purpose on the basis of laws or regulations of the country. [5] Citrus fruits (other than lemons) and potatoes are among the products listed in Annex V imports of which are to be accompanied by phytosanitary certificates pursuant to Article 12 of the directive.

7. The questions referred to the Court for a preliminary ruling read as follows:

'(1) Where the importation into a Member State of citrus products or potatoes from Cyprus is accompanied by EUR.1 movement certificates issued by the Turkish community in the part of Cyprus to the north of the UN Buffer Zone and not by officials authorized

1 — See Regulation (EEC) No 1246/73 of the Council on the conclusion of an Agreement establishing an Association between the European Economic Community and the Republic of Cyprus, to which the text of the Agreement is annexed, OJ 1973 L 133, p. 1).

2 — The Association Agreement provides for progressively closer cooperation between the Community and Cyprus. In the first stage, which was originally to terminate in June 1977 but was extended to the end of 1987, a mutual reduction of duties on industrial and agricultural products was to be implemented. An Additional Protocol to the Association Agreement, which entered into force on 1 January 1988, governs the second stage and aims to create a customs union between the Community and Cyprus. The second stage is divided into two phases: the first phase, from 1988 to 1997, involves, *inter alia*, the further reduction of duties and the abolition of quantitative restrictions.

3 — The Protocol was approved by the Community by Council Regulation (EEC) No 2907/77 on the conclusion of the Additional Protocol to the Agreement establishing an association between the European Economic Community and the Republic of Cyprus (OJ 1977 L 339, p. 1). The Protocol, which is a revised version of the original 1972 Protocol, is an addition to the Association Agreement of 1972.

4 — OJ 1977 L 26, p. 20. The directive has been amended several times. Amongst the most significant amendments with regard to the present case are those adopted in Directives 80/392 (OJ 1980 L 100, p. 32) and 85/574 (OJ 1985 L 372, p. 25).

5 — Under the main rule in the provision phytosanitary certificates are to be issued by the authorities empowered for this purpose under the International Plant Protection Convention. That part of the provision does not apply to Cyprus, which is not a party to the Plant Protection Convention.

by the Republic of Cyprus ("ROC"), does Community law:

(a) preclude the Member State from permitting that importation?

(b) require the Member State to accept those certificates?

(2) Where the importation into a Member State of citrus products (other than lemons) and potatoes from Cyprus is accompanied by phytosanitary certificates issued by the Turkish community in the part of Cyprus to the north of the UN Buffer Zone and not by officials duly authorized by the ROC, does Community law:

(a) preclude the Member State from permitting that importation?

(b) require the Member State to accept those certificates?

(3) Would it make any difference to the answers to (1) or (2) above if:

(a) it were in practice impossible for exporters from the part of Cyprus to the north of the UN Buffer Zone to obtain certification for their products from the ROC?

(b) there were a significant impediment to exporters from the part of Cyprus to the north of the UN Buffer Zone exporting their products through the part of Cyprus under the effective control of the government of the ROC?

(c) the procedures for the issue and verification of such certificates in the part of Cyprus to the north of the UN Buffer Zone were as dependable as the procedures in the part of Cyprus under the effective control of the government of the ROC?

(4) Would it make any difference to the answer to question (2) above if the

experience from checks in the Member State were to show no distinction between the standard of plant health of such products imported from the part of Cyprus to the north of the UN Buffer Zone and from the part of Cyprus under the effective control of the ROC?

(5) Is it relevant to the answers to questions 3(a) or (b) above to determine whether or to what extent any impossibility or impediment was caused by the Turkish community in the part of Cyprus to the north of the UN Buffer Zone and/or by the ROC, and if so what difference does this make?'

8. The applicants in the main proceedings, the United Kingdom and Greek Governments and the Commission have submitted observations to the Court. At the hearing the Irish Government and two companies which export citrus fruit and potatoes from the part of Cyprus to the north of the Buffer Zone and import them into the Community also put forward observations.

Further details of the factual and legal background to the case

9. The serious issue on which the Court of Justice must rule in this case has its background in the Turkish invasion of Cyprus in 1974 and the subsequent *de facto* partition of Cyprus into an area over which the authorities of the ROC continue to exercise full jurisdiction and an area — the part to the north of the UN Buffer Zone — where the ROC authorities cannot in fact exercise their constitutional powers. [6] The latter part of the island, where the majority of the Turkish Cypriot population now lives, constitutes 37% of the territory of Cyprus and today has approximately 130 000 inhabitants, that is to say one-fifth of the total population of Cyprus of approximately 700 000 inhabitants. [7]

6 — In the Commission's opinion on the application by the Republic of Cyprus for membership, Bulletin of the European Communities Supplement 5/93, p. 7, it is stated: 'The existence of the Greek and Turkish communities side by side, but differing in language, culture, religion and national traditions, conferred on the young republic a turbulent history, littered with crises and outbreaks of intercommunal violence, culminating in 1974 in a coup inspired by the supporters of integration with Greece. This resulted in a military intervention by Turkey. The outcome of the crisis of August 1974 and the occupation of part of the territory of Cyprus by the Turkish army was the *de facto* partition of the island, which led to large-scale population movements across the cease-fire line and, more especially, from the northern to the southern part of the island. ... In 1992 it seemed at first that the intercommunal negotiations arranged through the good offices of the United Nations Secretary-General might provide the means of gradually hammering out a solution based on a two-community and two-zone federation. The principles of this solution were approved unanimously by the Security Council in April 1992 (Resolution 774/92). The intercommunal discussions that took place in October and November 1992 revealed, however, that a great many points of disagreement remained, including on general principles and institutional aspects of the future federation. The discussions were resumed in the spring of 1993 and although it is hoped that they may lead to a final agreement, the possibility of continuing disagreements can still not be ruled out.'

7 — According to the Commission's opinion on the application by the Republic of Cyprus for membership, p. 11, there is also a Turkish military force some 30 000 strong and between 45 000 and 50 000 Turkish settlers on that part of the island.

10. The northern area of Cyprus called itself, at all events from 1975, the Turkish Federated State of Cyprus.

11. The Turkish invasion and the subsequent *de facto* partition of the island were the subject of a number of resolutions adopted by the UN Security Council and the UN General Assembly. [8] The main thrust of those resolutions was that the external military intervention should be brought to an end, Cyprus's territorial integrity should be respected and the parties encouraged to seek a peaceful solution.

12. In November 1983 the Turkish community in the part of Cyprus to the north of UN Buffer Zone proclaimed itself an independent State with the name 'the Turkish Republic of Northern Cyprus'. The UN Security Council reacted against the attempt to set up such a State. By Resolution 541/1983 the Security Council pronounced the declaration of secession to be 'legally invalid and [called] for its withdrawal'. In Resolution 550/1984 the Security Council repeated 'the call upon all States not to recognize the purported state of the "Turkish Republic of Northern Cyprus" set up by secessionist acts and [called] upon them not to facilitate or in any way assist the aforesaid secessionist entity'. No States other than Turkey have recognized the so-called Turkish Republic of Northern Cyprus. [9]

13. By declarations of 16 and 17 November 1983 the European Parliament, the Commission and the Foreign Ministers of the Member States, in the framework of European Political Cooperation, rejected the unilateral declaration of secession and expressed their continued support for the legal government of the Republic of Cyprus. By a declaration of 27 March 1984, in the framework of European Political Cooperation, the Foreign Ministers expressed their support for UN Security Council Resolution 541/1983 and regretted that Turkey had taken the step of recognizing the so-called Turkish Republic of Northern Cyprus.

14. It may be assumed that exports from the part of Cyprus to the north of the Buffer Zone take place exclusively directly from that part of Cyprus and that essentially they consist of agricultural products, the major part of which goes to the Community and Turkey.

15. In its observations the Commission has explained that the special problems which

8 — Security Council Resolutions 353/1974, 354/1974, 355/1974, 357/1974, 358/11974, 360/1974 and 365/1974 and General Assembly Resolution 3212/XXIX.

9 — France, the United Kingdom and the Netherlands, which at the material time was also a member of the Security Council, all voted for Resolutions 541 and 550.

arose as a result of the *de facto* partition of Cyprus were discussed in the Association Council, where the European Community representative expressed the view that Article 5 of the Association Agreement concerning the prohibition of discrimination between nationals or companies of Cyprus must be regarded as being of decisive importance.

16. After the declaration of secession in November 1983, according to the Commission's evidence, the Government of the Republic of Cyprus addressed a 'speaking note' to the Community in which it stated that only goods accompanied by a certificate issued by the official Government and exported from ports and airports under the Government's control satisfied the requirements of the Association Agreement.

17. The Commission stated that it held and continues to hold the view that it is lawful for the authorities of the Member States to accept imports from the part of Cyprus to the north of the Buffer Zone if the products in question are accompanied by the required certificates of origin and plant health issued by the Turkish community in that part of Cyprus, provided that those certificates are not issued by the 'Turkish Republic of Northern Cyprus' or other equivalent designation.

18. The Commission explained that it informed the organs of the Council accordingly and that after receiving the above 'speaking note' it expressly sought guidance from the Council. At the end of 1983 and beginning of 1984 the Council discussed the Community's attitude to the part of Cyprus to the north of the Buffer Zone. According to the Commission's observations, those discussions confirmed that the benefit of the Association Agreement and the Second Financial Protocol should be for the whole population of the island, but no more precise guidance was given for dealing with the certificates relevant to this case.

19. The Commission stated that for years it has furnished the competent authorities of the Member States with specimen seals, etc. used by the Turkish community north of the Buffer Zone.

20. The Commission recognizes, however, that its line of conduct in this area has not been absolutely consistent. Thus at the end of 1989, after the Commission had received complaints about variations in the treatment of phytosanitary certificates, Guy Legras, Director-General of DG VI (Agriculture) sent a letter to the Permanent Representa-

tives of the Member States in Brussels, stating *inter alia*:

'In the case of Cyprus, Article 12(1)(b) (of the plant health directive) must be read as referring exclusively to the authorities empowered on the basis of the laws or regulations of the Republic of Cyprus. Indeed the position of the Community is clear in this respect: while the Association Agreement with Cyprus is in the benefit of the whole population of the island, the only government recognised is that of the Republic of Cyprus. For this reason goods circulating under cover of a phytosanitary certificate for the purposes of Directive 77/93/EEC and originating in the northern part of the island are to be considered to be in accordance with the terms of the said directive only when the certificate carries the name "Republic of Cyprus" and where certification is carried out by the competent authorities thereof. No other denominations, such as for example "Turkish Federated State of Cyprus" or "Turkish Republic of Northern Cyprus" are recognized by the Community.'

21. The lawfulness of that letter formed the subject-matter of the application in Case C-50/90 *Sunzest (Europe BV and Sunzest (Netherlands) BV* v *Commission*, which the Court dismissed by order of 13 June 1992, [10] on the ground that the letter did not constitute a decision within the meaning of Article 173 of the EEC Treaty.

22. The Commission stated that in any case 'several' Member States recognize the certificates of origin and at least 'some' recognize the phytosanitary certificates.

23. The Commission was not in a position to provide reliable information on how the authorities in the individual Member States treat products imported from the part of Cyprus to the north of the Buffer Zone where those products are not accompanied by certificates issued by the competent authorities of the Republic of Cyprus.

24. The two 'Turkish-Cypriot' companies which submitted observations at the hearing explained that they have a goods warehouse in Rotterdam and that they import directly to several Member States on the basis of certificates issued by the Turkish community in the part of Cyprus to the north of the Buffer Zone. [11]

10 — [1991] ECR I-2917.

11 — Besides the United Kingdom the following Member States were mentioned: Belgium, France, Germany, Ireland, Italy and the Netherlands.

The significance of Questions 3 and 4

25. The High Court's questions are formulated, as will be seen, so that the first two questions ask whether, in connection with the importation of products from the part of Cyprus to the north of the Buffer Zone, it is possible for the authorities in the Member States to accept certificates issued by the Turkish community in that part of Cyprus and the subsequent questions ask whether it would make any difference if certain specific factual conditions were satisfied.

The first and second part of Question 3 seek clarification on whether it would make any difference to the answers to the first two questions if it were in practice impossible for exporters from that part of Cyprus to obtain the certificates in question from the competent authorities in the Republic of Cyprus or there were a significant impediment to exporters who might wish to export their products through the part of the island under the effective control of the Government of the ROC.

The third part of Question 3 and Question 4 seek clarification on whether it would make any difference to a reply to the first two questions if verification procedures in connection with the issue of the certificates were as dependable and safe in the part of Cyprus to the north of the UN Buffer Zone as the procedures in the part of the island under the effective control of the Government of the ROC.

26. The United Kingdom Government maintains that on the facts it must be assumed either that it is *de facto* impossible or at least that there are significant impediments to exporters from the part of Cyprus to the north of the UN Buffer Zone exporting without using certificates issued by the Turkish community in that part of Cyprus. It is also contended by the UK Government that verification procedures both in respect of origin and plant health have proved dependable in practice in connection with exports from that part of Cyprus. The Commission appears essentially to hold the same view as the UK Government and to base its opinion in the case on that view. [12]

The applicants in the main proceedings and the Greek Government contest the claim that it is impossible for or that there are sig-

12 — In the Commission's opinion on the application by the Republic of Cyprus for membership, it is stated on p. 7 that 'With very rare exceptions neither people nor goods nor services can cross the dividing line (cease-fire line).'

nificant obstacles to exporters from the part of Cyprus to the north of the Buffer Zone exporting on the basis of certificates issued by the competent authorities of the ROC. At the same time they claim that there is a potential risk in accepting certificates issued by the Turkish Community and that there actually have been cases in which movement certificates have been misused and phytosanitary certificates have not been dependable.

27. I find it difficult to form a view on the first two issues without taking as a basis for the reply one or the other assumption concerning the questions of fact referred to in Questions 3 and 4.

In my view it is appropriate to take as a starting point the view adopted by the United Kingdom authorities and the Commission.

In the first place, in their construction of the relevant Community rules the United Kingdom authorities seem to have attached weight to the fact that acceptance of the certificates in question is necessary and otherwise justifiable because the facts are what they claim them to be.

Secondly, it cannot be excluded that the Community rules in question might be interpreted as meaning that acceptance of the certificates is unlawful even if the view of the United Kingdom authorities and the Commission should be correct.

28. Moreover, it is worth noting in this connection that it is clear from the information available that if exportation of products from the part of Cyprus to the north of the Buffer Zone takes place on the basis of certificates issued by the competent authorities of the ROC, that presupposes export from the area effectively controlled by the ROC. The reason for this is the simple one that the issue of certificates presupposes verification arrangements which the authorities of the ROC cannot undertake in the part of Cyprus to the north of the Buffer Zone.

Questions 1 and 2

29. Questions 1 and 2 are on parallel lines. The first concerns certificates of origin, the second phytosanitary certificates. *Prima facie* it would appear reasonable to assume that the questions should be answered in the same way. The key question in the case is whether certificates issued by organs which, according to the letter of the relevant rules, do not have authority to issue the certificates in question may nevertheless, having regard

to the particular circumstances, be recognized by the authorities in the Community Member States. Among those who have submitted observations in the case there is agreement that the two questions can be answered in the same way.

30. It should not, however, be overlooked, that there are not insignificant differences between the two relevant sets of rules. The certificate of origin is derived from the Association Agreement and special account should be taken of the other party to the agreement with the Community when the rules concerning the certificate of origin fall to be construed. The phytosanitary certificate has its origin in one of the generally applicable directives adopted by the Community. The objectives underlying the sets of rules are also different.

It would be wrong to dismiss out of hand the possibility that these and other differences might be significant.

31. The following section will thus concentrate on the reply to the first question concerning the certificate of origin.

First question

32. The applicant in the main proceedings and the Greek Government claim that in the circumstances it is a breach of the rules in the Association Agreement on certificates of origin for Member States to accept any certificates of origin other than those issued by the competent authorities of the ROC when products are imported from Cyprus.

33. They refer to the fact that it appears from Articles 7 and 8 of the 1977 Origin Protocol that the certificate of origin (EUR.1 movement certificate) should be issued by the 'customs authorities of the exporting State', that is to say by the competent ROC customs authorities.

34. They further point out that it follows from Articles 22 and 24 of the Protocol that the rules of origin cannot operate without cooperation between the customs authorities of the exporting country and those of the importing country. Article 22 provides that 'In order to ensure the proper application of this title, Cyprus and the Community shall assist each other, through their respective customs administrations, in checking the authenticity of movement certificates ...'. Article 24(1) provides that 'Subsequent verification of movement certificates EUR.1 ...

shall be carried out at random or whenever the customs authorities of the importing State have reasonable doubt as to the authenticity of the document or the accuracy of the information regarding the true origin of the goods in question'. Article 24(2) provides: 'For the purpose of implementing paragraph 1, the customs authorities of the importing State shall return the movement certificate EUR.1 ... to the customs authorities of the exporting State, giving, where appropriate, the reasons of form or substance for an inquiry.' Article 24(3) provides 'The customs authorities of the importing State shall be informed of the results of the verification as quickly as possible ... If such disputes cannot be settled between the customs authorities of the importing State and those of the exporting State, or if they raise a question as to the interpretation of this Protocol, they shall be submitted to the Customs Cooperation Committee.'

The UK Government points out that the objective of the Association Agreement is the progressive elimination of obstacles as regards trade between the Community and Cyprus and thus to contribute to the development of international trade. Cooperation is to be achieved gradually and is therefore divided into several stages. The provisions relied upon by the applicants form part of the Protocol which deals with the administrative arrangements concerning verification of the origin of products. When account is taken of the wording and context of the provisions, they cannot, in the UK Government's view, have direct effect in national courts.

36. That view is mistaken.

Direct applicability of the provisions

35. The United Kingdom Government, supported by the Commission, contends that the rules of origin in the 1977 Protocol (namely the provisions concerning the administrative arrangements), in conjunction with the Association Agreement, are not of such a nature that they can be relied on by applicants in a case before the national courts.

It appears from the case-law of the Court that a provision in an agreement concluded by the Community with a non-member country has direct effect when, regard being had to its wording and the purpose and nature of the agreement itself, the provision contains a clear and precise obligation which is not subject, in its implementation or effects to the adoption on any subsequent measure. [13]

13 — See the judgments in Case 12/86 *Demirel* [1987] ECR 3719, at paragraph 24, and Case 104/81 *Kupferberg* [1982] ECR 3641, especially paragraphs 22 and 23.

37. The relevant rules in the 1977 Origin Protocol undoubtedly fulfil the requirement that they should be precise and unconditional and no special circumstances have been advanced by the United Kingdom Government as far as the purpose or nature of the Association Agreement are concerned which might indicate that the provisions should not have direct effect.

38. In a number of cases the Court has also laid down that equivalent provisions in the Community's trade agreements with other non-member countries can be applied by national courts. [14]

Interpretation of the 1977 Origin Protocol

39. The applicants in the main proceedings and the Greek Government refer to the above provisions in the Origin Protocol and claim that it is clearly a breach of the Protocol to accept, in connection with the importation of products originating in Cyprus, certificates issued by the Turkish community in the part of Cyprus to the north of the Buffer Zone. Those certificates are not issued by authorities who, under the Association Agreement, are competent to issue certificates, and it is not possible in relation to the Turkish community in the part of Cyprus to the north of the Buffer Zone to achieve the cooperation between the competent authorities in the exporting and importing States which, under the rules, is indisputably to play a significant role in ensuring that preference is given only to goods originating in Cyprus.

40. The United Kingdom Government and the Commission do not dispute that the certificates accepted as evidence of the origin of products from the part of Cyprus to the north of the Buffer Zone are not issued by the authorities who are competent under the Association Agreement and that, as a consequence of the non-recognition of that part of Cyprus, it is impossible to achieve the full cooperation between the competent authorities for which provision is made in the Origin Protocol.

41. Basically they concur in claiming, however, that that departure from the rules of the Agreement is founded on and justified by the fact that under the Agreement the population of Cyprus to the north of the Buffer Zone is also to be taken into consideration. Reference is made to the fact that the Association Agreement applies to the whole of Cyprus, see Article 16 of the Agreement, and

14 — See the judgments in Case 218/73 *Les Rapides Savoyards* [1984] ECR 3105 and Case C-12/92 *Huygen* [1993] ECR I-6381.

the provision in Article 5 of the Agreement is referred to, according to which:

'The rules governing trade between the Contracting Parties may not give rise to any discrimination between ... nationals or companies of Cyprus.'

42. It is claimed that when the Agreement was concluded it was made clear that the trade benefits consequent on the Agreement should be available to the entire population of Cyprus and it was *inter alia* for that purpose that the non-discrimination provision in Article 5 was inserted. The rules of origin must therefore be interpreted so as not to prevent implementation of the primary objective of the Agreement, which is the progressive elimination of impediments to trade between Cyprus and the Community. Reference is made to Article 3 of the Association Agreement, according to which the Contracting Parties are obliged to ... 'refrain from any measure likely to jeopardise the achievement of the aims of the Agreement'.

43. The Commission draws support for its view of the law from the Opinion of the International Court of Justice in the Namibia case. [15] It contends that in its Opinion the ICJ laid down an 'interpretative guideline' which implies that a policy of non-recognition should not lead to the denial to the population of Cyprus of advantages granted by treaty.

44. The United Kingdom Government and the Commission are of the opinion that the necessary inferences of non-recognition of the part of Cyprus to the north of the UN Buffer Zone are drawn if it is certain that the Community Member States refuse certificates issued under the designation 'Turkish Republic of Northern Cyprus' or the like and if the Community institutions and the authorities of the Member States avoid official contact with the Turkish community on that part of Cyprus.

De facto acceptance of certificates of origin issued by authorities other than the competent authorities of the ROC is a necessary and proper manifestation of regard for the entire population of Cyprus which is an explicit and essential consideration in the interpretation and application of the provisions of the agreement.

15 — Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, ICJ Reports 1971.

45. Furthermore, the certificates issued in respect of exports from the part of Cyprus to the north of the Buffer Zone in fact fulfil the same purposes as the certificates issued by the competent authorities of the ROC and it is possible, by informal contacts with the Turkish community, to resolve the practical problems which arise as a consequence of the difficulties in implementing the administrative cooperation for which provision is made in the Origin Protocol.

46. Lastly, the Commission contends that the view advanced in respect of certificates of origin has always been held by the Commission's departments and that the Commission so informed the organs of the Commission and the Member States. At all events the Council has expressed its basic concurrence that the Agreement should be for the benefit of the entire population of Cyprus and quite a number of the Member States have in any case administered the rules in accordance with that view.

47. It is, in my opinion, indisputable that the *de facto* partition of the territory of Cyprus which was the consequence of Turkey's invasion of the island gave rise to many problems for the Community which are difficult to resolve when it is borne in mind that the Agreement continued to apply to the whole of Cyprus.

48. If, at the same time, it is borne in mind that the Agreement should continue to benefit the entire population of Cyprus to the greatest extent possible and that it was believed that exporters from the part of Cyprus to the north of the Buffer Zone wished or were able only to export direct from the northern part of Cyprus, it is at least understandable that the Commission and the United Kingdom authorities considered that the solution must be to accept certificates issued by representatives of the Turkish community in the part of Cyprus to the north of the Buffer Zone. It is also understandable that it was accepted that that solution had to proceed on the basis of somewhat restricted and completely informal cooperation with the Turkish community as long as it was emphasized that this did not involve any recognition of the so-called Turkish Republic of Northern Cyprus.

49. In my view there are, however, a number of grounds which indicate that it is not possible on the basis of the Agreement to extend the preferences in that way so that they apply to exporters using certificates issued by the Turkish community in the part of Cyprus to the north of the Buffer Zone.

50. Preferential treatment accorded to the Turkish community presupposes the acceptance of certificates issued by bodies which are not competent under the rules of the Association Agreement. It also presupposes the acceptance of certificates issued by bodies with which the authorities of the Member States — as a consequence of the non-recognition policy adopted by the UN — do not cooperate. That involves not merely an infringement of the rules of the Agreement

concerning who is formally competent to issue the certificates, but also, and especially, difficulty in complying with the rules concerning subsequent administrative cooperation, which is of crucial importance for the effective functioning of the rules of origin.

51. The importance of that cooperation has been emphasized several times by the Court, for example in its judgment in Case 218/83 *Les Rapides Savoyards* [16] where, in connection with equivalent rules in the Free-trade Agreement with Switzerland, the Court stated:

'It follows from all those provisions that the determination of the origin of goods according to Protocol No 3 is based on a division of powers between the customs authorities of the parties to the Free-trade Agreement inasmuch as origin is established by the authorities of the exporting country and the proper working of that system is monitored jointly by the authorities concerned on both sides. ...

However, that mechanism can function only if the customs authorities of the importing country accept the determinations legally made by the authorities of the exporting country.

...

There is no danger that the application of those provisions may encourage abuses, in view of the fact that Articles 16 and 17 of Protocol No 3, in particular in their new version, have set out in detail the methods of cooperation between the customs authorities concerned, where the origin is contested or where the exporters or importers have acted fraudulently.' (paragraphs 26-28).

52. Regard for the entire population of Cyprus, which in the view of the Commission and the United Kingdom Government should be decisive in interpreting the provisions of the Agreement, cannot in my opinion justify a departure from the clear provisions of the 1977 Origin Protocol.

It is true that in its terms the Agreement applies to the whole area of Cyprus and it is also true that the Agreement's trade rules are to apply to the entire population of Cyprus without discrimination.

16 — [1984] ECR 3105.

It must also be assumed that the purpose of the specific provision concerning non-discrimination between population groups was not least to ensure equal treatment of the Greek-Cypriot and the Turkish-Cypriot population in Cyprus in the implementation of the Agreement.

It can further be assumed that, in their discussions concerning their reaction to the *de facto* partition of Cyprus, the Member States stressed the importance of the agreement's continuing to benefit the entire population and that at least at that point there was understanding for that point of view in the Association Council in relation to trade between Cyprus and the Community as well.

53. It does not, however, follow that efforts to allow the agreement to benefit the entire population of Cyprus — even in completely altered circumstances — can involve departure from essential rules in the Agreement taken as a whole which form the basis for the Agreement's functioning in accordance with its purpose. The efforts must take place within the framework that ensues from the Agreement and with all due consideration for the legitimate interests of the other contracting party.

54. In that connection it is significant that the understanding, mentioned above, which appears to have been shown by the ROC's authorities at the discussions in the Association Council with regard to resolving the said problems, at all events ceased to exist after the Turkish community's unilateral and unlawful declaration of secession in 1983 which, presumably, prompted the 'speaking note' mentioned in paragraph 16, in which the ROC expressed the view that acceptance of certificates of origin issued by authorities other than those of the ROC would be a breach of the Association Agreement.

55. It is, moreover, clear that to some extent it is possible to have regard for the entire population of Cyprus on the basis of the applicable provisions. Thus there is evidence in the case to show that the Agreement continues to benefit the entire population, since the Financial Protocol concluded between the parties is administered so as to ensure that resources made available by the Community are in practice used for purposes from which the population north of the Buffer Zone can also derive benefit.

56. As stated, the alleged need to interpret the Agreement's rules so as to enable them to apply with regard to the population to the

north of the Buffer Zone follows, according to the view of the Commission and the United Kingdom Government, from the prohibition in Article 5 of the Agreement against discrimination between the two population groups. It is correctly contended, in my opinion, that the basis for application of that principle was removed by and with the *de facto* partition of Cyprus and since then it is no longer possible to treat the two population groups in exactly the same way. That must, in any event, be the case in circumstances such as the present, where like treatment presupposes that the authorities in the Community Member States can cooperate with the authorities in Cyprus.

57. The Commission maintains, as mentioned above, that support for its interpretation of the Association Agreement is to be found in the ICJ's Opinion in the Namibia case.

58. The paragraph from the ICJ Opinion cited by the Commission has in my view, however, little, if any, relevance to the present case. The Commission reads too much into the ICJ's emphasis on the need to take account of the affected population's interests and underestimates the importance of the real differences between the two situations.

The ICJ was asked to rule on the legal consequences for States of the continued presence of South Africa in Namibia notwithstanding Security Council Resolution 276/1970. South Africa had not administered Namibia in accordance with the rules on mandate territories and South Africa was thus called upon by the UN General Assembly in several resolutions to bring its mandate over Namibia to an end. Since South Africa did not comply with those resolutions, the Security Council decided in Resolution 276/1979 to impose on the Member States of the UN 'the obligation to abstain from entering into economic and other forms of relationship or dealings with South Africa on behalf of or concerning Namibia which may entrench its authority over the Territory'.

Inter alia the ICJ stated:

— 'With respect to existing bilateral treaties, member States must abstain from invoking or applying those treaties or provisions of treaties concluded by South Africa on behalf of or concerning Namibia which involve active intergovernmental cooperation' (paragraph 122),

— 'The restraints which are implicit in the non-recognition of South Africa's presence in Namibia and the explicit provisions of paragraph 5 of resolution 276 (1970) impose upon member States the obligation to abstain from entering into economic and other forms of relationship or dealings with South Africa on behalf of or concerning Namibia which may entrench its authority over the Territory' (paragraph 124),

— 'In general, the non-recognition of South Africa's administration of the Territory should not result in depriving the people of Namibia of any advantages derived from international cooperation. In particular, while official acts performed by the Government of South Africa on behalf of or concerning Namibia after the termination of the Mandate are illegal and invalid, this invalidity cannot be extended to those acts, such as, for instance, the registration of births, deaths and marriages, the effects of which can be ignored only to the detriment of the inhabitants of the Territory' (paragraph 125).

Clearly in its Opinion the ICJ attached weight to the fact that the Security Council's sanctions were decided in the Namibian people's interest. [17] That factor was undoubtedly important in connection with the ICJ's finding that the sanctions should not extend to include official acts benefiting individual Namibians recognition of which could not, to all practical intents and purposes, lend support to the South African presence in Namibia.

The circumstances are different in this case, if only because the case concerns a question of the extent of the entitlement of the Member States of the Community — in breach of the express rules of an existing international law agreement on the matter — to accept 'official acts' the purpose of which is to enable trade to take place with businesses from the area which is not to be recognized under the Security Council's resolutions.

59. The present case thus concerns the question of recognition of official documents which are not of a type covered by the ICJ's Opinion concerning official acts issued in the population's interest and where the situation regarding the position of the population groups in question is not comparable.

17 — The International Court of Justice held in this connection: 'As to the general consequences resulting from the illegal presence of South Africa in Namibia, all States should bear in mind that the injured entity is a people which must look to the international community for assistance in its progress towards the goals for which the sacred trust was instituted.' (Paragraph 127).

60. It cannot, moreover, be assumed that the legal view expressed by the Commission and the United Kingdom Government corresponds to the view generally accepted in the Community. It is one thing to take the view that the Agreement should as far as possible benefit the entire population; it is another to draw the inference on that basis that the authorities of the Member States can or should accept certificates other than those issued by the competent authorities of the ROC. In discussions with the Council the Member States have, as stated, always been unanimous that the Agreement should in principle benefit the entire population but did not seem to be unanimous in drawing the same inference as far as recognition of certificates is concerned.

61. The Commission contends that it has always expressed the view that the Agreement could be interpreted to the effect that the disputed certificates might be used by the authorities of the Member States and that, in practice, was demonstrated by the fact that it supplied Member States with specimen stamps and so forth of the Turkish community which could be used in connection with the issue of certificates of origin.

Quite apart from the doubts raised in the case of how consistent the Commission has been in that legal viewpoint and the question, raised by the Greek Government, of how in fact the stamps referred to were supplied to all the Member States, I do not consider that the Commission's view and consequent course of action can be attributed any decisive independent weight. In its order in the *Sunzest* case [18] the Court emphasized that 'no provision in Directive 77/93/EEC confers on the Commission power to adopt decisions on its interpretation, so that the Commission merely has the possibility, which is always open to it, of expressing an opinion which is not binding on the national authorities' (paragraph 13). The same holds true, in my view, as far as certificates of origin are concerned.

62. As stated, the Commission mentioned that in any event various Member States, when applying the Association Agreement in practice, have in fact taken the same view as that advanced by the Commission. It would, I think, be a significant factor with regard to its interpretation if it could be assumed that the Member States had, in fact, in the period after the problem arose, accepted certificates of origin issued by authorities other than the competent ROC authorities. On the evidence it is clear that the United Kingdom authorities did so. There is also evidence to show that the authorities in the Netherlands and — according to information given by the

18 — Case C-50/90 [1991] ECR 2917.

'Turkish-Cypriot undertakings' — certain other Member States did so. Conversely, it is also certain that the Greek authorities have never done so and the Irish Government stated at the hearing that it did not share the Commission's legal viewpoint. There is thus no uniform view among the Community Member States.

63. Considerable importance should be attached to that regrettable situation, in my opinion.

64. It is relevant to the argument adduced by the Greek Government and the applicants in the main proceedings, according to whom the UK authorities' application of the Association Agreement represents a breach of the rules of the Treaty on common commercial policy. Their line of reasoning is that in the way they deal with the situation the British authorities have independently assumed a power to depart from common rules which apply to the importation of products from non-member countries.

65. In my opinion that view is certainly not correct. It is accepted that the United Kingdom authorities take the view that they are acting within the bounds of a correct interpretation of the relevant Community rules.

66. Reference to the common commercial policy is, nevertheless, significant for another reason. It draws attention to the fact that a legal situation in which Community rules are not interpreted and applied uniformly in the Member States when products are imported from Cyprus is in principle a breach of the requirements which ensue from the existence of a common commercial policy. In that area it is unacceptable — just as it is in all other areas regulated by Community law — for Community rules to be interpreted and applied in different ways in the Member States, unless there is a clear basis otherwise. In the area of common commercial policy it is especially important for the Community rules to be treated uniformly, because application of the law by the importing State can directly affect other Member States as a consequence of the free movement of products in the internal market.

67. Even if, as stated, it is to some extent understandable that the Commission, in the present quite special circumstances, believed that it did not have sufficient reason to attempt to ensure uniformity in the application of the law by the Member States, it is not possible to uphold such a legal position.

68. In its observations the Commission has also stated that it realises that the completion

of the internal market means that the present legal position is becoming ever less tenable and for that reason the Commission intends to propose steps for the satisfactory resolution of the present problems.

69. Until the Commission's proposals have led to changes in the rules applicable, it does not seem to me possible to arrive at any other result but that the common legal position applicable to all Member States must be that which follows from the Association Agreement's express rules, namely that the authorities of the Member States are not empowered to accept certificates of origin issued by authorities other than the competent authorities of the ROC.

70. Accordingly, there is no need to enter into a further consideration of whether — as alleged by the Greek Government and the applicants in the main proceedings — it is a breach of international law, in particular of the UN Security Council's Resolutions on the non-recognition of the regime in the part of Cyprus to the north of the UN Buffer Zone, for the authorities in the Community Member States to accept certificates issued by the Turkish community in that part of Cyprus.

Question 2 concerning phytosanitarycertificates

71. The Plant Health Directive provides, as stated, in Article 12(1)(b) that the certificates are to be issued by 'authorities empowered for this purpose on the basis of laws or regulations of the country'.

72. The basic arguments in the observations with regard to the question of the lawfulness of accepting phytosanitary certificates issued by authorities other than the lawful authorities of the ROC are the same as those put forward in connection with certificates of origin.

73. It should be noted, however, in connection with the phytosanitary certificate, that the directive does not contain special rules on formalized cooperation between the health authorities of the exporting and importing country. The directive provides that the importing country's health authorities may undertake their own checks. Therefore it is possible for the authorities of the Member States to undertake intensive health checks in connection with the importation of

products from the part of Cyprus to the north of the Buffer Zone if need be. Conversely, it is also right to mention that in that area it is particularly important for the exporting and importing countries' plant health authorities to be able to work together in practice in an atmosphere of trust. In that area it is not simply a question of economic interests but also of the critical importance of ensuring plant health in the Community Member States.

74. It is significant that, with the amendments to the directive which entered into force on 1 June 1993, a system has been introduced whereby in future products covered by the directive, once they have been imported and examined in one Member State, can be freely distributed in the entire Community. [19] The new rule increases the need for uniform administration of the rules when products are imported from Cyprus. Hitherto Member States to which products imported into one Member State were re-exported within the Community could, according to the information available, prevent importation by refusing to issue a special reforwarding certificate which had to accompany those products.

75. In my opinion there is no reason in the matter under discussion to apply an interpretation other than that applied in connection with certificates of origin. It follows that the plant health directive must also be interpreted to the effect that products which are exported from Cyprus may be accompanied only by phytosanitary certificates issued by the authorities designated for that purpose in the ROC.

Questions 3 to 5

76. It will be recalled that Questions 3 and 4 asked whether it would make any difference if the exportation of products from the part of Cyprus to the north of the Buffer Zone accompanied by certificates issued by the competent authorities of the ROC was impossible, or significantly impeded, and if the certificates issued by the Turkish community were just as dependable as those issued by the authorities of the ROC.

77. It will also be recalled that in replying to the two first questions I found it appropriate to proceed on the basis that exports from the part of Cyprus in question were significantly impeded if they could not take place with certificates issued by the Turkish community in the part of Cyprus to the north of the

19 — See Directive 93/19/EEC OJ 1993 L 96, p. 33.

Buffer Zone and that the said certificates were regarded as dependable.

78. It is clear from my reply to the two first questions that the relevant rules do in principle preclude acceptance of the certificates in question — even if the suppositions in Questions 3 and 4 are correct.

79. However, in my opinion there is reason to take note of the Greek Government's remarks concerning the question of the actual feasibility of effecting exports of products from the part of Cyprus to the north of the Buffer Zone with certificates issued by the authorities of the ROC. First, the Greek Government claims that it was the Turkish community north of the Buffer Zone which itself took the decision not to use export certificates issued by the authorities of the ROC and, in the Greek Government's view, the situation is that the authorities of the ROC, in accordance with the rules of the Association Agreement and the directive, will indeed issue the necessary certificates for products from the part of Cyprus to the north of the Buffer Zone provided they can undertake the necessary checks in conjunction with export through ROC ports and airports. The Government takes the view that — if that premise were proved wrong — the situation would be different from that which now exists.

80. In my view it cannot be excluded that, should it prove that the premise referred to by the Greek Government were incorrect, it might be possible to find a legal basis for resolving the problem thereby arising by permitting the acceptance of origin and phytosanitary certificates issued by the Turkish community to the north of the Buffer Zone.

There is, however, no reason to enter into the question in any further detail. On the evidence it is clear that in practice there has been no attempt on the part of the Turkish community to export products accompanied by certificates issued by the competent ROC authorities.

81. There is unanimity amongst those who have submitted observations in this case that it is irrelevant to the reply to the part of Question 3 concerning any impossibility for or impediment to exporters how far such impossibility or impediment might be caused by the Turkish community in Cyprus to the north of the Buffer Zone.

82. Subject to any qualification that might ensue from the situation discussed in paragraph 81 I agree on that point.

83. I would refer to the foregoing comments concerning the significance of Questions 3 to 5 and consider I am justified in confining myself in my Opinion to answering the first two questions.

Conclusion

84. On the basis of the foregoing I would propose to the Court that it reply to questions raised by the High Court as follows:

(1) Where the importation into a Member State of citrus fruit or potatoes from Cyprus is accompanied by EUR.1 movement certificates issued by the Turkish community in the part of Cyprus to the north of the UN Buffer Zone and not by officials authorized by the Republic of Cyprus, Community law precludes the Member State from permitting that importation.

(2) Where the importation into a Member State of citrus fruit (other than lemons) and potatoes from Cyprus is accompanied by phytosanitary certificates issued by the Turkish community in the part of Cyprus to the north of the UN Buffer Zone and not by officials duly authorized by the Republic of Cyprus, Community law precludes the Member State from permitting that importation.