OPINION OF MR ADVOCATE GENERAL REISCHL DELIVERED ON 26 FEBRUARY 1981 [1]

Mr President,
Members of the Court,

By the Invoerbesluit landen 1963 [Import (Countries) Order 1963], which was made pursuant to the In- en Uitvoerwet [Import and Export Law] and whose period of validity was extended by a Law of 16 February 1978, it is prohibited in the Netherlands to import goods from Czechoslovakia without the authorization of the Minister for Economic Affairs. So far as handkerchiefs in particular are concerned, until 1978 import licences were issued as requested until the Minister, having regard to the quantities already imported and after consulting the ministers responsible in the other Benelux countries, took a decision to the contrary effect.

It was provided in Council Decision 79/252 (Official Journal 1979, L 60, p. 1), which was adopted on 21 December 1978 and took effect on 1 January 1979, that in 1979 the Benelux States were to open a quota of 3 393 000 items for imports of handkerchiefs from Czechoslovakia (see Annex IX to that decision). By a ministerial decision the share of the quota assigned to the Netherlands was allocated in proportion to imports of handkerchiefs from Czechoslovakia in 1977.

The plaintiff in the main action is the representative of a Prague undertaking, Centrotex, which intended to supply handkerchiefs to two Netherlands companies, Peijnenborg's Handelsmij BV and Grotex-Textiles BV. It receives a commission from the Prague undertaking on such exports which is naturally not forthcoming if no goods are supplied because an import licence has been refused.

However, in February 1979, under the rules just described neither of the aforementioned Netherlands companies was granted permission to import cotton handkerchiefs from Czechoslovakia. In the case of Grotex, which had not apparently undertaken any imports of that kind in 1977, a licence was still refused after objections had been raised, whilst in Peijnenborg's case imports were subsequently allowed.

That caused Toneman to initiate court proceedings in which it sought to have the decision refusing an import licence set aside, as well as payment of damages. Toneman relied on the fact that for many years the importation of handkerchiefs from Czechoslovakia had been unrestricted in practice since import licences were issued automatically. it argued in particular that the publication of the decision on the opening of the quota must be regarded as being late because it did not take place until 12 March 1979. Traders concerned should have been given due notice of the import restrictions so that they could have borne them in mind when concluding transactions. At any rate, transitional rules should have been introduced for contracts already concluded.

Accordingly, for the court seised of the proceedings, which considers the action inadmissible in so far as it relates to the decision addressed to Peijnenborg, the question arises whether in such a case there is not a requirement under Community law to give public notice of the products for which an import licence

1 — Translated from the German.

is required and the procedure whereby import licences are issued in view of Article 4 of Regulation No 1023/70 of the Council of 25 May 1970 establishing a common procedure for administering quantitative quotas (Official Journal, English Special Edition 1970 (I), p. 303) which reads:

"Not later than three weeks after each quota allocation the Member States shall make known, by official publication, the products which may be imported or exported and the procedure whereby import or export of such products is to be authorized . . .".

The court consequently stayed the proceedings and submitted the following questions for a preliminary ruling under Article 177 of the EEC Treaty:

1. Must Regulation (EEC) No 1023/70 of the Council be interpreted to mean that the provision concerning publication contained in Article 4 of the regulation applies to the import quotas to be opened by the Member States pursuant to Article 3 of the Council Decision of 21 December 1978 (79/252/EEC)?

2. If the answer to Question 1 is in the affirmative, must it then be held that upon a true construction of Article 4 of Regulation No 1023/70 — on its own or taking account also of the date on which the publication as meant by Article 3 of the regulation took place — a scheme adopted by a Member State for the issue of import licences in regard to an import quota opened pursuant to Article 3 of the Council Decision of 21 December 1978 is not binding if the Member State concerned has disregarded the provision concerning publication in Article 4 of Regulation No 1023/70?"

My opinion on these questions is as follows:

1. I think it appropriate to preface my opinion with a few general observations on the law of the Community governing external trade as it is applied in regard to State-trading countries.

It is important to remember that there is still no wholly uniform system in this area because the degree of liberalization of trade in relation to State-trading countries varies appreciably in the Member States.

To a certain extent imports into the Community are liberalized. Liberalized trade is governed by Regulation No 925/79 on common rules for imports from State-trading countries (Official Journal 1979, L 131, p. 1) in which there is a list of the products concerned.

As regards textiles in particular, the Community has entered into bilateral agreements with some State-trading countries — but not with Czechoslovakia. Regulation No 3059/78 (Official Journal 1978, L 365, p. 1) governs those imports.

Moreover, national quotas were retained in various national systems, as Community quotas are being established only gradually. Community regulation started with Council Decision 75/210/EEC of 27 March 1975 on unilateral import arrangements in respect of State-trading countries (Official Journal 1975, L 99, p. 7). It laid down a Community procedure for unilateral import arrangements, that is to say for products subject to quantitative restrictions in the Member States or whose importation is unrestricted only in certain Member States, and it specified

the conditions governing the amendment of import arrangements. Article 2 thereof provides that in the case of products from State-trading countries which are subject to quantitative restrictions but which are not covered by quotas opened under Article 1, Member States may each year open in respect of each of those countries import facilities up to the value or the volume of the highest imports of the products in question coming from the non-member country concerned during one of the previous three years. Article 8 stipulates that the Council is to adopt each year any amendments which it appears necessary to make for the following year to the quotas referred to in Article 1. The decision also sets out the import quotas applicable in 1975 in the case of the countries listed in Annex I thereto.

The decision, or at any rate parts of it, was repeatedly amended, the most recent amending decision which is material to this case being the aforementioned Decision 79/252. Although in the previous decisions no quotas had been fixed in regard to the Benelux countries for the products in issue in the main action, Decision 79/252 provided for such a quota in the aforementioned Annex IX thereto. It was introduced in view of Article 2 of Decision 75/210, to which reference has already been made, and the fact that imports had not been unrestricted in previous years either but had been subject to the grant of a licence upon certain conditions, that being regarded as a "quantitative restriction".

2. I turn now to the first question which seeks to determine whether the requirement of publication which is laid down in Article 4 of Regulation No 1023/70 has application to import quotas which the Member States have opened in accordance with Article 3 of Decision 79/252. As the Commission and the Netherlands Government are at one in demonstrating, the answer to that question can only be in the negative.

The important point is that in Community law a basic distinction is drawn between quotas which the Community fixes uniformly in derogation from Regulations Nos 925/79 and 926/79, and import quotas which the Member States open under their import arrangements (which at times differ considerably) even if they are opened on an authorization granted by the Community such as that contained in Article 3 of Decision 79/252. Accordingly, *regulations* are adopted for Community quotas and *decisions* addressed to the Member States are issued as regards national quotas. It is, however, quite clear that the regulation referred to by the national court applies only to the administration of *Community* quotas. For example, its preamble refers to an "allocation of Community quotas" and Article 1 leaves no doubt that the regulation applies only to quotas which the Community has fixed unilaterally or by agreement.

If that is not sufficient to militate against the application of the regulation to national import quotas permitted to be opened under Decision 79/252, there still remain the following considerations.

For example, the Commission has shown that in the present case it is also necessary to refer back to Decision 75/210 which I mentioned at the beginning. It was amended by later decisions only as regards the annual

fixing of the import quotas, in other words, only the first paragraph of Article 1 was amended. On the other hand, the second paragraph of Article 1 stayed the same and thus continued to apply in subsequent years. That paragraph states that "this provision shall not affect Member States' rules governing the opening and administration of quotas". The Commission has rightly deduced therefrom that even if Regulation No 1023/70 is assumed to cover in principle national import quotas as well, it would in any event have to be taken to have no application to the opening and administration of national quotas, that is to say, to the distribution of those quotas, the rules for the grant of import licences and connected questions of publication.

At the same time the Netherlands Government has pointed out that, subsequent to Regulation No 1023/70, Decision 72/455 was adopted (Official Journal, English Special Edition, 30-31 December 1972, p. 101 (original reference L 299, p. 46)). Article 1 thereof provided that Member States could unilaterally amend their import arrangements in regard to non-member countries and the preamble thereto indicates that national import arrangements and common import arrangements — whether unilateral or conventional — must be clearly distinguished. The Netherlands Government has further pointed out that, since the essentials of Decision 75/210 were maintained in force and were thus applicable to later national quotas and amendments thereto, the assumption that Regulation No 1023/70 also covers national quotas would lead to there being two different procedures on the amendment of import arrangements (Article 2 of the regulation and Articles 4 and 5 of the decision), and two provisions on publication (Article 3 of the regulation and Article 5 of the decision) which would both have to be observed simultaneously. That can neither be practical nor have been intended. Finally, it is also worth noting that regulations on Community quotas, such as for example Article 2 of Regulation No 3020/77 (Official Journal 1977, L 357, p. 51), expressly refer to Regulation No 1023/70 whereas that is not the case with the decisions concerning national quotas.

3. In view of the clear outcome to which the examination of the first question leads, the second question, which was put in the event of the first question being answered in the affirmative, need not be considered further.

4. Accordingly, in my opinion the reference from the College van Beroep voor het Bedrijfsleven should be answered as follows:

The provision on publication contained in Article 4 of Regulation No 1023/70 does not apply to import quotas which Member States opened in accordance with Article 3 of Decision 79/252/EEC.