

JUDGMENT OF THE COURT
OF 31 JANUARY 1979 ¹

Yoshida Nederland B.V.
v Kamer van Koophandel en Fabrieken voor Friesland
(preliminary ruling requested by the
College van Beroep voor het Bedrijfsleven, The Hague)

“Slide fasteners”

Case 34/78

1. Goods — Slide fasteners — Origin — Determination thereof — Criteria — Commission Regulation (EEC) No 2067/77, Art. 1 — Invalid

In adopting Regulation (EEC) No 2067/77 concerning the determination of the origin of slide fasteners, the Commission exceeded its power under Regulation (EEC) No 802/68 of the Council. Article 1 of Regulation No 2067/77 is therefore invalid.

In Case 34/78

REFERENCE to the Court under Article 117 of the EEC Treaty by the College van Beroep voor het Bedrijfsleven, The Hague, The Netherlands, for a preliminary ruling in the action pending before that court between

YOSHIDA NEDERLAND B.V., Sneek (The Netherlands)

and

KAMER VAN KOOPHANDEL EN FABRIEKEN VOOR FRIESLAND, Leeuwarden (The Netherlands)

on the interpretation and the validity of Regulation (EEC) No 2067/77 concerning the determination of the origin of slide fasteners in respect of which not all the manufacturing processes are carried out in the same country.

¹ — Language of the Case: Dutch.

THE COURT

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

Advocate General: F. Capotorti
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

The facts, procedure, conclusions and submissions and arguments of the parties may be summarized as follows:

I — Summary of the facts and procedure

The plaintiff in the main action, Yoshida Nederland B.V., a *vennootschap met beperkte aansprakelijkheid* (limited liability company), is a Netherlands company founded in 1964 and a subsidiary of the Japanese group YKK (Tokyo). In its factory in Sneek, Friesland, the place at which it has its registered office, it manufactures slide fasteners made of metal and synthetics (nylon and polyester). The two parallel tapes of the metal slide fasteners are closed by interlocking scoops while the parallel tapes of the synthetic slide fasteners are closed by interlocking spirals.

The operations carried out in the factory at Sneek include not only the manufacture of slide fasteners but also the manufacture of a large number of metal

components thereof and, *inter alia*, the tapes onto which the slide fasteners are affixed, the metal scoops and the nylon spirals which form the closures.

On the other hand, the sliders used are manufactured in Japan.

Within the context of the exportation of those slide fasteners to Western Germany and the United States of America, Yoshida Nederland B.V. applied on 8 November 1977 to the Kamer van Koophandel en Fabrieken voor Friesland (the Chamber of Commerce and Manufacture of Friesland) for the grant of certificates that they were of Netherlands origin.

The defendant in the main action refused the certificates of origin requested on the ground that, under Commission Regulation (EEC) No 2067/77 of 20 September 1977 concerning the determination of the origin of slide fasteners, they could not be declared to have been manufactured in the Netherlands unless the assembly including placing of the scoops or other interlocking elements onto the tapes accompanied by the manu-

facture of the slider and the forming of the scoops or other interlocking elements had been carried out in that country. However, since the sliders were manufactured in Japan, the Kamer van Koophandel en Fabrieken voor Friesland could not certify that those slide fasteners were of Netherlands origin.

However, before the entry into force of Regulation No 2067/77, the rules applicable in that respect were contained in Regulation No 802/68 of the Council of 27 June 1968 on the common definition of the concept of the origin of goods, Article 5 of which provides that "A product in the production of which two or more countries were concerned shall be regarded as originating in the country in which the last substantial process or operation that is economically justified was performed, having been carried out in an undertaking equipped for the purpose, and resulting in the manufacture of a new product or representing an important stage of manufacture" and was interpreted by the Kamer van Koophandel en Fabrieken voor Friesland as authorizing it to grant Yoshida Nederland B.V. certificates of Netherlands origin for the exportation of its slide fasteners.

Yoshida Nederland B.V. brought before the College van Beroep voor het Bedrijfsleven (administrative court of last instance in matters of trade and industry) two decisions of refusal made by the Kamer van Koophandel en Fabrieken voor Friesland and requested it to annul them, claiming in particular that Regulation No 2067/77 was invalid and, in the alternative, even supposing that the regulation was valid, that the defendant could not apply it as it had done.

In those circumstances the Netherlands court referred to the Court of Justice the following three questions for a preliminary ruling:

1. "Must Article 1 of Commission Regulation (EEC) No 2067/77 be interpreted as meaning that a country

in which not all the processes listed in the third column in Article 1 of the regulation were carried out, in particular a country in which the slider was not made, can in no circumstances be considered the country of origin of the slide fastener?

If so, is that article also applicable to slide fasteners which are not closed by means of interlocking metal scoops but by means of interlocking nylon spirals?

2. If the first part of Question 1 is answered in the affirmative, which means that the slide fasteners involved in the case cannot be issued with certificates of origin within the meaning of Articles 9 and 10 of Regulation (EEC) No 802/68 of the Council, is Regulation No 2067/77 invalid as being in conflict with:
 - (a) Article 5 of Regulation No 802/68?
 - (b) Or Article 30 of the Treaty?
 - (c) Or Article 110 of the Treaty?
3. If Regulation No 2067/77 is not held to be invalid for any of the reasons set out under (a), (b) or (c) must the regulation be regarded as being invalid for one of the reasons listed by the appellant set out under numbered paragraphs (4) to (9) inclusive in the body of this judgment, or else as being in conflict with any other provision or principle of Community law which has not yet been mentioned by the appellant?"

The plaintiff in the main action put forward in particular the following arguments before the national court:

- (a) *The validity of Regulation No 2067/77*
- This regulation conflicts with Regulation No 802/68 (Article 5) and with Articles 30 and 110 of the Treaty.

- The Commission, as the legislative body drawing up the regulation, has declared that the criteria set out in the regulation are applicable generally and without distinction for determining whether slide fasteners originate in the EEC or a Member State of the EEC.
- Insufficient reasons are stated for Regulation No 2067/77.
- Essential procedural requirements were not complied with in drawing up Regulation No 2067/77 because the procedural rules laid down by Article 14 of Regulation No 802/68 were not properly complied with.
- Regulation No 2067/77 was adopted in an extremely careless manner.
- Regulation No 2067/77 is not completely identical in the six authentic languages.
- If the Commission has “discretionary power” to determine the country of origin of slide fasteners, Regulation No 2067/77 is invalid because of “misuse of powers”, for since economies of scale require undertakings belonging to the YKK group to manufacture sliders in Japan the above-mentioned regulation makes the marketing of slide fasteners more difficult when a certificate of origin declaring that the slide fastener originates in a Member State of the EEC is required.
- Article 1 of Regulation No 2067/77 is not applicable to slide fasteners whose closures consist of spirals, for which the country of origin must be determined by means of direct application of Article 5 of Regulation No 802/68.

The order for reference was entered in the Court Register on 14 March 1978. Written observations were submitted in accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC by Yoshida Nederland B.V., represented by Mr Alexander, Advocate at The Hague, by the Commission of the European Communities, represented by its Legal Adviser, Mr Trevor Townsend, acting as Agent, assisted by Mr Haagsma, and by the Netherlands, French and Italian Governments.

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

II — Summary of the written observations submitted to the Court

A — *Observations submitted by Yoshida Nederland B.V.*

Yoshida Nederland B.V. first gives some technical information on the slide fasteners used to fasten various products.

The range of slide fasteners manufactured by Yoshida Nederland B.V. includes 35 main types supplied in extremely variable lengths and 140 colours.

(b) *The interpretation and method of implementing that regulation*

With regard to the interpretation to be given to Regulation No 2067/77, if it is valid, the plaintiff put forward the following viewpoint:

- the condition that the slider must be manufactured in the country which is to be regarded as the country of origin does not signify that in all other cases the slide fastener does not originate in a Member State or in the EEC.

The parts of a slide fastener are closed by a slider which generally bears an indication of the trade name under which the slide fastener is sold.

The value of the slider compared with that of the completed slide fastener is very variable.

The range of sliders used by the YKK group covers more than one thousand varieties.

A slider factory can supply several slide fastener factories; for this reason the production of sliders for the slide fastener factories of the YKK group is centralized.

Yoshida Nederland markets its products principally in the Netherlands, Belgium and Denmark but also exports to third countries.

In the EEC, the YKK group has other subsidiaries in the Federal Republic of Germany, France, Italy, the United Kingdom and Belgium.

Since "imports into the Community of slide fasteners, particularly of Japanese origin, have increased considerably in recent years" the Commission introduced as from 1 May 1975 Community surveillance over those imports (Regulation No 646/75 of 13 March 1975, Official Journal L 27 of 14 March 1975, p. 21). That Community surveillance is still in force.

Yoshida then studies the background to Regulation No 2067/77.

The first draft based on tariff heading 78.02 was not successful because of the judgment of 26 January 1977 in Case 49/76, *Gesellschaft für Überseehandel mbH v Handelskammer Hamburg* [1977] ECR 41 in which it was held in paragraph 5 of the Decision that "it would not seem sufficient to seek criteria defining the origin of the goods in the tariff classification of the processed products, for the Common Customs Tariff has been conceived to fulfil special purposes and not in relation to the determination of the origin of products".

The Committee on Origin delivered no opinion on the fresh draft (Article 14 (3) (a) of Regulation No 802/68) and the Council did not act (Article 14 (3) (b)), so that the Commission adopted on its own initiative Regulation No 2067/77, according to which a slide fastener can only originate in a specific country if the slider has been manufactured in that country, with the result that the undertakings of the YKK group are no longer able to obtain certificates of origin for most of the slide fasteners which they manufacture in the EEC.

This effect of the regulation has had such serious repercussions on the sales of slide fasteners that solely for that reason a new subsidiary of YKK has been set up in Italy which is building a slider factory there.

In these circumstances Yoshida Nederland B.V. requested the Netherlands court principally to declare that Regulation No 2067/77 was invalid and that court referred to the Court of Justice the three questions quoted above for a preliminary ruling.

A. The meaning of Question 1 according to the plaintiff in the main action

Since certificates of origin were refused because the sliders were not manufactured in a country of the Community, the national court wishes to know whether the effect of Article 1 of the Regulation is that in no circumstances can a slide fastener be considered as originating in a country in which in particular the slider was not manu-

factured. In the present case, certificates of origin had been refused for slide fasteners closed by interlocking nylon spirals so that the second sub-question is whether Article 1 of Regulation No 2067/77 is also applicable to slide fasteners closed by interlocking nylon spirals.

Reply to the first sub-question of Question 1

A grammatical analysis of Article 1 of Regulation No 2067/77 leads to the conclusion that all the operations listed in the third column: assembly, placing of the scoops or other interlocking elements onto the tapes, manufacture of the slider and forming of the scoops or other interlocking elements, must take place in a Member State for that State to be considered as the country of origin of those slide fasteners.

Accordingly, a slide fastener can in no circumstances originate in a country in which certain of those operations, including the manufacture of the slider, have not taken place.

This reasoning leads to solutions contrary to Article 5 of Regulation No 802/68. However, according to the plaintiff, it is possible to interpret Article 1 of Regulation No 2067/77 differently, in other words as follows:

- (a) If the operations listed in the third column have been carried out in a Member State, the slide fastener originates in that Member State or in the Community;
- (b) In all other cases, the origin of a slide fastener must be determined by direct application of the criteria laid down in Article 5 of Regulation No 802/68.

Reply to the second sub-question of Question 1

Slide fasteners are closed either by scoops (in Dutch: haakjes; in German: Haken; in English: scoops; in Italian:

graffette; in Danish: haegter), or by spirals.

The Netherlands, French, Italian and Danish texts of Article 1 of Regulation No 2067/77 mention only the forming and assembly of scoops.

In the English version, the words "or other interlocking elements" are added after the word "scoops"; the validity of this, as we shall see later, is doubtful.

The German term "Reißverschlussskette" is completely obscure.

In the opinion of the plaintiff these differences of language prompt the following reply: "Article 1 of Regulation No 2067/77 is not applicable to slide fasteners closed by interlocking nylon spirals".

- B. Reply to Question 2 on the invalidity of Regulation No 2067/77 for infringement of Article 5 of Regulation No 802/68 and Articles 30 and 110 of the Treaty

(a) Infringement of Article 5 of Regulation No 802/68

To be valid, Regulation No 2067/77 must be compatible with the superior provision laid down in Article 5 of Regulation No 802/68 of the Council.

However, Regulation No 2067/77 is contrary to Article 5, which provides as follows:

"A product in the production of which two or more countries were concerned

shall be regarded as originating in the country in which the last substantial process or operation that is economically justified was performed, having been carried out in an undertaking equipped for the purpose, and resulting in the manufacture of a new product or representing an important stage of manufacture,"

for four reasons:

- (1) Last operation determining the origin

According to the judgment of the Court of Justice of 26 January 1977 in Case 49/76 on the origin of casein ([1977] ECR 53), the determination of the origin of goods must be based on a real and objective distinction between raw material and processed product, depending fundamentally on the specific material qualities of each of those products. However, the plaintiff is in complete opposition to the Commission as regards the technical analysis of the operations or processes which may be considered as last substantial processes or operations resulting in the manufacture of a new product or representing an important stage of manufacture.

These differences, according to the applicant, arise from the fact that the Commission did not wish to hold an investigation at its factory in Sneek.

- (2) Vertical integration in one and the same factory

The fact that if the slider alone is not manufactured in a country the finished product in that country is not a product originating in that country whatever the complexity of all the operations which enable it to be manufactured in the same factory is contrary to Article 5 of Regulation No 802/68.

- (3) Vertical integration in one and the same group of undertakings

The YKK group of undertakings to which Yoshida Nederland B.V. belongs itself manufactures the basic products which are intended to be processed in one or several of its slide fastener factories. Article 1 of Regulation No 2067/77 provides, however, that the manufacture of the slide fastener must be accompanied by the manufacture of that basic product (in particular the slider) in order to be granted the origin of the country of manufacture. This provision also constitutes an infringement of Article 5 of Regulation No 802/68.

- (4) Slide fasteners without a country of origin

The rules on origin aim to determine the origin of the goods. They cannot lead to situations in which products cannot be granted any country of origin. However, Article 1 of Regulation No 2067/77 leads to that situation because it is impossible to attribute to those slide fasteners as the country of origin Japan, which is the country in which only the sliders are manufactured. This situation is in breach of Article 5 of Regulation No 802/68.

- (b) *Infringement of Articles 30 and 34 of the EEC Treaty*

The importation of YKK slide fasteners and of components thereof into the Member States of the Community has given rise to several measures of commercial policy. On the one hand, at the request of the Commission YKK

Tokyo undertook to limit exportation to Italy of slide fasteners and components of those slide fasteners of Japanese manufacture and to inform the Commission quarterly of the value of exports to Italy of Japanese-manufactured slide fasteners.

On the other hand, considering that "imports into the Community of slide fasteners, particularly of Japanese origin, have increased considerably in recent years", the Commission introduced as from 1 May 1975 Community surveillance over these imports (Regulation (EEC) No 646/75 of the Commission, Official Journal L 67 of 14 March 1975, p. 21). Article 4 of that regulation requires that the origin of slide fasteners must be established by a certificate of origin.

However, the fact that it is impossible for Yoshida to obtain that certificate of origin results in obstacles to trade between Member States contrary to the provisions of Articles 30 and 34 of the Treaty.

Thus German buyers who send the slide fasteners to Poland within the context of imported work under contract carried out in undertakings established in that country must be able to establish that those slide fasteners originate in the EEC. They cannot therefore approach the YKK undertakings.

As regards exports to Italy, if the quota fixed for a specific year is exhausted, the Italian authorities will prevent the importation of YKK slide fasteners which, according to the certificates referred to in Articles 9 and 10 of Regulation No 802/68, do not originate in the Community. Thus Regulation No 2067/77 has results which are contrary to the provisions of Articles 30 and 34 of the EEC Treaty.

(c) *Infringement of Article 110 of the Treaty*

Yoshida Nederland B.V. maintains that Regulation No 2067/77 infringes Article 110 of the Treaty which obliges the

Community to contribute *inter alia* to the harmonious development of world trade and the progressive abolition of restrictions on international trade, objectives which are recommended in the preamble to the Treaty and in Articles 18 and 29 thereof.

Measures leading to or likely to lead to restrictions on the international division of labour and in world trade based thereon and to restrictions on international trade are in particular contrary to those rules.

However, Regulation No 2067/77 constitutes an example of the introduction of a restriction on international trade which is not a tariff.

C. Reply to Question (3) on the invalidity of Regulation No 2067/77 on other grounds

The plaintiff in the main action puts forward several arguments to maintain that Regulation No 2067/77 is invalid:

(a) *Restrictions on imports in the EEC*

In many cases Regulation No 2067/77 compels the undertakings which manufacture slide fasteners in the EEC to obtain sliders manufactured in the EEC and thus leads to disguised restrictions on imports. The importance of those restrictions is shown by the fact that they have obliged the YKK group to build a slider factory in the Community.

(b) Restrictions on exports from the EEC

A certificate of origin within the meaning of Articles 9 and 10 of Regulation No 802/68 is often required when goods are exported to third countries; in that case, Regulation No 2067/77 leads to a restriction on exports from the Community and the construction by the YKK group of a slider factory in the EEC is intended to compensate for the damage which has been caused to exports by that regulation.

It therefore seems that Regulation No 2067/77 is protectionist in nature.

(c) Inadequate statement of the reasons upon which it is based

Regulation No 2067/77 is invalid because it lays down generally and vaguely the criteria whose application, in some cases but not in others, has results contrary to Article 5 of Regulation No 802/68.

In particular, this regulation provides no reason justifying the decisive importance which it attaches to the manufacture of sliders.

(d) Infringement of the procedural rules laid down in Article 14 of Regulation No 802/68

To comply with Article 14 the draft submitted to the Council by the Commission must be identical to that on which the Committee was requested to deliver its opinion and the provisions finally adopted by the Commission must be identical to the draft which it submitted to the Council.

However, Yoshida Nederland B.V. suspects that the Commission infringed those procedural rules and in particular added to Article 1 of the English version of Regulation No 2067/77 the words "or other interlocking elements" after the word "scoops".

(e) Carelessness in adopting Regulation No 2067/77

The regulation shows that the Commission has no precise idea of the manufacturing process or of the economic significance of the various stages thereof, as the officials of the Commission have never visited its factory.

By failing to take the necessary care in adopting the regulation the Commission has infringed a rule of law which must be complied with in the application of the EEC Treaty.

(f) Linguistic differences

Regulation No 2067/77 is not completely identical in the six authentic languages. According to the plaintiff, in all the languages except English and German Article 1 of that regulation is not applicable to slide fasteners which are not closed by interlocking metal scoops, such as those closed by nylon spirals.

Thus the regulation infringes the fundamental rule requiring that regulations should have the same effect in all the Member States of the Communities.

(g) Misuse of powers

The Commission misused its powers in order to adopt a measure of commercial policy resulting in restrictions on imports and exports which could only have been adopted on the basis of and having regard to the provisions of Regulation No 1439/74 of the Council (Official Journal L 159 of 15 June 1974, p. 1). Moreover, that measure was directed against the undertakings of the YKK group.

The plaintiff concludes that each of the grounds put forward should lead to a declaration that Commission Regulation No 2067/77 is invalid.

B — Observations submitted by the Commission

The Commission observes that because of a considerable increase in imports of slide fasteners into the Community, particularly from Japan, it established surveillance over those imports and adopted Regulation No 646/75 of 13 March 1975 (Official Journal L 67 of 14 March 1975, p. 21).

This regulation made the putting into free circulation of slide fasteners and their parts subject to production of an import document; Article 4 provides that the origin of the product under Community surveillance must be established by a certificate of origin. This regulation is valid until 31 December 1978.

The Commission also observes that an agreement on voluntary restraint was entered into, apparently as the result of negotiations between the Italian Government and the plaintiff in the main action, according to which the plaintiff in the main action undertook to limit exports to Italy of slide fasteners manufactured in Japan.

As a result of a question put by five Members of the European Parliament to the Commission the latter was prompted to carry out an investigation of the technical aspects of the manufacture of slide fasteners, in particular by visiting a factory manufacturing those fasteners chosen in agreement with the trade organization representing the European slide fastener industry (Organisme de liaison des industries métallurgiques européennes).

The officials investigating drew up a report on the manufacturing process which was submitted both to the services of the Commission and to the Committee on Origin and which contains a certain number of processes or operations which may be described as follows:

- “(a) The first phase consists in the manufacture of a certain number of semi-finished products from raw materials such as crude oil, iron ore, cotton and linen:
 - yarn
 - metal or synthetic strips
 - metal ingots or plastic blocks.
- (b) These semi-finished products then undergo a certain number of processes or operations from which the components of the slide fastener are obtained:
 - Tapes are woven from the *yarn* which are specially designed for the slide fasteners and sewing thread may be produced which is used to place the scoops onto those tapes;
 - Spirals are manufactured from the *synthetic strips*; these spirals are used as they are or interlocked, each pair of spirals then being cut lengthwise to obtain the required scoops or, in the case of metal slide fasteners, the *metal strips* are then used to stamp metal scoops;
 - The *metal ingots* and the *plastic blocks* are used to manufacture the body and the tab of the slider which are then polished and assembled to form the slider properly so-called;
 - At the same time the end stops of the slide fastener are manufactured.

(c) Finally, the slide fastener properly so-called is assembled as follows:

- The scoops formed are affixed to two parallel tapes of the desired length so that a continuous strip is obtained with hooks affixed for a certain length and at regular intervals;
- The end stops and the slider are placed on each part of the slide fastener to which the scoops or other interlocking elements have been attached;
- The strip thus obtained is then divided by cutting it between the parts to which the scoops have been attached so as to obtain individual slide fasteners.

(d) Treatment such as dyeing or edging may take place at different stages of the production process according to the type of fastener and to the process devised by the manufacturer.

(e) Generally the very last stage consists of packing the product for transport and/or distribution."

However, it appeared that the manner of interpreting the general rule laid down in Regulation No 802/68 for slide fasteners varied between the Member States and within the Committee on Origin and that the Community measures, including the Common Customs Tariff, based on the concept of origin were not implemented uniformly within the Community.

For this reason the Commission decided to undertake the adoption of a regulation on the determination of the origin of slide fasteners coming within tariff heading 98.02 of the Common Customs Tariff.

Thus when one of the preliminary drafts of a regulation was discussed with the members of the Committee on Origin, the representative of the United Kingdom observed that the technical term "scoops" contained in the English

version of the preliminary draft did not have exactly the same meaning as the terms used in other languages. The word "scoop" might in fact give the impression that it did not apply to plastic spirals. The Irish delegate declared that he was of the same opinion but the delegates of the other Member States indicated that the words used in their language referred both to metal slide fasteners and to slide fasteners made from synthetic spirals. For this reason the Commission decided to adapt the English version so as to make the expression used there exactly equivalent to the expression used in the other languages and to adopt in the English version the words "scoops and other interlocking elements".

Finally, the vote of the Committee on Origin on the Commission's draft revealed that it could not be approved or rejected by a qualified majority, with the result that no opinion was delivered.

The Commission then sent a proposal to the Council in accordance with the provisions of Article 14 (3) (b) of Regulation No 802/68. This proposal differs from the draft submitted to the Committee on one point only because it was necessary to adapt in particular the recitals of the preamble to the draft and its title because that draft was no longer a draft Commission regulation but a proposal for a Council regulation.

Commission Regulation No 2067/77 aims to draw up rules on the application of Article 5 of Regulation No 802/68 and gives a Community interpretation of the concept of "origin of goods" where it is necessary to determine the origin of slide fasteners.

This Community interpretation was necessary, because of the differences in implementation noted, so as to achieve uniform application of the Common Customs Tariff and of the measures of commercial policy applicable to slide fasteners regardless of the place in which those measures are applied and of the authority applying them.

This uniform application is also desirable in respect of the grant of certificates by the Member States where they are required by the importing State and where they involve the grant of certain advantages.

It is also very important for the definition of the concept of "origin of goods" to be clear and to enable the bodies authorized to grant certificates of origin to apply it uniformly.

Article 5 of Regulation No 802/68 of the Council was deliberately drafted in very vague terms because it must be able to apply to very different products whose processing and working has been carried out in several countries. In view of the enormous range of products of that kind, the fact that new products are constantly brought onto the market, that production techniques evolve and that new techniques are developed, it is practically impossible to lay down precise rules which are capable of applying to all cases.

On the other hand, as the Chambers of Commerce of each Member State are generally authorized to grant certificates of origin it frequently occurs that they apply differently the criteria laid down in Article 5.

To resolve those problems Article 12 of Regulation No 802/68 provided for the

setting-up of a Committee on Origin consisting of representatives of the Member States with a representative of the Commission acting as chairman.

When the Committee does not reach a uniform opinion on the way in which Article 5 should be applied the Commission uses the power conferred upon it by Article 14 and initiates the procedure provided for in that article by submitting to the Committee draft provisions containing the interpretation and the application of the provision laid down in Article 5 to the product concerned.

The Commission has already adopted twelve regulations complying with those objectives. The power to adopt "provisions necessary for the application of Article 5 concerning the determination of the origin of the goods" is conferred on the Commission by the Council under Article 14 of the same regulation, Regulation No 802/68, in accordance with the fourth indent of Article 155 of the EEC Treaty.

However, the provisions concerning the application of Article 5 should not make any amendment to the rules laid down by that article.

The legal validity of Regulation No 2067/77

The Commission examines under this heading all the complaints put forward by the plaintiff in the main action as set out in the decision of the court making the reference.

(1) The incompatibility with Article 5 of Regulation No 802/68

Article 5 makes "Community origin" depend on whether the last substantial process or operation that is economically justified carried out in an undertaking equipped for the purpose and resulting in the manufacture of a new product or

representing an important stage of manufacture was performed in the territory of the Community.

"If therefore it is established that the last substantial process or operation has not or has not entirely been performed in a specific country the product in question cannot be regarded as 'originating in that country' even if all the stages prior to that last process were performed in that country."

The Commission observes that within the limits laid down by Article 14 in conjunction with Article 5 it has a certain freedom of discretion. Within those limits it may decide which operations do or do not come within the last substantial process or operation within the meaning of Article 5 and by making the choice it made it did not in any case exceed those limits.

Within that margin, which is very narrow, it was unable to consider the weaving of the tapes as forming part of the operation immediately preceding assembly and therefore forming part of the last substantial operation.

On the other hand, it may be asked whether the forming and placing of the scoops together constitute one of the parallel operations mentioned and come within the group of operations constituting the last substantial process or operation. The Commission based its final choice on the following considerations: either the placing of the scoops must be regarded as an operation independent of their manufacture — in which case the first operation forms part of the assembly of the slide fastener which is not "substantial" operation — or else they must be considered as forming as a whole a single operation — in which case they constitute an operation which precedes assembly and thus forms part of the parallel processes or operations referred to. Since whichever way one looks at it, part of that operation formed in all cases part of the last substantial operation, the

Commission considered that it was appropriate and desirable for practical reasons to consider that stages are as a whole necessary for the grant of a certificate of "Community origin". This concept corresponds moreover to the "rules on origin" existing in respect of slide fasteners in preferential agreements entered into by the Community with third countries. (See for example the agreement entered into between the Community and the Republic of Austria, Official Journal, English Special Edition 1972 (31 December) p. 4 *et seq.*). In fact in accordance with Article 2 thereof, Regulation No 802/68 does not affect trade between the Community and the countries with which there are agreements which derogate from the most-favoured-nation clause. Generally, such agreements themselves contain rules determining the origin of goods which do not generally differ much from those laid down in Regulation No 802/68.

The Commission considers that it has thus clearly shown that its final choice was the result of a very thorough analysis and that it kept within the limits laid down by Article 14 in conjunction with Article 5 of Regulation No 802/68.

The plaintiff in the main action requested the Commission to state that the most appropriate rule — which had moreover been chosen in Regulation (EEC) No 2632/70 of the Commission of 23 December 1970 on determining the origin of radio and television receivers (Official Journal, English Special Edition 1970 (III), p. 911) and in Regulation (EEC) No 861/71 of 27 April 1971 on

determining the origin of tape recorders (Official Journal, English Special Edition 1971 (I), p. 243) — is to choose as the country of origin of a slide fastener the country in which the value of the operations performed there represents a minimum percentage (for example 45%) of the ex-works invoice price of the finished products.

However, that "percentage rule" cannot, according to the Commission, be taken into consideration unless it is impossible to determine what the last substantial process or operation is; this was possible in the present case because the manufacture of the slider constitutes such an important stage that in comparison with it all the other processes or operations are of much less importance.

(2) *The incompatibility with Article 30 of the EEC Treaty*

The Commission recalls that, according to the plaintiff in the main action, Regulation No 2067/77 must be considered as a quantitative restriction on imports between the Member States or a measure having equivalent effect.

It replies to this argument by relying upon two factors: the nature of the rules on the origin of goods and the meaning of the prohibition laid down in Article 30.

As emphasized in the judgment of the Court in Case 49/76, quoted above, the regulations on the origin of goods aim to give a common definition of the concept of origin of goods so as to ensure "the uniform application of the Common Customs Tariff, of quantitative restrictions and of all other measures adopted, in relation to the importation or exportation of goods, by the Community or by the Member States".

It is therefore clear that those regulations play a supplementary rôle in relation to other rules and that they do not affect trade autonomously.

As regards measures having an effect equivalent to a quantitative restriction, although it is correct that the Court (judgment of 11 July 1974 in Case 8/74, *Procureur du Roi v Benoît and Gustave Dassonville* [1974] ECR 837) defined them as all rules enacted by Member States which are capable of hindering, directly or indirectly, actually or potentially, intra-Community trade, the objective and result of the rule chosen by the Commission in accordance with Article 5 of Regulation No 802/68 is to ensure uniform application in all the Member States of the concept of "origin of goods" and thus to avoid "deflections of trade and abuses" (judgment given in Case 49/76).

Finally, it is necessary to state that the determination of the origin of goods plays a minor rôle in intra-Community trade.

According to the Commission it is impossible therefore to speak of the incompatibility of Regulation No 2067/77 with Article 30.

(3) *The incompatibility with Article 110 of the EEC Treaty*

According to the Commission, Article 110 must be considered as a mere declaration of principle imposing no obligation, but moreover it considers that by laying down a Community definition of the concept of "origin" of slide fasteners it did not act contrary to the objective and the meaning of Article 110.

(4) *The application without distinction between Community origin and origin in a Member State (numbered paragraph 4 of the body of the order for reference)*

The arguments of Yoshida Nederland B.V. seem to consist in maintaining that

no distinction is made between "Community origin" and "origin in a Member State".

However, one of the principal objectives of Regulation No 802/68 consists in drawing the conclusions from the creation of a common market as regards the determination of the origin of a product.

In view of those provisions and in particular Articles 8 and 10 it is impossible for a regulation adopted under Regulation No 802/68 to re-establish differentiations according to the Member States.

(5) Inadequate statement of reasons for Regulation No 2067/77

The Commission considers that it has complied with the requirements laid down in Article 190 of the Treaty as specified by the Court (judgment of 4 July 1963 in Case 24/62, *Government of the Federal Republic of Germany v Commission of the EEC* [1963] ECR 63) by mentioning in the recitals of the preamble to Regulation No 2067/77 the four main considerations which prompted it to adopt the rule contained in the regulation:

1. The principle stated in Article 5 of Regulation No 802/68 according to which the determining factor is "the last substantial process or operation".
2. The statement that a slide fastener consists essentially of two parallel tapes of the same length, scoops or other interlocking elements, a slider and "end pieces" and that the assembly of such a slide fastener does not constitute a substantial process or operation nor result in the manufacture of a new product or represent an important stage of manufacture within the meaning of Article 5.
3. The processes of operations which may together be considered as the last substantial process or operation and which result in the manufacture of a

new product or represent an important stage of manufacture consist of the forming and placing of the scoops or other interlocking elements onto the tapes and the manufacture of the slider.

4. The manufacture of the end pieces does not constitute a substantial process or operation.

(6) Infringement of essential procedural requirements

It has already been indicated that the only amendments made to the provisions submitted to the Committee on Origin and then to the Council were adaptations necessitated for the conversion from a Council regulation to a Commission regulation. The Commission considers that it therefore complied with Article 14 of Regulation No 802/68 and has not infringed any essential procedural requirement. It refers in particular to the need to exercise its power under Article 14 (3) (c).

(7) Carelessness in the preparation of Regulation No 2067/77

The Commission wishes to emphasize that the preparation of that regulation was made with the greatest care, as has already been indicated.

(8) Linguistic differences

It has already been stated that those differences were only apparent and considered necessary by the national experts themselves for the purpose of uniform comprehension.

Moreover a difference between the linguistic versions of a Community measure does not lead to the nullity of that measure but only the need to give it a uniform interpretation (judgment of 12 November 1969 in Case 29/69, *Erich Stauder v City of Ulm, Sozialamt* [1969] ECR 419 and judgment of 21 November 1974 in Case 6/74, *Johannes Coenrad Moulijn v Commission of the European Communities* [1974] ECR 1287).

(9) *Misuse of powers*

The plaintiff maintains that the Commission adopted Regulation No 2067/77 to make its sale of slide fasteners "more difficult" where that sale is subject to the grant of a certificate of origin certifying that the slide fastener originates in a Member State of the European Communities.

The Commission strongly denies that it pursued such an objective but it observes moreover that to make it "more difficult" supposes that before the regulation the matter was easier. However, according to the Commission, it follows clearly from Article 5 of Regulation No 802/68 which requires, for the purposes of certifying that goods originate in a country, that the last substantial process has taken place in that country, that the slider must be manufactured in the country of origin. This operation thus no doubt formed part of the last substantial process or operation. If therefore certificates were granted to the plaintiff declaring that the slide fasteners in question were of Community origin when the slider was manufactured in Japan this was the result of an incorrect interpretation of Article 5.

The difficulties which arose were not therefore caused by an amendment of the legal situation but by an amendment of the factual situation aiming to make that situation conform to the legal situation.

In any case there can be no question of misuse of powers.

The interpretation of Regulation No 2067/77

In order to reply to the first question it is necessary, according to the Commission, to observe that the wording of Article 1 of Regulation No 2067/77 implies that the rule laid down is limitative and that it does not merely quote one of the possibilities. This interpretation is moreover confirmed by the recital of the preamble in which it is stated that the operations mentioned constitute the last substantial process or operation resulting in the manufacture of a new product or representing an important stage of manufacture.

Since, in accordance with Article 5 of Regulation No 802/68, only that operation determines the origin of the goods, it follows that on the one hand other operations cannot have that result and that on the other the whole of that last substantial process must be performed in the country of origin.

A different interpretation would be incorrect since Regulation No 2067/77 merely constitutes a measure adopted in implementation of Regulation No 802/68 whose objective is to ensure uniform application *inter alia* of the Common Customs Tariff; this would not be the case if several operations could each by itself enable the origin of the goods to be determined.

The second part of the first question concerns the field of application of the regulation. The table concerns the "products obtained" coming within tariff heading 98.02 of the Common Customs Tariff with the description "slide fasteners".

Consequently the regulation is applicable to all slide fasteners coming within that tariff heading whether the closing parts are formed of metal components in the form of scoops or of interlocking nylon spirals.

On the basis of the foregoing the Commission considers that the following answers could be given to the questions submitted by the national court:

- "1. Article 1 of Commission Regulation (EEC) No 2067/77 must be interpreted as meaning that only the country in which all the operations listed in the third column of the table in that article were carried out, which constitute as a whole the last substantial process or operation within the meaning of Article 5 of Regulation (EEC) No 802/68 of the Council, may be regarded as the country of origin of a slide fastener.
2. Commission Regulation (EEC) No 2067/77 is applicable to all slide fasteners coming within tariff heading 98.02 of the Common Customs Tariff whether they contain small metal components in the form of scoops or interlocking nylon spirals.
3. The above-mentioned regulation constitutes a correct application of Article 5 of Regulation (EEC) No 802/68 of the Council and is not incompatible with either Article 30 or with Article 110 of the Treaty establishing the EEC and must not be regarded as invalid for any other reason."

C — Observations submitted by the Netherlands Government

The Netherlands Government observes that the undertaking established in Sneek for the manufacture of slide fasteners includes operations *inter alia* performed by special machines which incontestably constitute a "last substantial process or operation that is economically justified

having been carried out in an undertaking equipped for the purpose ... representing an important stage of manufacture" within the meaning of Regulation No 802/68.

In the opinion of the Netherlands Government the condition relating to the "manufacture of the slider" goes beyond what is permitted by Article 5 of the regulation and the Commission has exceeded its duties.

D — Observations submitted by the French Government

The French Government considers that the characteristic features of a slide fastener are the system of closure by means of scoops or nylon spirals by means of the action of a slider. Only those factors enable a new product to result and represent an important stage of manufacture. Dyeing, cutting and assembly are only secondary operations which do not give the product its specific character.

For those reasons the French Government considers that the criteria of origin adopted by the Commission comply with the conditions laid down in Article 5 of Regulation No 802/68 and that the refusal by the Kammer van Koophandel en Fabrieken voor Friesland to grant the certificates of origin to Yoshida Nederland B.V. is in accordance with the provisions of Regulation No 2067/77.

E — Observations submitted by the Italian Government

The Italian Government observes that Regulation No 2067/77 does not aim to prevent the sale in Europe of what is objectively "Japanese" but is intended only to prevent goods which are objectively Japanese from being able to disguise themselves as European goods.

It also states that that regulation is not contrary to Article 5 of Regulation No 802/68.

Under Article 5 it is necessary, for the purpose of establishing the place of origin of goods, to take into account the place in which a "process or operation" defined as follows has taken place:

- (a) it must be a process or operation which results in the manufacture of a new product;
 - (b) it must be the "last" process or operation;
 - (c) it must be a "substantial" process or operation;
 - (d) it must be a process or operation "that is economically justified";
- and
- (e) it must be a process or operation "carried out in an undertaking equipped for the purpose".

There are therefore five discretionary judgments coming within the power of the Community institutions and Regu-

lation No 2067/77 makes certain of those judgments, specifying in detail what the "new product" is and what the "last", "substantial" and "economically justified" process or operation is.

The discretionary judgment made by the Commission cannot be the subject-matter of judicial review; in the present case that judgment is in any case completely rational since the manufacture of the sliders constitutes the process or operation of the greatest economic importance and involves an important change in the basic products.

III — Oral procedure

The oral hearing took place on 15 November 1978. Yoshida and the Commission put forward and illustrated the arguments put forward in their written observations and replied to questions asked by the Court. The Advocate General delivered his opinion at the hearing on 13 December 1978.

Decision

- 1 By order of 10 March 1978 received at the Court Registry on 14 March 1978 the College van Beroep voor het Bedrijfsleven referred to the Court under Article 177 of the EEC Treaty three questions on the interpretation and validity of Commission Regulation (EEC) No 2067/77 of 20 September 1977 concerning the determination of the origin of slide fasteners (Official Journal L 242 of 21 September 1977, p. 5).
- 2 These questions have been raised within the context of a dispute between a Netherlands subsidiary of the Japanese Yoshida Kogyo KK group which owns a factory in Sneek in which it produces metal and nylon slide fasteners, the sliders for which are manufactured in Japan, and the Kamer van

Koophandel en Fabriek voor Friesland (the Chamber of Commerce and Manufacture of Friesland) which refused, in application of Regulation No 2067/77, to grant it a certificate of origin certifying that those slide fasteners are of Netherlands or Community origin, on the ground that the sliders used in the manufacture of the slide fasteners had not been manufactured in "the Netherlands or elsewhere in the European Economic Community".

- 3 Until the entry into force of that regulation these certificates of origin, which are necessary for the plaintiff for the purpose of obtaining the benefit of certain advantages reserved to Community products where they are exported to third countries, were granted without difficulty by the defendant under Article 5 of Regulation No 802/68 of the Council of 27 June 1968 on the common definition of the concept of the origin of goods (Official Journal, English Special Edition 1968 (I), p. 165).
- 4 In these circumstances the national court referred to the Court of Justice several questions; to be logical, the question relating to the validity of Regulation No 2067/77, having regard to Article 5 of Regulation No 802/68, must be examined first.

This question asks whether the Commission has not, in adopting Regulation No 2067/77, exceeded the powers conferred upon it by the Council for the implementation of the rules which it had laid down in Regulation No 802/68, and more precisely, whether the specific criteria of origin laid down by the Commission regulation conform to the objective criteria laid down in Article 5 of the Council regulation which is the legal basis of Regulation No 2067/77 and the source of the powers exercised by the Commission in adopting it.

- 5 Under Article 5 of Regulation No 802/68 "A product in the production of which two or more countries were concerned shall be regarded as originating in the country in which the last substantial process or operation that is economically justified was performed, having been carried out in an undertaking equipped for the purpose, and resulting in the manufacture of a new product or representing an important stage of manufacture".

It is clear from the file and in particular from the observations of the defendant in the main action that there is no doubt that the final assembly of the slide fasteners constitutes an "operation that is economically justified" and is carried out in an undertaking which is "remarkably well-equipped and which has modern machines and a large staff".

Thus the problem is essentially whether the provisions of Regulation No 2067/77 conferring on goods the status of products originating in the country in which assembly took place including placing of the scoops or other interlocking elements onto the tapes accompanied by the manufacture of the slider and the forming of the scoops or other interlocking elements do not exceed the limits of the discretion of the Commission to adopt implementing provisions in this field under Article 14 of Regulation No 802/68.

- 6 To reply to this question it is necessary to inquire as to the circumstances in which Regulation No 2067/77 came into being and was then drawn up and finally to interpret it having regard to the technical operations resulting in the manufacture of slide fasteners.
- 7 In 1975 the Commission found that imports into the Community of slide fasteners, particularly of Japanese origin, had increased considerably in recent years and that those developments threatened to cause injury to Community producers of like products and therefore introduced on 13 March Regulation (EEC) No 646/75 establishing Community surveillance over imports of slide fasteners (Official Journal L 67 of 14 March 1975, p. 21).

This regulation had been preceded by the initiation, in accordance with the provisions of Regulation No 459/68 of the Council of 5 April 1968 on protection against dumping or the granting of bounties or subsidies by countries which are not members of the European Economic Community, of an anti-dumping/anti-subsidies procedure concerning slide fasteners by Yoshida Kogyo, Tokyo, (Japan) (Official Journal C 51 of 30 June 1973, p. 2). This procedure was terminated "having regard to the development of the situation" by a notice published in Official Journal C 63 of 1 June 1974, p. 1.

- 8 In accordance with Article 14 of Regulation No 802/68, the Commission submitted to the Committee on Origin set up by Article 12 of Regulation No 802/68 and consisting of representatives of the Member States with a representative of the Commission acting as Chairman a draft of the provisions to be adopted which did not obtain the required qualified majority. The Commission then applied the provisions of Article 14 (3) (b) and submitted to the Council a proposal which received no reply.

At the end of the period of three months after the Council had been informed of the proposal it had not acted; the Commission therefore, in accordance with Article 14 (3) (c), regularly adopted Regulation No

2067/77, Article 1 of which states that slide fasteners coming within tariff heading 98.02 of the Common Tariff originate in the country in which the following operations took place: "Assembly including placing of the scoops or other interlocking elements onto the tapes accompanied by the manufacture of the slider and the forming of the scoops or other interlocking elements".

- 9 It is therefore necessary to examine whether those operations correspond to the requirements laid down in Article 5 of Regulation No 802/68 and may be interpreted as constituting the last substantial process or operation resulting in the manufacture of the slide fastener or representing an important stage of manufacture. This is a question of a technical nature which must be examined having regard to the definition of a slide fastener and of the various operations resulting in its formation.

- 10 The characteristic feature of the finished product known as a slide fastener is that two flexible tapes to which scoops or other interlocking elements are attached in parallel staggered formation can be opened or closed by means of the action of a slider.

It follows from the file that the process of the manufacture of slide fasteners which takes place at the undertaking in Sneek is composed of the following main operations as described by the national court:

- (a) the weaving of the tapes and where necessary the trimming and dyeing of them;
- (b) the stamping of the metal scoops or the production of the spirals from nylon thread;
- (c) the attaching of the metal scoops or nylon spirals to the tapes and the subsequent joining of the tapes;
- (d) the attaching of bottoms stops and top stops;
- (e) the insertion and where necessary the colouring of the sliders;
- (f) the drying and cleaning of the slide fasteners followed by the cutting of them to make individual slide fasteners.

- 11 It follows from the examination of those various operations that the last substantial process or operation must be interpreted as being constituted by the combination of operations (c), (d), (e) and (f) resulting in the manufacture of a new and original product which, in contrast to each of the basic products, is a linking element which can be separated over and over again and is used to join objects, in particular pieces of fabric.

The slider constitutes merely a particular part of this whole, the price of which cannot moreover have an appreciable influence on the final cost of a slide fastener and which, although it is a characteristic feature thereof, is however of no use unless it is combined in a harmoniously assembled whole.

- 12 The Commission, in taking the view that it had to go back beyond the last process to the process of the manufacture of the slider and make that a binding condition for the grant of a certificate of origin, relied upon an operation which is extraneous to the objectives of Regulation No 802/68 which requires a real and objective distinction between raw material and processed product depending fundamentally on the specific material qualities of each of those products.

The requirement that virtually all components of a product must be of Community origin, even those of little value which are of no use in themselves unless they are incorporated into a whole, would amount to a repudiation of the very objective of the rules on the determination of origin. The Commission has therefore by that very fact exceeded its power under Article 14 (3) of Regulation No 802/68.

- 13 Consequently, without its being necessary to examine whether the provisions of Regulation No 2067/77 are compatible with Articles 30 and 110 of the EEC Treaty, it is necessary to state that Article 1 of Commission Regulation No 2067/77 of 20 September 1977 concerning the determination of the origin of slide fasteners is invalid. Since Regulation No 2067/77 has been held to be invalid for the abovementioned reasons, the other questions have become purposeless.

Costs

- 14 The costs incurred by the Commission and by the Governments of the Kingdom of the Netherlands, the French Republic and the Italian Republic which submitted observations to the Court are not recoverable and since the proceedings are, in so far as the parties to the main action are concerned, a step in the action pending before the national court, the decision on costs is a matter for that court.

THE COURT,

in answer to the questions referred to it by the College van Beroep voor het Bedrijfsleven by order of 10 March 1978, hereby rules:

1. Article 1 of Commission Regulation No 2067/77 of 20 September 1977 concerning the determination of the origin of slide fasteners (Official Journal L 242 of 21 September 1977, p. 5) is invalid.
2. There is therefore no further need to interpret that regulation.

Kutscher	Mertens de Wilmars	Mackenzie Stuart	Donner	Pescatore
Sørensen	O'Keefe	Bosco	Touffait	

Delivered in open court in Luxembourg on 31 January 1979.

A. Van Houtte
Registrar

H. Kutscher
President

OPINION OF MR ADVOCATE GENERAL CAPOTORTI
DELIVERED ON 13 DECEMBER 1978 ¹

*Mr President,
Members of the Court,*

1. The concept of the origin of goods is relevant in the Community context for the purposes of the application of certain provisions concerning trade, and in particular of certain rules laid down in

the Common Customs Tariff, as well as for the purposes of the issue of certificates of origin for goods exported to third countries. The Council therefore provides by Regulation (EEC) No 802/68 of the Council of 27 June 1968 for the introduction of a common definition of that concept to solve the

¹ — Translated from the Italian.