justified under Article 36 of the Treaty provided that, first, in the case of vehicles put on the road before such registration, it is necessary for the protection of human health and life and, secondly, it applies without distinction to vehicles of national origin and imported vehicles.

It is in any event impermissible in the light of the aforementioned articles to require a roadworthiness test whose sole purpose is to obtain from the owner of the imported vehicle a simple written declaration on the circumstances in which it is to be used.

2. A fee collected in connection with a roadworthiness test which is contrary to Articles 30 *et seq.* of the Treaty is itself contrary to the Treaty.

3. A fee collected in connection with a roadworthiness test which is carried out prior to the registration of an imported vehicle and is justified under Article 36 of the Treaty complies with the Treaty provided that it is not greater in amount than the fee applicable in the same circumstances to a vehicle of national origin.

OPINION OF MR ADVOCATE GENERAL MANCINI
delivered on 7 May 1986 *

Mr President,
Members of the Court,

1. In connection with proceedings brought by Mr Bernhard Schloh against Auto contrôle technique SPRL, the Third Cantonal Court of Schaerbeek in Belgium has asked this Court to interpret Articles 30 and 13 of the EEC Treaty with reference to the formalities laid down by the Belgian legislation for the approval and registration of imported motor vehicles. In particular, the Cantonal Court asks whether national rules providing for roadworthiness tests in the case of motor vehicles coming from a Member State which have received a certificate of conformity are compatible with the Treaty and whether it is lawful to charge a fee for such tests.

In the Federal Republic of Germany at the beginning of 1979, Mr Schloh, a German national residing in Belgium who is an official of the Council of the European Communities, purchased a Ford Granada estate car, which for the purposes of Belgian law is classified as a *voiture mixte.*[1] It appears that the car was first placed on the road on 19 January 1979. With a view to importing the car into his country of

* Translated from the Italian.

Translator's note: For the sake of convenience, the term 'voiture mixte' is hereinafter rendered as 'estate car'. It should, however, be noted that the term as a broader meaning and covers any vehicle suitable for the carriage of either passengers or goods.

residence, Schloh obtained a certificate of its conformity to the vehicle type approved in Belgium on 13 February 1979 from Ford Motor Company SA in Antwerp. On 20 March 1979 he submitted the car to Auto contrôle technique, the agency approved by the Minister for Transport for performing the roadworthiness test required for the purposes of registration. The test, for which the owner of the vehicle paid a fee of BFR 500, took place on 22 March 1979.

Four days later, Schloh was requested to submit the car for a second test and was informed that he would at that stage need to present a declaration concerning the use of the vehicle. He made such a declaration in a letter to Auto contrôle technique dated 2 April 1979, in which he objected that the requirement of a further test was in his view unreasonable and requested its postponement to a date after 23 April. On 30 May 1979 Auto contrôle technique replied pointing out that under the legislation in force the vehicle had to be submitted for a roadworthiness test 'notwithstanding the test carried out for the purposes of obtaining the certificate of conformity dated 22 March 1979'. Accordingly, the second test took place on 11 June and, after paying a further BFR 500, Schloh was issued with a certificate of roadworthiness valid for four years.

That same day he also wrote to the Minister for Transport requesting him to ascertain whether the duplication of the roadworthiness tests for a new vehicle was in fact in accordance with the Belgian rules, while at the same time reserving the right to seek a ruling on whether those rules were compatible with Community law by means of the procedure under Article 177 of the EEC Treaty. In a letter dated 17 August 1979, the Minister replied that the correct procedure had been followed. He stated that any vehicle imported in a used condition must undergo a roadworthiness test in order to be registered; in addition, estate cars were required to undergo a second test 'before being put back on the road in the name of the new owner', in other words, 'after the car has been registered'. By the same token the requests for a declaration concerning the use of the vehicle and for payment of a fee were also valid.

Schloh therefore decided to take legal action. He brought unsuccessful actions before the Belgian Conseil d'Etat and the Fourth Cantonal Court of Brussels (both were dismissed as inadmissible, albeit on different grounds) and then brought the action which gave rise to these proceedings before the Third Cantonal Court of Schaerbeek, in which he sought repayment by Auto contrôle technique of the sums paid in respect of the two tests. As the court of last instance within the meaning of the first paragraph of Article 617 of the Code Judiciaire (causes where the amount in dispute is less than BFR 15 000), the Cantonal Court stayed the proceedings and referred the following questions to this Court for a preliminary ruling pursuant to Article 177 of the EEC Treaty:

(1) Are Articles 30 and 13 of the EEC Treaty to be interpreted as meaning:

(a) that a legal provision of a Member State whereby a new estate car which was manufactured in and imported from another Member State and has been placed on the road after undergoing a roadworthiness test is required to undergo a further test several days later

because it is an estate car constitutes a measure having an effect equivalent to a quantitative restriction on imports (Article 30);

(b) that, where the same provision requires payment of a specified sum for each of the two roadworthiness tests, it creates a charge having an effect equivalent to customs duties (Article 13)?

(2) Are Articles 30 and 13 of the EEC Treaty to be interpreted as meaning:

(a) that a legal provision of a Member State under which a new car (whether an estate car or not) which was manufactured in and imported from another Member State and placed on the road and which carries a certificate of conformity is required to undergo a roadworthiness test constitutes a measure having an effect equivalent to a quantitative restriction on imports (Article 30);

(b) that, where the same provision requires payment of a specified sum for that roadworthiness test, it creates a charge having an effect equivalent to customs duties (Article 13)?

2. In order to set those questions in context it will be useful to summarize the Belgian legislation in force at the material time and describe the relevant Community legislation. The Belgian legislation consists of the Royal Decree of 31 December 1953 laying down rules on the registration of motor vehicles (Moniteur Belge, 9 January 1954), several times amended, and the Royal Decree of 15 March 1968 laying down general rules on the technical requirements which must be met by motor vehicles and their trailers (Moniteur Belge, 28 March 1968).

According to those enactments registration of an imported vehicle under Belgian number plates is subject to the production of various documents and requires various roadworthiness tests beforehand or afterwards according to whether the vehicle is used or new. In the first place, any vehicle intended to be put on the road must be in conformity with the type approved by the Minister for Transport. In the case of imported vehicles, proof of conformity may be supplied in three forms. For 'new' type-approved vehicles proof is supplied by means of a certificate issued by the manufacturer or his agent, while new vehicles which do not conform to an approved type are subject to individual approval. For 'used' vehicles, the rule is that the owner must obtain a certificate of conformity and present the vehicle to the agency responsible for testing; following a test to determine whether the vehicle complies with the relevant legislation, the agency issues him with a certificate of roadworthiness.

The two decrees require a roadworthiness test in the case of: (a) 'new' motor vehicles (including estate cars but excluding vehicles for private use) prior to their being first placed on the road; (b) motor vehicles for which registration is requested by a new owner; (c) imported motor vehicles (it is worth pointing out that on 1 April 1979, that is to say, after Schloh's vehicle had undergone the first test, the requirement for tests prior to registration was abolished in the case of 'new' imported vehicles);

(d) motor vehicles (including estate cars but excluding vehicles for private use) which have changed hands.

Motor vehicles are also required to undergo periodic tests; these are annual but cars which are exclusively for private use are exempt for the first four years. The same exemption applies to estate cars provided that the owner has made the relevant declaration at the time of the first roadworthiness test.

3. The Community provisions are based on the rules of the Treaty relating to the movement of goods and are contained in the various directives for the harmonization of national legislation, which number more than 50 in the sector which concerns us: one is of a general nature and the others relate to the components of motor vehicles. The framework directive (Council Directive 70/156/EEC of 6 February 1970, Official Journal, English Special Edition 1970 (I), p. 96) provides for the adoption of a procedure which will enable manufacturers to obtain in any Member State EEC type-approval valid for the whole Community so that vehicles in respect of which they issue a certificate of conformity may be freely marketed in all the Member States. However, that procedure will only become operative once all the components and characteristics mentioned in the EEC type-approval certificate annexed to the framework directive have been harmonized by implementing directives; even now the topics of tyres, safety glass, weights and dimensions have yet to be covered.

It should also be stated that the framework directive and the special directives provide for so-called 'optional' harmonization, which means that the Member States are empowered to maintain in force their own requirements alongside the Community requirements (first and second recitals of the preamble to Directive 70/156). It is therefore still possible for vehicles of the same make and type but having different characteristics to co-exist, so that even in future there may be obstacles to their movement within the Community. In recognition of that fact, the Commission on 20 September 1984 addressed a Communication to the Member States on approval and registration formalities for vehicles imported from another Member State and the compatibility thereof with Community law.

4. I stated earlier that the Belgian legislation draws a distinction — as indeed does that of other Member States — between 'new' vehicles and 'used' vehicles. The judgment of the Cantonal Court shows that the parties to the main action are in disagreement as to the condition of the imported car, Schloh contending that it is new, while the defendant regards it as used. The Cantonal Court has clearly opted for the former view, and according to the previous decisions of this Court it is the sole body competent to evaluate the facts (judgment of 9 July 1969 in Case 10/69 *Portelange* v *Marchant* [1969] ECR 309, at paragraphs 5 to 7 of the decision; judgment of 23 January 1975 in Case 51/74 *Hulst* v *Produktschap voor Siergewassen* [1975] ECR 79, paragraph 12; judgment of 5 October 1977 in Case 5/77 *Tedeschi* v *Denkavit* [1977] ECR 1555, paragraph 17; judgment of 16 March 1978 in Case 117/77 *Algemeen Ziekenfonds* v *Pierik* [1978] ECR 825, paragraphs 6 and 7; judgment of 29 November 1978 in Case 83/78 *Pigs Marketing Board* v *Redmond* [1978] ECR 2347, paragraph 25; judgment of 15 November 1979 in Case 36/79 *Denkavit Futtermittel* v *Finanzamt Warendorf* [1979] ECR 3439, paragraph 12;

judgment of 14 February 1980 in Case 53/79 *ONPTS* v *Damiani* [1980] ECR 273, paragraph 5; most recently, judgment of 20 March 1986 in Case 35/85 *Tissier* v *Ministère Public* [1986] ECR 1212, paragraph 9).

It is necessary, however, to be clear about this point. The definition of 'new' and 'used' is not the same as the dictionary definition but is broader in the one case and narrower in the other. The facts which gave rise to these proceedings are an instance of the phenomenon known as 'parallel imports', namely imports carried out by persons purchasing their vehicle from a supplier in the country of manufacture or another country and then exporting or re-importing it into any Member State (see the Order of the President of 7 June 1985 in Case 154/85 R *Commission* v *Italy* [1985] ECR 1753). As far as such operations are concerned it is clear that a vehicle is not regarded as used when it is first put on the road even though some administrations (notably the Italian administration) oddly classify it as 'used for nil mileage'. Moreover, according to the legislation and practice of a number of Member States, the term 'new' used to describe condition also applies to vehicles with a provisional foreign registration (for example, a vehicle may be exported with a customs plate which enables it to be transported out of the exporting country but does not permit its use on the road, or with transit plates which enable it to be driven).

I shall therefore answer the Cantonal Court's questions in accordance with its own view that the term 'new' does not mean 'having just left the factory' but has the meaning stated above. I shall deal with the issues raised by a 'used' vehicle only for the sake of completeness.

5. In these proceedings written observations have been submitted by the Commission of the European Communities and the Danish Government. The Belgian Government has answered certain questions put to it by the Court.

From the logical standpoint it would be appropriate to examine first the problem raised by Question 2, namely whether it is legitimate, for the purposes of Community law, to subject to a roadworthiness test prior to registration a new vehicle imported from another Member State and having a certificate of conformity. To me it appears obvious that if such a certificate has been delivered in the importing Member State, any controls which make registration more onerous or more difficult constitute a measure contrary to Article 30 which is not justified under Article 36 of the Treaty. The certificate certifies that the vehicle conforms to the approved type in the country in which it is to be used and therefore that it meets the safety standards applicable to vehicles registered or to be registered in that country.

The same, however, may be said of vehicles possessing a certificate of conformity referring to the type approved in the exporting State, at least where that State imposes technical requirements complying with the Community directives or, in any event, equivalent to those imposed by the importing country. In my view this is a case covered by the principle set out in the Court's judgment of 17 December 1981 (in Case 272/80 *Frans-Nederlandse Maatschappij voor Biologische Producten BV* [1981] ECR 3277, at paragraph 14 of the decision), namely that national authorities are not entitled unnecessarily to require technical tests where those tests have already been

carried out in another Member State and their results are available to those authorities, or may at their request be placed at their disposal.

6. Question 1 concerns the compatibility with Community law of a provision requiring imported vehicles with certificates of conformity to undergo a second test shortly after the first in the importing or exporting country. For the reasons I have just stated, even such a test, in so far as its purpose is to verify the conformity with the legislation of a new vehicle — even when it is an estate car — constitutes a measure having an effect equivalent to a quantitative restriction. The defendant objects that the requirement is also useful to the owner because that test is the stage at which he provides the declaration necessary in order for an estate car to be treated as equivalent to a private car and thereby be exempt from annual tests for the first four years. That argument, however, is untenable. Such a declaration does not in fact require any test on the vehicle and may just as well be supplied together with the request for registration.

Since it is established that roadworthiness tests on new imported motor vehicles are prohibited by Article 30 and not justified under Article 36 of the Treaty, the fees charged for those tests are also incompatible with Community law. On this point I would refer to the judgment of the Court of 28 March 1979 in Case 179/78 *(Procureur de la République* v *Rivoira* [1979] ECR 1147, at paragraph 14 of the decision) and its judgment of 15 December 1976 in Case 35/76 *(Simmenthal* v *Italian Minister for Finance* [1976] ECR 1871, at paragraph 22).

7. For the sake of completeness, and having regard to the views expressed on the topic by the Danish Government and at the hearing by the Commission, it may be appropriate to consider whether the two roadworthiness tests were permissible under Community law in the case of the importation of 'used' vehicles.

I shall begin with the test preceding the registration of a vehicle. At least two arguments appear to me to militate in favour of its legality: (a) the vehicle may have been modified in the period following its definitive registration and may therefore be different from the description given in the certificate of conformity; (b) the condition of the vehicle may not be such as to offer the guarantees of safety and environmental protection required for vehicles registered in the importing State. Naturally, the principle laid down in the *Frans-Nederlandse Maatschappij* case is also applicable here; in other words, the test must not be a duplicate of the test already carried out in the exporting State, particularly when the results of that test are available to the authorities of the importing country.

There is no doubt, on the other hand, that the second test constitutes an unjustified obstacle to imports. In reply to a question put to it by the Court, the Belgian Government has denied this, but its arguments do not appear to me to be persuasive. This is because (a) the identity of the owner may be readily ascertained from the documents, including customs documents, presented by him for the purposes of registration; (b) there is nothing to prevent the declaration concerning the use of the vehicle from being supplied on the occasion of the first roadworthiness test.

Those conclusions govern the legality of the fees. The fee charged for the first test falls

within the scope of Article 95 of the EEC Treaty and may be regarded as justified provided it is not contrary to the principle of proportionality. The second is clearly unlawful as an ancillary part of a control which is incompatible with Community law.

8. On the basis of all the foregoing considerations I propose that the Court reply as follows to the questions referred to it by the Third Cantonal Court of Schaerbeek in the proceedings between Mr Bernard Schloh and Auto contrôle technique SPRL:

(1) Articles 30 to 36 of the EEC Treaty are to be interpreted as meaning that a national rule under which new imported motor vehicles — including vehicles intended for the transport of passengers and goods — are required to undergo roadworthiness tests prior to registration or shortly afterwards, even though they carry a certificate of conformity to the vehicle type approved in the importing or exporting country, constitutes a measure having an effect equivalent to a quantitative restriction.

(2) The sums charged in connection with roadworthiness tests which are incompatible with Community law represent charges having an effect equivalent to customs duties in so far as they are charged by reason of the crossing of the national border.