OPINION OF MR ADVOCATE-GENERAL TRABUCCHI DELIVERED ON 20 JUNE 1974 [1]

Mr President,
Members of the Court,

1. Several dozen bottles of whisky produced by two well-known British firms, bought in France from exclusive concessionaires of the producer, were, after proper importation and customs clearance, imported into Belgium in 1970, with a view to their sale in that country.

The product was duly bottled in its original bottles, on which the purchasers (the trader Gustave Dassonville and his son Benoît) had affixed, before offering them for sale, a label bearing, *inter alia,* the printed inscription 'British customs certificate of origin' followed by the hand-written note of the number and date of the excise bond certifying payment of the prescribed guarantee to the French administrative authorities. Following a subsequent on-the-spot inspection carried out at Uccle in a shop selling wines and spirits belonging to the Dassonvilles by an inspector of foodstuffs, it was discovered that the Dassonvilles were not in possession of the certificates of origin of the goods issued by the British authorities. Although the authenticity of the goods is not disputed, the Public Prosecutor instituted criminal proceedings against them, alleging that the accused had committed forgery by affixing to the bottles the said label and the said number and date, thereby contravening both Article 2 of the Belgian Royal Decree No 57 of 20 December 1934 relating to spirits and Article 1 of the same Royal Decree, by importing, selling, displaying for sale, holding in their possession or transporting for the purposes of sale and for delivery, whisky, bearing the designation 'Scotch whisky' duly adopted by the Belgian Government, without causing the whisky to be accompanied by an offical document certifying its right to such designation. The absence of this document is essentially the cause of the two charges, the penalties for which may include imprisonment.

In its judgment making the reference to this Court, the Brussels court points out that the rules in force in Belgium on designations of origin may have the effect of completely isolating the Belgian market, especially since the other Member States, as is the case with France, do not possess similar rules with regard to certificates of origin. The result of this is that a third party purchasing goods in these States would be unable to obtain the document required for importation into Belgium.

The position of 'exclusive importer' holds a particular importance in the general context of the case, for it is this position which is claimed in respect of Belgium by the two firms who brought a civil claim in the criminal proceedings for the purpose of protecting their rights as exclusive importers and distributors of these products. The Belgian court points out that the exclusive dealing agreement between these undertakings and the British producers was notified within the prescribed time to the Commission, which has so far not initiated the procedure under Article 9 of Regulation No 17. For its part, the Commission states, in its written observations submitted in this case, that its departments are at the present time examining a test case relating to an exclusive dealing agreement between a producer of whisky and a French concessionaire with regard especially to the prohibition on exports, which also

1 — Translated from the Italian.

seems to be present, so far as concerns us, in the exclusive dealing agreements between both the two Belgian firms with civil claims and their British supplier.

Taking into account the restriction on trade between Member States which could ensue from the application of the Belgian law in force and the claims of the 'exclusive importers' referred to above, the Belgian court has referred the following two questions to the Court of Justice:

1. Must Articles 30, 31, 32, 33 and 36 be interpreted as meaning that a national provision prohibiting, in particular, the import of goods such as spirits bearing a designation of origin duly adopted by a national government where such goods are not accompanied by an official document issued by the government of the exporting country certifying the right to such designation, must be considered as a quantitative restriction or as a measure having equivalent effect?

2. Is an agreement to be considered void if its effect is to restrict competition and adversely to affect trade between Member States only when taken in conjunction with national rules with regard to certificates of origin when that agreement merely authorizes or does not prohibit the exclusive importer from exploiting that rule for the purpose of preventing parallel imports?

2. The requirement of the certificate of origin of goods coming from other States is customary in free trade areas where, in the absence of a common external customs tariff, it is necessary to distinguish between products originating in the area in question, and as such put into free circulation, from products coming from third countries.

In our case, however, this requirement has no customs function but is merely intended to protect designations of origin adopted by the Belgian authorities.

In the absence of a Community definition it is certainly lawful for a Member State to adopt the definition of a particular standard product given by the competent authorities of the producer third country for the purposes of protecting, in accordance with international conventions, the designations of origin of foreign products.

The first question does not cast doubt upon the conformity with the Treaty of national laws intended to protect the origin of goods, but merely the lawfulness of the particular means used by Belgian law, which relate to proof that the goods in question correspond to the legal definition and which require, even where the goods have already been put into free circulation in another Member State, a certificate of origin issued by the authorities of the country where the goods were produced.

The fear expressed by the Brussels court that this requirement will hinder the free movement of goods between Member States to the point where it will completely prevent it in certain cases is most certainly well-founded. Clearly, this is especially the case where the certificate of origin is required to be made out directly in the name of the Belgian importer; or where, even apart from any indication as to the party to whom it must be addressed, the national authorities will accept only the original certificate, without admitting the possibility of equivalent copies, even when legally authenticated. These requirements, even considered separately, are not in fact easy to satisfy for those who purchase the products indirectly in a Member State of the Community with a view to exporting them to Belgium.

But, rather than dwell at this stage upon these extreme cases, I will concentrate primarily on the more general question of the compatibility with Community law of the requirement of the certificate of origin for goods bearing a designation duly adopted in the importing State.

The requirement of the certificate of origin, issued by the authorities of the producer country as a general rule at the time of export, has a restrictive effect on the movement of products between Member States because of the practical difficulties in obtaining the certificate encountered by traders operating indirectly who normally only purchase from the exclusive concessionaire part of a larger consignment. Although in theory it is also possible for third parties subsequently to ask the British authorities for the certificate, the need to possess the precise details enabling the batch in question to be correctly identified as the subject of a particular export, makes it in practice rather difficult, if not completely impossible, to obtain this certificate, especially for small quantities forming part of a larger consignment. This applies, *a fortiori,* where individual exclusive concessionaires in the various Member States are unwilling — either because they have entered into a formal undertaking with the producer not to engage in exports, or because they wish to avoid upsetting any convenient territorial division of the markets — to cooperate in any way with third traders, and, for example, do not supply all the details needed to identify the consignment in question. The result of this is in practice completely to prevent freedom of movement between the various national markets, such movement as there is running along a single well-defined path and involving the recognized likelihood of differences, objectively unjustified, in the price of a particular product from one Member State to another. The products in question can in fact be imported legally into Belgium only by exclusive concessionaires or agents of the producers, since the latter are the only ones having access to direct supplies and they can therefore obtain the certificate of origin without any difficulty.

The fact that third parties have the possibility of importing freely into Belgium original Scotch whisky by describing it merely as whisky does not, by reason of the clearly uneconomic nature of the operation, cast the situation described above in a more favourable light.

One can recognize here a situation which in some respects is similar to that which the Court dealt with in the *Grundig-Consten* Case. But there are also important differences. Above all, the restriction on freedom of movement and on competition, which in this case is caused not by trade mark rights but by the rules for the protection of the designation of origin of the goods, derives, objectively and necessarily, from the law itself, which applies without the need for any initiative on the part of interested private parties. Whereas in that case the trade mark was used expressly in the private interests of individual undertakings who sought to exclude parallel imports of products from the same firm, in our case, the legal sanctions are intended to ensure respect for a legal requirement enacted to protect a public interest represented, in the main, in the importing State, by the interest of consumers in ascertaining the quality of goods. Furthermore, whereas in the *Grundig* case the hindrance to parallel imports resulting from the trade mark was a legal obstacle and as such insuperable in domestic law by reason of the completely exclusive nature of the trade mark which was directly guaranteed to its national owner, in this case there is no legal prohibition on parallel imports into Belgium of products bearing a designation of origin. There is only the requirement of a document which in theory anyone may obtain, and which, by its very nature, constitutes without doubt an effective means of controlling the product's authenticity.

3. As part of our consideration of the first question, we must establish the criteria which will enable the national court to decide whether the rules relating to the certificate of origin, which it is claimed apply to this case, are

compatible with the Treaty. In this connexion, the first rule of importance is Article 30 prohibiting quantitative restrictions and measures having equivalent effect.

But first of all it is necessary to reject one method of approaching the question which I believe to be erroneous. It has been observed that when restrictions on the movement of goods between Member States result not from a domestic measure which conflicts with the Treaty but merely from the coexistence of different domestic laws, the obstacles themselves can be eliminated in principle only by approximating the laws in accordance with the procedure provided by the Treaty. One could ask whether this is not also the case here. One might in fact consider that the difficulties complained of would be greatly reduced if French law were also to make the importation and marketing in France of Scotch whisky subject to the same requirement of a certificate of origin demanded by Belgian law, with the result that a further certification for movement across the border into Belgium would appear absolutely unnecessary. This might lead to the view that the situation created in our case really arises from an objective difference between national laws, which can only be put right by the process of approximation of the laws.

But this is not the way to solve the problem. First of all, one can only speak of approximation of laws if the domestic measures under consideration are not in themselves prohibited by the Treaty. Consequently, this examination of compatibility with the Treaty logically takes precedence over the proposal made for solving the difficulties established through the process of approximation of laws.

Furthermore, the discussion is based on false argument. The restriction on trade established as existing in this case between France and Belgium results in reality not from the fact that French law does not require the same formality as Belgian law, but from the fact that the latter requires a formality which a person buying goods indirectly on the French market is not in a position to satisfy. Besides, one cannot in fact assert with any certainty that, even if French law were to require the same formality as Belgian law for the entry into France of those products, a third person acquiring, for example, only a fraction of the consignment of goods imported by the exclusive concessionaire into France could obtain from the latter or from a subsequent purchaser a copy of the certificate of origin. For this it is in fact necessary that French law should require the exclusive concessionaire to issue copies of this document on demand to purchasers or third parties who also purchased the goods imported by him at 'second or third hand', and that after a number of moves and subsequent subdivisions of consignments of the goods it should still be possible to identify all the intermediaries.

It can therefore be concluded that the difficulties encountered for trade between Member States due to the requirement of the certificate of origin result directly from the law of the State which imposes this requirement. So we must now consider the compatibility of this requirement with Community law on the prohibition of quantitative restrictions and measures having equivalent effect.

4. Whereas the concept of quantitative restriction is very precise, being identical to a quota, the concept of measure having equivalent effect is not so easy to define, given that the restrictive effect on imports and exports deriving from such a measure is only indirect and given the multiplicity of measures which can tend to produce an effect of this nature.

The Commission has had the opportunity to define this concept in the performance of the task conferred on it by the aforementioned Article 33 (7) of the Treaty. In compliance with this rule, it has arranged, through directives adopted at various times, for the

abolition of measures having an effect equivalent to quotas in existence when the Treaty came into force. A Directive which is particularly important for our case is that of 22 December 1969 (OJ L 13, p. 29, 1970) which directs the abolition of 'measures', other than those applicable equally to domestic or imported products, which hinder imports which could otherwise take place, including measures which make importation more difficult or costly than the disposal of domestic production' (Article 2 (1)).

According to paragraph (2) of this Article, the Directive covers in particular 'measures which make imports or the disposal, at any marketing stage, of imported products subject to a condition — other than a formality — which is required in respect of imported products only, or a condition differing from that required for domestic products and more difficult to satisfy'.

Besides these measures, Article 3 also provides for the abolition of measures governing the marketing of products which deal, *inter alia,* with their identification, even where they are applicable equally to domestic and imported products, where their 'restrictive effect on the free movement of goods exceeds the effects intrinsic to trade rules'. According to the same Article this is the case, in particular, where: 'the restrictive effects on the free movement of goods are out of proportion to their purpose; the same objective can be attained by other means which are less of a hindrance to trade'. The Commission has applied here a general criterion governing the implementation of authorized restrictions on the full operation of the fundamental freedoms which are the basis of the common market.

Domestic rules relating to designations of origin constitute one aspect of the regulation of trade. The powers which Member States are recognized still to possess in this area must be exercised in accordance with the strict limits laid down by the EEC Treaty. The right of freedom of movement within the Community of goods which are in free circulation in a Member State constitutes one of the fundamental principles of the Treaty. A trade rule enacted by a State which is unlike a quota but which, considered in the context in which it applies, is capable of seriously hindering intra-Community trade in certain categories of goods, must be regarded in principle as a measure having an effect equivalent to a quantitative restriction.

Contrary to the opinion of the British Government, the prohibition on measures having an effect equivalent to quotas is not subject, for its application, to the condition that there should actually be a quantitative reduction in the movement of goods between Member States. In accordance with the reasoning adopted by the Court in its case law on the subject of customs duties and measures having equivalent effect, which satisfies requirements of logic and practice, the prohibition operates automatically by reason of the sole fact that the measures in question, even though not discriminatory or protectionist, constitute an unjustified additional burden for importers, which means that they are liable to restrict, in an improper manner, intra-Community trade (Judgment No 2-3/69, *Sociaal Fonds voor de Diamantarbeiders,* Rec. 1969, p. 221 *et seq.).* This corresponds precisely with the text of the Treaty, which provides, on the expiry of the transitional period, for the prohibition, in the same absolute and automatic manner, of both quantitative restrictions and measures having equivalent effect, independently of proof in individual cases of the quantitative effects which the measure in question actually had on trade. Otherwise, according to the opinion criticized, one would have to accept the continuance of quotas where it emerges that the quantity of goods imported is lower than the quota stipulated.

5. Article 36 of the EEC Treaty does however allow States to derogate from

the prohibition on quantitative restrictions and measures having equivalent effect for certain purposes and within defined limits. This possibility of derogation is provided in particular for the purpose of enabling States to fulfil their duties relating to the protection of industrial and commercial property and the protection of morality, the health of persons etc.

We are dealing with an exception, subject as such to strict interpretation, which enables States to protect various national interests connected with the exercise of powers which remain subject to that exclusive authority.

The protection of designations of origin of products is covered by the principle of protection of industrial and commercial property for which Article 36 allows necessary derogations to the prohibition on quantitative restrictions and measures having equivalent effect. However, on the basis of this rule, States can derogate in the said manner only for the purpose of the protection of their own interests and not for the protection of the interests of other States. Thus, for example, restrictions on freedom of movement, which a State can introduce on the basis of this rule for the protection of public health, cannot in any case justify restrictions on exports of products considered harmful for the purpose of protecting the public health of the populations of other Member States. Article 36 allows every State the right to protect exclusively its own national interests. Consequently, for the purpose of protecting industrial and commercial property, each State can restrict the freedom of movement of goods only with reference to the protection of individual rights and economic interests falling under its own sphere of interest.

In the context of property rights, it is clear that the protection of a designation of origin relates to the economic interest of the producer. Consequently, in the case of a foreign product, and even more so where a third State is involved, the interest to be protected lies outside the sphere of interest which every State is allowed by virtue of Article 36. Thus, in relation to designations of origin, it is the producer State which has the right to make use of the provisions of Article 36 enabling it to lay down the conditions (relating, for example, to packaging, labelling, sale, etc. . . .) which it considers necessary to ensure the protection of the original product, and not an importing State.

If the producer State is not a Community Member State, as was the case here with Britain, the Member States which have entered into international agreements with this same State regarding the protection of its standard products can adopt all the measures necessary for this purpose, but they must respect the limits to their freedom of action laid down by Community law. It would certainly not be consistent with the spirit or the function of Article 36 to allow derogations to the principle of freedom of movement of goods within the Community, to a greater or lesser extent, in favour of individual States, in accordance with their varying international obligations with third States.

It is perhaps in consideration of this factor that Fourcroy and Breuval have sought to justify the application of Article 36 exclusively on the basis of protection of public health within the importing State. But, as the Commission has observed, one could, on this basis, justify prohibiting the importation into a State of harmful products, but not obstacles to the importation of a product simply on the basis of its designation. As we have seen, there is nothing to prevent the importation and marketing in Belgium of Scotch whisky, even without the certificate of origin, where it is designated purely and simply as whisky.

It appears to me, therefore, that one can completely reject the argument that Article 36 allows a Member State to apply in respect of imports from other Member States restrictive measures

having an effect equivalent to quotas for the purpose of protecting the designations of origin of products of third States.

6. Be that as it may, even where Article 36 must be considered applicable in theory, there remains the fact that a derogation based on this rule would only be allowed on condition that prohibitions or restrictions implemented by States for the purposes prescribed do not constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.

Besides this factor, in conformity with a general criterion relating to the application of rules allowing derogations from the fundamental principles of the common market, exceptions to the prohibitions of Article 30 are only allowed insofar as strictly necessary for the attainment of the legal objective. In other words, the only measures allowed are those which, among others equally suitable for the objective, hinder the operation of the common market the least; this is in conformity with the case law of this Court.

This general criterion of interpretation defining the power of States to derogate conforms — as has been seen — with the criterion laid down in the last part of Article 3 of the Commission's Directive of 22 December 1969 referred to above.

One must therefore examine whether the restrictions in question can be justified on the basis of their suitability for the objectives, which means whether they do not involve greater restrictions than are necessary. In such a case one might consider that there is an infringement of the very restriction laid down expressly by Article 36 in its prohibition of 'disguised restrictions' on intra-Community trade. We will also have to examine whether, despite the fact that there is no difference in the treatment of similar products, the same restrictions do not result in an unjustified difference in the treatment of Community citizens, consequently leading to arbitrary discrimination. It may perhaps appear a little artificial to consider these two questions separately as it is difficult to conceive how a restriction can be considered suitable for the objective, in the sense indicated above, when its effect is to create arbitrary discrimination. Where a restriction on imports is considered the only means suitable for attaining one of the objectives authorized by Article 36 this factor precludes, in principle, the argument that differences in treatment deriving from this restriction can be interpreted as cases of arbitrary discrimination. On the other hand, an unjustifiable difference in treatment would seem to imply that for the attainment of the legal objective there exist means different from the one causing such inequality. Moreover, for the purposes of explaining the matter clearly, I shall proceed on the basis of a separate examination of the conditions attached to the legality of any derogation under Article 36.

7. One can first of all establish the excessive and unjustified nature of the restrictions on free movement pointed out at the beginning of this opinion, resulting from the requirement that on the certificate of origin there must appear the name of the consignee in the Member State who uses the certificate for the purpose of importing and marketing the products. In fact, there certainly exist other means which are less restrictive than mention of the consignee's name on the certificate, which would allow one to identify clearly the consignment of goods to which the certificate of origin relates, especially where the product in question is usually bottled at the place of origin. Consequently, a condition of this kind involves restrictions on trade between Member States which are not justified on the basis of the first part of Article 36. Nor is the refusal to accept authenticated copies of the original certificate admissible.

At this point it must be considered whether the requirement of the

certificate of origin is more restrictive than necessary, even when it does not have to be made out directly for importation into a particular Member State and, furthermore, it need not contain the name of the importer.

It is impossible to state as a general principle whether the requirement of the certificate of origin is the only effective means of protection. Such a statement can only be made by reference to the characteristics of the particular products and, having regard to the position of trade in the products concerned. In general, one can however state that, given that the *raison d'être* of the certificate of origin — and the justification for the additional hindrance to trade resulting from it — is that of protecting producers against fraud and giving consumers a guarantee as to quality, the requirement that someone should produce the said certificate who cannot easily obtain it, even when there is no reasonable doubt as to the regularity and authenticity of a particular product, can constitute an unnecessary and therefore unjustified hindrance to trade. This observation conforms with the general principle restricting the application of provisions granting the right to derogate, of which a particular aspect is the criterion established in the Judgment in Case 78/70 *(Deutsche Grammophon)* specifically on Article 36, which applies to the field of industrial and commercial property only for the protection of rights which form the specific subject matter of this property (Rec. 1971, p. 499, para. 11).

It is true that when appraising the hindrance to trade which may result from a particular rule relating to the means of proving the authenticity of goods one should at the same time bear in mind the practical advantages which may result for the speedy dispatch of work by the customs authorities of the importing State. But facilitation of the duties of these authorities must accord with the principle of freedom of movement of goods. One cannot justify, in the context of Community law, a simplification of the work of administrative authorities if it leads to an effective reduction of this liberty for dealers.

Consequently, when there is no doubt as to the authenticity of the product bearing a protected designation and its correspondence with the legal definition of that product, the fact that a certificate is still required, which the Community dealer may find difficult to obtain, is contrary to the general criterion which — as we have seen — governs the application of provisions granting the right to derogate.

Moreover, even where the authenticity of a product may not appear evident (the causes of which may be completely unconnected with the behaviour of the importer, as, for instance, where the products are not packaged at the place of origin) the person concerned, finding it perhaps impossible to obtain a certificate, as it does not depend on him, must be allowed to prove by every reasonable means the correspondence of the goods themselves with the legal requirements.

The case is different where it is Community law which requires a certificate of origin for the importation of particular goods into the Community. In this case, there would in fact be no hindrance to the movement of the goods themselves within the common market once they had been duly put into free circulation within a Member State.

In conclusion, without prejudice to the protection of public and private interests from fraud by recourse to general rules on the fraudulent imitation of goods and on unfair competition and, without prejudice to the probative value, under domestic law, of the certificate of origin in cases where it can be obtained by the importer, importers who have not received the goods directly from the country of origin must at least be allowed to prove their authenticity by

any other means definitely establishing this fact.

8. Moving on now to consider the prohibition of arbitrary discrimination, it is enough for me to add that the fact of requiring an importer of a Member State to obtain a certificate of origin when this is quite beyond his powers, since for this he needs the cooperation of third persons which is improbable, besides constituting a serious obstacle to the movement of goods within the Community is capable of having an essentially discriminatory influence even where the same requirement applies to the marketing of corresponding domestic goods, by reason of the fact that, in the case of the latter, dealers are generally not faced with any real difficulty in obtaining the certificate of origin from the local producer. As this restriction is unnecessary to attain the legal objective of the protection of products bearing a designation of origin, it results in any event in arbitrary discrimination, if not between foreign and domestic goods, at least between Community dealers in relation to the actual possibilities of selling the same product in a particular Member State. Consequently, for this reason as well the limits of the power of derogation laid down expressly by Article 36 would be exceeded.

9. Since, therefore, the Treaty does not allow a State to prohibit imports of products bearing a protected designation and put into free circulation in another Member State of the Community on the sole ground that the importer does not possess the certificate of origin even where there is no doubt as to the authenticity of the goods, or where their authenticity may be proved by some other means, the second question, concerning the interpretation of Article 85 with reference to the appraisal of the exclusive dealing agreement operating between the Belgian exclusive concessionaire and the British producer, is of minor importance in this case.

The legal action which gave rise to these preliminary proceedings, if viewed realistically, does however make it appear that the interest at stake was not bound up so much with the protection of the designation of origin as, perhaps more emphatically, with the protection of an anti-competitive position. It is in this light that the second question referred by the Tribunal of Brussels must really be examined: a question to which it is easy to give an answer which is consistent with the unequivocal case law of this Court of Justice.

No interest other than the maintenance of an exclusive position can have induced the Belgian concessionaires to invoke a rule protecting the designation of origin of goods whose origin and basic conformity with the legal definition of the product are not in fact denied.

The fact that the text of the exclusive dealing agreement contains no provision obliging the concessionaire or agent to refrain from invoking his domestic law to prevent parallel imports can certainly not render the contract itself incompatible with Article 85 of the Treaty.

As we know, the exclusive dealing agreement operating between the Belgian concessionaire and the British producer is not legally effective in Belgium against third persons who may make parallel imports. In addition, there is no necessity for any private initiative on the part of the exclusive concessionaire to institute the criminal procedure provided by the Belgian law mentioned above on the protection of designations of origin of goods. As this penal law is applicable on the initiative of the Public Prosecutor, the obstacle to inter-State trade and therefore to freedom of competition, derives essentially and directly from the national law itself, whereas the bringing of a civil claim in criminal proceedings by exclusive concessionaires can only worsen the economic position of those who may find themselves accused, but it does not actually establish the restriction

on trade which is a direct result of the legal prohibition.

Nevertheless, the behaviour of the exclusive concessionaire in Belgium, although legally it does not affect the application of the prohibition laid down by the Belgian law relating to the protection of designations of origin, can, all the same, be significant in the sphere of Community law on competition as an indication of the anti-competitive nature of agreements or concerted practices relating to intra-Community trade in the products in question.

Exclusive dealing agreements concluded between concessionaires established in Member States and producers in third States could therefore have a restrictive effect on competition and trade between Member States, through the situation which they create and which must be appraised as a whole. This could in particular be the case where the concessionaires, besides giving the sole producer an undertaking not to re-export directly to other Member States, also act in a manner which has the effect of actually discouraging such exports. By virtue also of the combined effect of domestic laws as, for example, a law which requires a certificate for imports whose availability depends upon the goodwill of third persons whose interests are opposed to the growth of real competition in certain products, there could occur an actual division of national markets resulting in the isolation of some of these from intra-Community trade. This may also explain why, in this case the exclusive French concessionaire failed to cooperate with the request of the accused for a copy of the certificate of origin of the consignment of Scotch whisky.

When a concessionaire shows by his overall behaviour (aspects which are not insignificant include the bringing of a civil claim and perhaps even more important the complaint made to the Public Prosecutor requesting him to institute criminal proceedings against the competitor even though there is no doubt whatsoever regarding the authenticity of the product and the regularity of its entry into free circulation within the Community) that he wishes to prevent or eliminate parallel importers so as to ensure or maintain a *de facto* monopoly in the product bearing that particular trade mark within the national territory and to avoid all competition, even though legal, in that product, and when he is helped in the realization of this intention by the behaviour of other concessionaires of the same producer within the common market, one can deduce from this the existence of a concerted practice intended to ensure the absolute territorial protection of the national market in question. This is a practice which, by operating in close conjunction with the exclusive dealing agreement of the concessionaire who is thereby protected, can render the exclusive dealing agreement illegal.

Considered in this light, in the complex economic and legal context in which it actually operated, the exclusive dealing agreement to which the Belgian court refers may therefore prove to be prohibited by Article 85 (1). But such a decision can only be made on the basis of an examination of the facts. Consequently, within the context of the present proceedings, this is a matter for the Belgian court.

10. I therefore advise the Court to reply to the questions referred by the Brussels court by ruling as follows:

1. The prohibition on importation into a Member State of foreign products bearing a protected designation of origin and already in free circulation

in another Member State, imposed on the sole ground of inability to produce the certificate of origin, constitutes a measure having an effect equivalent to a quantitative restriction prohibited in principle by Article 30 of the EEC Treaty and not admissible on the basis of Article 36.

2. An exclusive concession agreement which is in itself compatible with Article 85 of the EEC Treaty is capable of falling within the prohibition of this rule when, considered in the legal context and as part of the complex of contractual relations which may be traced back to the same producer, and taking account of the observed market behaviour of various concessionaires of the same product and their behaviour in relation to third persons, it reveals a concerted practice tending to bring about or maintain the isolation of national markets from free intra-Community trade.