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Legislation

Contents

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

The titles of all other Acts are printed in bold type and preceded by an asterisk.

I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 3667/81

of 3 December 1981

opening, allocating and providing for the administration of a Community tariff quota for certain hand-made products (1982)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 113 thereof,

Having regard to the proposal from the Commission,

Whereas, as regards certain hand-made products, the European Economic Community has declared its readiness to open an annual duty-free Community tariff quota of an overall amount of 5 000 000 units of account with a limit of 500 000 units of account for each tariff heading or subheading in question; whereas, in pursuance of the Declaration of Intent concerning trade relations with certain Asian countries, the total amount of the quota and the maximum for each tariff heading or subheading were raised to 10 000 000 and 1 200 000 units of account respectively; whereas products may, however, be admitted under the Community tariff quota only on the submission to the Community's customs authorities of a document issued by the recognized authorities of the country of manufacture certifying that the goods concerned are hand-made; whereas the specimen certificate of manufacture, models of which have been annexed to the Regulations adopted by the Council each year for the opening of the abovementioned tariff quotas and, in particular, to Regulation (EEC) No 318280 [1], is no longer in conformity with the most recent international standards; whereas, in particular, it is not in conformity with the layout key recommended by the Economic Commission for Europe in Geneva for documents used in external trade; whereas, in order to take account of that recommendation, the specimen certificates of manufacture should be adapted; whereas, in the interests of economy, the use of forms conforming to the old models should be permitted until 31 December 1982; whereas it is accordingly appropriate to open the tariff quota in question with effect from 1 January 1982 in accordance with Council Regulation (EEC) No 3308/80 of 16 December 1980 on the replacement of the European unit of account by the ECU in Community legal instruments [2];

Whereas equal and continuous access to the quota should be ensured for all Community importers and the rate laid down for the tariff quota should be applied consistently to all imports until the quota is used up; whereas a system of utilization of the Community tariff quota based on an allocation between the Member States concerned would, in the light of the principles outlined above, appear consistent with the Community nature of the quota; whereas, to represent as closely as possible the actual development of the market in the said goods, the allocation should follow proportionately the requirements of the Member States calculated both from statistics of imports from third countries during a representative reference period and according to the economic outlook for the tariff year in question;

Whereas, however, there is no specific classification of the said goods in the statistical nomenclatures; whereas it has thus been impossible to collect sufficiently precise and representative statistics; whereas the extent to which the current Community tariff quota has been used is not such that the real requirements of each of the Member States can be firmly ascertained; whereas

[1] OJ No L 337, 13. 12. 1980, p. 50.

[2] OJ No L 345, 20. 12. 1980, p. 1.

the only possibility is, therefore, to divide the tariff quota volume into nine parts, of which one each would be allocated to the Benelux countries, Denmark, Germany, Greece, France, Ireland, Italy and the United Kingdom, the last part being held in reserve to cover the later requirements of Member States which use up their initial shares;

Whereas the initial shares may be used up at different rates; whereas, therefore, to avoid disruption of supplies, any Member State which has almost used up its initial share should draw a supplementary share from the Community reserve; whereas this must be done by each Member State as each one of its supplementary shares is almost used up, and as many times as the reserve allows; whereas the initial and supplementary shares must be valid until the end of the quota period; whereas this form of administration requires close collaboration between the Member States and the Commission, and the Commission must be in a position to follow the extent to which the tariff quota has been used up and inform the Member States accordingly; whereas this collaboration must be all the closer since it does not seem necessary, at present, to provide for special measures in this Regulation to avoid exceeding the maximum allocation of 1 200 000 ECU per tariff heading or subheading;

Whereas if, at a given date in the quota period, a Member State has a considerable quantity left over it is essential that it should return a significant percentage thereof to the reserve so as to avoid a part of the Community tariff quota remaining unused in one Member State when it could be used in others;

Whereas, since the Kingdom, of Belgium, the Kingdom of the Netherlands and the Grand Duchy of Luxembourg are united within and jointly represented by the Benelux Economic Union, any operation concerning the administration of the shares allocated to that economic union may be carried out by any one of its members,

HAS ADOPTED THIS REGULATION:

Article 1

1. From 1 January to 31 December 1982, a Community tariff quota of a volume corresponding to a value of 10 000 000 ECU shall be opened for the products listed below, subject to a maximum of 1 200 000 ECU for each tariff heading or subheading in the list:

CCT heading No	Description
42.02	Travel goods (for example trunks, suit-cases, hat-boxes, travelling-bags, rucksacks), shopping-bags, handbags, satchels, brief-cases, wallets, purses, toilet-cases, tool-cases, tobacco-pouches, sheaths, cases, boxes (for example for arms, musical instruments, binoculars, jewellery, bottles, collars, footwear brushes) and similar containers, of leather or composition leather, of vulcanized fibre, of artificial plastic sheeting, of paperboard or of textile fabric: B. Of materials other than artificial plastic sheeting
42.03	Articles of apparel and clothing accessories, of leather or of composition leather: C. Other clothing accessories
44.24	Household utensils of wood
44.27	Standard lamps, table lamps and other lighting fittings, of wood; articles of furniture, of wood, not falling within Chapter 94; caskets, cigarette boxes, trays, fruit bowls, ornaments and other fancy articles, of wood; cases for cutlery, for drawing instruments or for violins, and similar receptacles, of wood; articles of wood for personal use or adornment of a kind normally carried in the pocket, in the handbag or on the person; parts of the foregoing articles, of wood

CCT heading No	Description
48.21	Other articles of paper pulp, paper, paperboard or cellulose wadding:
	D. Bed linen, table linen, toilet linen (including handkerchiefs and cleansing tissues) and ktichen linen; garments
	F. Other:
	I. Articles of a kind used for surgical, medical or hygienic purposes, not put up for retail sale
	II. Other
ex 55.09	Other woven fabrics of cotton
	— Fabrics, hand-dyed or hand-printed by the 'batik' method
58.01	Carpets, carpeting and rugs, knotted (made up or not):
	A. Of wool or of fine animal hair:
	I. Containing a total of more than 10 % by weight of silk or of waste silk other than noil
	B. Of silk, of waste silk other than noil, of synthetic textile fibres, of yarn falling within heading No 52.01 or of metal threads
	C. Of other textile materials
58.10	Embroidery, in the piece, in strips or in motifs
59.02	Felt and articles of felt, whether or not impregnated or coated:
	ex B. Other:
	— Carpets, mats
60.05	Outer garments and other articles, knitted or crocheted, not elastic nor rubberized:
	A. Outer garments and clothing accessories:
	II. Other:
	b) Other:
	4. Other outer garments:
	bb) Jerseys, pullovers, slip-overs, waistcoats, twinsets, cardigans, bed jacket and jumpers:
	11. Men's and boys':
	ex bbb) Of fine animal hair:
	— Jerseys, pullovers, slip-overs
	22. Women's, girls' and infants':
	ex ccc) Of fine animal hair:
	— Jerseys, pullovers, slip-overs
	ll) Other outer garments:
	ex 11. Of wool or of fine animal hair
	— Ponchos in fine animal hair
ex 61.01	Men's and boys' outer garments:
	B. Other:
	V. Other:
	b) Overcoats, raincoats and other coats, cloaks and capes:
	ex 1. Of wool or of fine animal hair:
	— Ponchos

CCT heading No	Description
ex 61.02	Women's, girls' and infants' outer garments: — Garments, hand-dyed or hand-printed by the 'batik' method
61.02	Women's, girls' and infants' outer garments: B. Other: II. Other: e) Other: 2. Coats and raincoats; cloaks and capes: ex aa) Of wool or of fine animal hair: — Ponchos and capes in wool — Ponchos in fine animal hair 5. Skirts, including divided skirts: ex aa) Of wool or of fine animal hair: — Skirts, skirtlengths, in wool
61.05	Handkerchiefs: A. Of cotton fabric, of a value of more than 15 ECU per kg net weight
61.06	Shawls, scarves, mufflers, mantillas, veils and the like
61.07	Ties, bow ties and cravats
61.11	Made up accessories for articles of apparel (for example, dress shields, shoulder and other pads, belts, muffs, sleeve protectors, pockets), etc.
62.01	Travelling rugs and blankets
62.02	Bed linen, table linen, toilet linen and kitchen linen; curtains and other furnishing articles: ex B. Other: — Cotton fabric articles, hand-dyed or hand-printed by the 'batik' method
62.02	Bed linen, table linen, toilet linen and kitchen linen; curtains and other furnishing articles: B. Other: IV. Curtains and other furnishing articles: ex c) Of other textile materials: — Double curtains in wool
62.05	Other made-up textile articles (including dress patterns)
64.05	Parts of footwear (including uppers, in-soles and screw-on heels) of any material except metal
ex 65.05	Hats and other headgear (including hairnets) knitted or crocheted, or made up from lace, felt or other textile fabric in the piece (but not from strips), whether or not lined or trimmed: — Berets, in wool
66.02	Walking-sticks (including climbing-sticks and seat-sticks), canes, whips, riding-crops and the like

CCT heading No	Description
68.02	Worked monumental or building stone, and articles thereof (including mosaic cubes), other than goods falling within heading No 68.01 or within Chapter 69:
	A. Worked monumental or building stone:
	IV. Carved
74.18	Other articles of a kind commonly used for domestic purposes, sanitary ware for indoor use and parts of such articles and ware, of copper
74.19	Other articles of copper
83.06	Statuettes and other ornaments of a kind used indoors, of base metal; photography, picture and similar frames, of base metal; mirrors of base metal:
	A. Statuettes and other ornaments of a kind used indoors
83.07	Lamps and lighting fittings, of base metal, and parts thereof, of base metal:
	B. Other
ex 83.09	Clasps, frames with clasps for handbags and the like, buckles, buckle-clasps, hooks, eyes, eyelets, and the like, of base metal, of a kind commonly used for clothing, travel goods, handbags or other textile or leather goods; tubular rivets and bifurcated rivets, of base metal; beads and spangles, of base metal:
	— Beads and spangles, of base meal
83.11	Bells and gongs, non-electric, of base metal, and parts thereof of base metal
94.03	Other furniture and parts thereof
95.05	Worked tortoise-shell, mother of pearl, ivory, bone, horn, coral (natural or agglomerated) and other animal carving material, and articles of those materials:
	B. Other:
	II. Other
95.08	Worked vegetable or mineral carving material and articles of those materials; moulded or carved articles of wax, of stearin, of natural gums or natural resins (for example, copal or rosin) or of modelling pastes, and other moulded or carved articles not elsewhere specified or included; worked, unhardened gelatin (except gelatin falling within heading No 35.03) and articles of unhardened gelatin:
	B. Other
97.02	Dolls:
	ex A. Dolls (dressed or undressed):
	— Dolls dressed in a folk costume representative of the country of origin
97.03	Other toys: working models of a kind used for recreational purposes:
	A. Of wood

2. Admission under this quota shall, however, be granted only for products accompanied by a certificate recognized by the competent authorities of the Community and conforming to one of the examples in Annex I, issued by one of the recognized authorities of the country of manufacture appearing in Annex II and certifying that the goods in question are hand-made. However, the specimen certificates used previously, and in particular those annexed to Regulation (EEC) No 3182/80, may continue to be used until 31 December 1982. The goods must in addition be accepted as hand-made by the competent authorities of the Community.

3. Within this Community tariff quota the Common Customs Tariff duties shall be totally suspended.

Within the limits of this tariff quota, Greece shall apply duties calculated in accordance with the relevant provisions of the Act of Accession of 1979.

Article 2

1. A first instalment of 6 380 000 ECU shall be allocated among the Member States; the respective shares of the Member States, which, subject to Article 5, shall be valid from 1 January to 31 December 1982, shall correspond to the following values:

	(ECU)
Benelux	1 250 000
Denmark	250 000
Germany	1 386 000
Greece	16 000
France	1 250 000
Ireland	163 800
Italy	757 000
United Kingdom	1 307 200

2. The second instalment of 3 620 000 ECU shall constitute the Community reserve.

3. The provisions of Regulation (EEC) No 3308/80, and in particular Article 2 thereof, shall apply for the purposes of determining the equivalent value in national currencies of amounts expressed in ECU.

Article 3

1. If 90 % or more of a Member State's initial share as specified in Article 2 (1), or of that share minus the portion returned to the reserve where Article 5 is applied, has been used up, that Member State shall forthwith, by notifying the Commission, draw a second share equal to 15 % of its initial share, rounded up where necessary to the next whole number, to the extent permitted by the amount of the reserve.

2. If, after its initial share has been used up, 90 % or more of the second share drawn by a Member State has been used up, that Member State shall, in accordance with the conditions set out in paragraph 1, draw, a third share equal to 7·5 % of its initial share, rounded up where necessary to the next whole number.

3. If, after its second share has been used up, 90 % or more of the third share drawn by a Member State has been used up, that Member State shall, in accordance with the same conditions, draw a fourth share equal to the third.

This process shall continue to apply until the reserve is used up.

4. By way of derogation from paragraphs 1, 2 and 3, a Member State may draw lower shares than those specified therein if there are grounds for believing that those specified may not be used up. It shall inform the Commission of its reasons for applying this paragraph.

Article 4

Supplementary shares drawn pursuant to Article 3 shall be valid until 31 December 1982.

Article 5

Member States shall return to the reserve, not later than 1 October 1982, the unused portion of their initial share which, on 15 September 1982, is in excess of 50 % of the initial amount. They may return a larger quantity if there are grounds for believing that such quantity might not be used.

Member States shall notify the Commission, not later than 1 October 1982, of the total quantities of the said goods imported up to and including 15 September 1982 and charged against the Community tariff quota and of any portion of their initial share returned to the reserve.

Article 6

The Commission shall keep an account of the shares opened by the Member States pursuant to Articles 2 and 3 and shall, as soon as it has been notified, inform each State of the extent to which the reserve has been used up.

It shall inform the Member States, not later than 5 October 1982, of the amount still in reserve after amounts have been returned thereto pursuant to Article 5.

It shall ensure that the drawing which exhausts the reserve is limited to the balance available and to this end shall specify the amount thereof to the Member State making the last drawing.

Article 7

1. Member States shall take all appropriate measures to ensure that supplementary shares drawn pursuant to Article 3 are opened in such a way that imports may be charged without interruption against their accumulated shares in the Community tariff quota.

2. Member States shall ensure that importers of the said goods established in their territory have free access to the shares allocated to them.

3. Member States shall charge imports of the said goods against their shares as and when such goods are entered with the customs authorities for free circulation.

4. The extent to which a Member State has used up its share shall be determined on the basis of imports charged in accordance with paragraph 3.

Article 8

At the Commission's request, Member States shall inform it of imports of the products concerned actually charged against their shares.

Article 9

Member States and the Commission shall cooperate closely to ensure that this Regulation is complied with.

Article 10

This Regulation shall enter into force on 1 January 1982.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 3 December 1981.

For the Council

The President

T. KING

BILAG I — ANHANG I — ΠΑΡΑΡΤΗΜΑ I — ANNEX I — ANNEXE I — ALLEGATO I — BIJLAGE I

MODELLER TIL FREMSTILLINGSCERTIFIKAT

MUSTER DER HERSTELLUNGSBESCHEINIGUNG

ΥΠΟΔΕΙΓΜΑΤΑ ΠΙΣΤΟΠΟΙΗΤΙΚΩΝ ΚΑΤΑΣΚΕΥΗΣ

MODEL CERTIFICATE OF MANUFACTURE

MODÈLES DE CERTIFICAT DE FABRICATION

MODELLI DI CERTIFICATO DI FABBRICAZIONE

MODELLEN VAN CERTIFICAAT VAN VERVAARDIGING

1 Eksportør (navn, fuldstændig adresse, land)	2 Nummer	00000

CERTIFIKAT
VEDRØRENDE VISSE KUNSTHÅNDVÆRKSPRODUKTER
(HANDICRAFTS)

udstedt med henblik på opnåelse af præferencetoldbehandling i Det europæiske økonomiske Fællesskab

3 Modtager (navn, fuldstændig adresse, land)	4 Fremstillingsland	5 Bestemmelsesland

6 Sted og dato for indskibning — transportmiddel	7 Supplerende oplysninger

8 NØJE BESKRIVELSE AF VARERNE — Mærker og numre — Antal kolli og disses art	9 Antal (1)	10 Værdi fob (2)

11 DEN KOMPETENTE MYNDIGHEDS PÅTEGNING

Undertegnede erklærer, at nedenfor beskrevne forsendelse udelukkende indeholder kunsthåndværksprodukter fremstillet af landsbyhåndværkere i det land, der er anført i rubrik nr. 4.

12 Kompetent myndighed (navn, adresse, land)	Sted ..... Dato .....
	(Underskrift) (Stempel)

(1) Anfør, hvorvidt det drejer sig om antal dele, meter, m² eller kilo.
(2) Anfør den valuta, der er anført i købekontrakten.

1 Ausführer (Name, vollständige Anschrift, Land)	2 Nummer	00000
	BESCHEINIGUNG FÜR BESTIMMTE HANDGEARBEITETE WAREN (HANDICRAFTS) **ausgestellt für die Zulassung zur zolltariflichen Vorzugsregelung in der Europäischen Wirtschaftsgemeinschaft**	
3 Empfänger (Name, vollständige Anschrift, Land)	4 Herstellungsland	5 Bestimmungsland
6 Ort und Datum der Verladung — Beförderungsmittel	7 Zusätzliche Angaben	

8 GENAUE BESCHREIBUNG DER ERZEUGNISSE — Zeichen und Nummern — Anzahl und Art der Packstücke	9 Menge (1)	10 Wert fob (2)

11 SICHTVERMERK DER ZUSTÄNDIGEN BEHÖRDE

Der Unterzeichnende bescheinigt, daß die vorstehend bezeichnete Sendung ausschließlich in ländlichen Handwerksbetrieben des unter Nr. 4 angegebenen Landes handgearbeitete Waren enthält.

12 Zuständige Behörde (Name, vollständige Anschrift, Land)

Ort ..... Datum .....

(Unterschrift) (Stempel)

ngeben, ob es sich um Stück, Meter, Quadratmeter oder Kilogramm handelt.
der im Kaufvertrag angegebenen Währung.

1 Ἐξαγωγέας (ὄνομα, πλήρης διεύθυνση, χώρα)	2 Ἀριθμός	00000
	ΠΙΣΤΟΠΟΙΗΤΙΚΟ ΟΣΟΝ ΑΦΟΡΑ ΟΡΙΣΜΕΝΑ ΠΡΟΪΟΝΤΑ ΧΕΙΡΟΤΕΧΝΙΑΣ (HANDICRAFTS) **παραδίδεται γιά νά χρησιμεύσει γιά τήν ἐπίτευξη τῆς ἀπολαβῆς τοῦ προτιμησιακοῦ δασμολογικοῦ καθεστῶτος τῆς Εὐρωπαϊκῆς Οἰκονομικῆς Κοινότητος**	
3 Παραλήπτης (ὄνομα, πλήρης διεύθυνση, χώρα)	4 Χώρα κατασκευῆς	5 Χώρα προορισμοῦ
6 Τόπος καί χρονολογία ἀποστολῆς — Μέσον μεταφορᾶς	7 Συμπληρωματικά στοιχεῖα	

8 ΛΕΠΤΟΜΕΡΗΣ ΠΕΡΙΓΡΑΦΗ ΤΩΝ ΕΜΠΟΡΕΥΜΑΤΩΝ — Σημεῖα καί ἀριθμοί — Ἀριθμός καί εἶδος τοῦ δέματος	9 Ποσότης (1)	10 Ἀξία fob (2)

11 ΕΠΙΚΥΡΩΣΗ ΤΗΣ ΑΡΜΟΔΙΑΣ ΥΠΗΡΕΣΙΑΣ

Ὁ ὑπογεγραμμένος πιστοποιεῖ ὅτι ἡ ἀποστολή μέ τήν παραπάνω περιγραφή περιέχει ἀποκλειστικά προϊόντα χειροτεχνίας ἀπό οἰκοτεχνίτες τῆς χώρας πού ἀναφέρεται στό τετράγωνο ἀριθ. 4.

12 Ἁρμόδια ὑπηρεσία (ὄνομα, πλήρης διεύθυνση, χώρα)

Ἐν ..... τῆ .....

(Ὑπογραφή) (Σφραγίδα)

(1) Ἀναφέρατε ἐάν πρόκειται περί ἀριθμοῦ τεμαχίων, μέτρων, τετραγωνικῶν μέτρων ἤ κιλῶν.
(2) Στό νόμισμα τῆς συμβάσεως πωλήσεως.

1 Exporter (Name, full address, country)	2 Number	00000

CERTIFICATE
IN REGARD TO CERTAIN HANDICRAFT PRODUCTS (HANDICRAFTS)

issued with a view to obtaining the benefit of the preferential tariff regime in the European Economic Community

3 Consignee (Name, full address, country)	4 Country of manufacture	5 Country of destination

6 Place and date of shipment — means of transport	7 Supplementary details

8 DETAILED DESCRIPTION OF GOODS — Marks and numbers — Number and kind of packages	9 Quantity (1)	10 FOB value (2)

11 CERTIFICATION BY THE COMPETENT AUTHORITY

I, the undersigned, certify that the consignment described above contains only handicraft products (handicrafts) of the cottage industry of the country shown in box No 4.

12 Competent authority (Name, full address, country)	At ....., on .....
	(Signature) (Seal)

(1) Indicate whether in pieces, metres, square metres or kilograms.
(2) In the currency of the contract of sale.

1 Exportateur (Nom, adresse complète, pays)	2 Numéro	00000
	CERTIFICAT CONCERNANT CERTAINS PRODUITS FAIT À LA MAIN (HANDICRAFTS) **délivré en vue de l'obtention du bénéfice du régime tarifaire préférentiel dans la Communauté économique européenne**	
3 Destinataire (Nom, adresse complète, pays)	4 Pays de fabrication	5 Pays de destination
6 Lieu et date d'embarquement — moyen de transport	7 Données supplémentaires	

8 DÉSIGNATION DÉTAILLÉE DES MARCHANDISES — Marques et numéros — nombre et nature des colis	9 Quantité (1)	10 Valeur fob (2)

11 VISA DE L'AUTORITÉ COMPÉTENTE

Je soussigné, certifie que l'envoi décrit ci-dessus contient exclusivement des produits faits à la main par l'artisanat rural du pays indiqué dans la case n° 4.

12 Autorité compétente (Nom, adresse complète, pays)

À ....., le .....

(Signature) (Sceau)

ndiquer s'il s'agit d'un nombre de pièces, de mètres, de m² ou de kilogrammes.
Dans la monnaie du contrat de vente.

1 Esportatore (nome, indirizzo completo, paese)	2 Numero	00000
	CERTIFICATO RELATIVO A TALUNI PRODOTTI FATTI A MANO (HANDICRAFTS) **rilasciato per ottenere il beneficio del regime tariffario preferenziale nella Comunità economica europea**	
3 Destinatario (nome, indirizzo completo, paese)	4 Paese di fabbricazione	5 Paese di destinazione
6 Luogo e data d'imbarco — Mezzo di trasporto	7 Dati supplementari	

8 DESIGNAZIONE DETTAGLIATA DELLE MERCI — Marche e numeri — Numero e natura dei colli	9 Quantità (1)	10 Valore fob (2)

11 VISTO DELL'AUTORITÀ COMPETENTE

Il sottoscritto certifica che la partita descritta sopra contiene esclusivamente dei prodotti fatti a mano dall'artigianato rurale del paese indicato nella casella n. 4.

12 Autorità competente (nome, indirizzo completo, paese)	A ..... il .....
	(Firma) (Sigillo)

ndicare se si tratta di un numero di pezze, di metri, di m^2 o di chilogrammi.
Vella moneta del contratto di vendita.

1 Exporteur (naam, volledig adres, land)	2 Nummer	00000
	CERTIFICAAT BETREFFENDE BEPAALDE MET HANDENARBEID VERKREGEN PRODUKTEN (HANDICRAFTS) **afgeleverd met het oog op het bekomen van de voordelen van het regime der tariefpreferenties in de Europese Economische Gemeenschap**	
3 Geadresseerde (naam, volledig adres, land)	4 Land van vervaardiging	5 Land van bestemming
6 Plaats en datum van inlading — vervoermiddel	7 Bijkomende gegevens	

8 NAUWKEURIGE OMSCHRIJVING VAN DE GOEDEREN — Merken en nummers — aantal en soort	9 Hoeveelheid (1)	10 fob waarde (2)

11 VISUM VAN DE BEVOEGDE AUTORITEIT:

Ik ondergetekende, verklaar dat de hierna omschreven zending uitsluitend produkten bevat welke ten plattelande met handenarbeid in de huisindustrie zijn vervaardigd in het land aangeduid in vak nr. 4.

12 Bevoegde autoriteit (naam, volledig adres, land)	Te ..... de .....
	(Handtekening) (Stempel)

Aantal aan te duiden in stukken, meters, vierkante meters of kilogrammen.
In de munt van het verkoopcontract.

BILAG II — ANHANG II — ΠΑΡΑΡΤΗΜΑ II — ANNEX II — ANNEXE II — ALLEGATO II — BIJLAGE II

Fremstillingsland Herstellungsland Χώρα κατασκευῆς Country of manufacture Pays de fabrication Paese di fabbricazione Land van vervaardiging	Kompetent myndighed Zuständige Behörde Ἁρμόδια Ὑπηρεσία Competent authority Autorité compétente Autorità competente Bevoegde autoriteit
Indien Indien Ἰνδία India Inde India India	All India Handicrafts Board
Pakistan Pakistan Πακιστάν Pakistan Pakistan Pakistan Pakistan	Export Promotion Bureau
Thailand Thailand Ταϊλάνδη Thailand Thaïlande Tailandia Thailand	Department of Foreign Trade
Indonesien Indonesien Ἰνδονησία Indonesia Indonésie Indonesia Indonesië	Ministeriet for handel og kooperativer Ministerium für Handel und Genossenschaften Department of Trade and Cooperatives Ministère du commerce et des coopératives Ministero del commercio e delle cooperative Ministerie van Handel en Coöperatieven
Philippinerne Philippinen Φιλιππίνες Philippines Philippines Filippine Filippijnen	National Cottage Industries Development Authority (NACIDA)
Iran Iran Ἰράν Iran Iran Iran Iran	The Institute of Standards and Industrial Research in Iran (ISIRI)
Sri Lanka Sri Lanka Σρί-Λάνκα Sri Lanka Sri Lanka Sri Lanka Sri Lanka	Department for Marketing and Export Promotion of Handicrafts of Sri Lanka

Fremstillingsland Herstellungsland Χώρα κατασκευῆς Country of manufacture Pays de fabrication Paese di fabbricazione Land van vervaardiging	Kompetent myndighed Zuständige Behörde Ἁρμόδια Ὑπηρεσία Competent authority Autorité compétente Autorità competente Bevoegde autoriteit
Uruguay Uruguay Οὐρουγουάη Uruguay Uruguay Uruguay Uruguay	Dirección general de comercio exterior
Bangladesh Bangladesch Μπαγκλαντές Bangladesh Bangladesh Bangladesh Bangladesh	Export Promotion Bureau
Laos Laos Λάος Laos Laos Laos Laos	Service national de l'artisanat et de l'industrie
Ecuador Ecuador Ἰσημερινός Ecuador Équateur Ecuador Ecuador	Ministerio de Industria, Comercio e Integración
Paraguay Paraguay Παραγουάη Paraguay Paraguay Paraguay Paraguay	Ministerio de Industria y Comercio
Panama Panama Παναμάς Panama Panama Panama Panama	Cámara de comercio e industrias de Panamá — Dirección de comercio interior y exterior
El Salvador El Salvador Ἔλ Σαλβαδόρ El Salvador El Salvador El Salvador El Salvador	Dirección de comercio internacional

Fremstillingsland Herstellungsland Χώρα κατασκευῆς Country of manufacture Pays de fabrication Paese di fabbricazione Land van vervaardiging	Kompetent myndighed Zuständige Behörde Ἁρμόδια Ὑπηρεσία Competent authority Autorité compétente Autorità competente Bevoegde autoriteit
Malaysia Malaysia Μαλαισία Malaysia Malaysia Malaisia Maleisië	Malaysian Handicraft Development Corporation
Bolivia Bolivien Βολιβία Bolivia Bolivie Bolivia Bolivië	Ministerio de Industria, Comercio y Turismo — Instituto boliviano de pequeña industria y artesania
Honduras Honduras Ὀνδούρα Honduras Honduras Honduras Honduras	Dirección general de comercio exterior
Peru Peru Περού Peru Pérou Perù Peru	Ministerio de Industria y Turismo
Chile Chile Χιλή Chile Chili Cile Chili	Servicio de cooperación técnica (SERCOTEC)
Guatemala Guatemala Γουατεμάλα Guatemala Guatemala Guatemala Guatemala	Dirección de comercio interior y exterior
Argentina Argentinien Ἀργεντινή Argentina Argentine Argentina Argentinië	Secretaria de Estado y comercio y negociaciones económicas internacionales

COUNCIL REGULATION (EEC) No 3668/81

of 3 December 1981

opening, allocating and providing for the administration of a Community tariff quota for certain handwoven fabrics, pile and chenille, falling within heading Nos ex 50.09, ex 55.07, ex 55.09 and ex 58.04 of the Common Customs Tariff (1982)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 113 thereof,

Having regard to the proposal from the Commission,

Whereas, as regards handwoven fabrics of silk, waste silk other than noil and cotton, falling within heading Nos ex 50.09 and ex 55.09, the European Economic Community has declared its readiness to open annual duty-free Community tariff quotas up to the value (customs value) of 1 000 000 units of account for each; whereas, in pursuance meanwhile of the Declaration of Intent concerning commercial relations with certain Asiatic countries, the quota amounts have been raised to 2 200 000 units of account in respect of silk fabrics and to 2 000 000 units of account in respect of cotton fabrics, and the benefit of the tariff quotas in question has been extended to certain other textile products falling within heading Nos ex 55.07 and ex 58.04 of the Common Customs Tariff, in silk or cotton; whereas products may be admitted under the Community tariff quota only on production of a certificate of manufacture recognized by the competent authorities of the European Economic Community, such products being stamped in a manner approved by such authorities at the beginning and end of each item and carried direct from the country of manufacture to the Community; whereas the specimen certificate of manufacture, examples of which have been annexed to the Regulations adopted by the Council each year for the opening of the abovementioned tariff quotas, and in particular to Regulation (EEC) No 3181/80 [1], is no longer in conformity with the most recent international standards; whereas, in particular, it is not in conformity with the layout key recommended by the Economic Commission for Europe in Geneva for documents used in external trade; whereas, in order to take account of that recommendation, the specimen certificates of manufacture should be adapted; whereas, in the interests of economy, the use of forms conforming to the old models should be permitted until 31 December 1982; whereas it is, accordingly, appropriate to open the tariff quotas in question with effect from 1 January 1982 in accordance with Council Regulation (EEC) No 3308/80 of 16 December 1980 on the replacement of the European unit of account by the ECU in Community legal instruments [2] and, after making provision for an increase of 2 % in the case of silk fabrics in the abovementioned amounts of the quotas, to take account of the accession of the Hellenic Republic;

Whereas equal and continuous access to the quotas should be ensured for all Community importers and the rate of levy for the quotas should be applied consistently to all imports until the quotas are used up; whereas, in the light of the principles outlined above, a Community tariff quota arrangement based on an allocation between the Member States would seem to preserve the Community nature of the said quotas; whereas, to represent as closely as possible the actual development of the market in the said goods, the allocation should follow proportionately the requirements calculated both on the basis of statistics of imports from third countries during a representative reference period and on the basis of the economic prospects for the tariff year in question;

Whereas, however, in the statistical nomenclatures there is no specific classification for the handwoven fabrics concerned; whereas, in these circumstances, it has been impossible to collect sufficiently precise and representative statistics; whereas the quantities charged against the shares allocated to the Member States for the Community tariff quotas opened for certain of these fabrics for 1978, 1979 and 1980 were as follows:

(1) OJ No L 337, 13. 12. 1980, p. 1.

(2) OJ No L 345, 20. 12. 1980, p. 1.

1. Woven fabrics of silk or of waste silk other than noil (heading No ex 50.09 of the Common Customs Tariff):

Member States	1978		1979		1980	
	u.a.	%	EUA	%	EUA	%
Benelux	46 567	2·16	54 000	2·48	69 000	3·15
Denmark	66 150	3·06	41 634	1·91	43 160	1·97
Germany	1 537 429	71·19	1 551 291	71·11	1 491 442	68·03
France	164 400	7·61	270 000	12·38	310 500	14·16
Ireland	—	—	—	—	—	—
Italy	207 000	9·59	158 150	7·25	174 400	7·96
United Kingdom	138 000	6·39	106 416	4·87	103 730	4·73

2. Woven fabrics of cotton (heading Nos ex 55.07, ex 55.09 and ex 58.04 of the Common Customs Tariff):

Member States	1978		1979		1980	
	u.a.	%	EUA	%	EUA	%
Benelux	53 986	2·62	54 000	2·71	69 000	3·50
Denmark	134 946	6·55	164 444	8·25	251 775	12·79
Germany	213 300	10·36	450 000	22·58	409 297	20·79
France	720 300	34·98	708 600	35·56	666 533	33·85
Ireland	44 351	2·15	—	—	2 280	0·12
Italy	103 500	5·03	119 900	6·02	99 467	5·05
United Kingdom	788 700	38·31	495 920	24·88	470 600	23·90

Whereas, in view of the variations in these figures, the latter cannot lead to a firm conclusion on the real requirements of each Member State referred to above for the tariff period under consideration; whereas, so that the Community tariff quotas in question may be allocated fairly among the Member States, these factors make it possible to express the initial percentage shares in the quota volume roughly as follows:

Member States	Silk goods (heading No ex 50.09)	Cotton goods (heading Nos ex 55.07, ex 55.09 and ex 58.04)
Benelux	4·72	3·55
Denmark	4·72	6·45
Germany	43·18	13·59
Greece	3·27	0·86
France	23·60	38·68
Ireland	3·10	2·33
Italy	9·53	3·58
United Kingdom	7·88	30·96

Whereas, to take account of future import trends for the goods under consideration, each quota volume should be divided into two successive amounts, the first being allocated among the Member States and the second held as a reserve to cover at a later date the requirements of Member States who have used up their initial shares; whereas, to give importers some degree of certainty, the first successive amount of each Community tariff quota should be fixed at a relatively high level, at approximately 50 % for silk goods and at approximately 76 % for cotton goods;

Whereas the initial shares may be used up fairly quickly; whereas, therefore, to avoid disruption of supplies, any Member State which has almost used up one of its initial shares should draw a supplementary share from the corresponding reserve; whereas this must be done by each Member State as each one of its supplementary shares is almost used up, and as many times as the reserve allows; whereas each initial and supplementary share must be valid until the end of the quota period; whereas this form of administration requires close collaboration between the Member States

and the Commission, and the Commission must be in a position to follow the extent to which the tariff quotas have been used up and inform the Member States thereof;

Whereas, if at a given date in the quota period a Member State has a considerable quantity of one of its initial shares left over, it is essential that it should return a significant proportion thereof to the reserve to prevent a part of one or other of the Community quotas from remaining unused in one Member State while it could be used in others;

Whereas, since the Kingdom of Belgium, the Kingdom of the Netherlands and the Grand Duchy of Luxembourg are united within and jointly represented by the Benelux Economic Union, any operation relating to the administration of the quota shares allocated to that economic union may be carried out by any one of its members,

HAS ADOPTED THIS REGULATION:

Article 1

1. From 1 January to 31 December 1982, for each of the two categories of the following products, Community tariff quotas of a volume corresponding to the customs value indicated shall be opened:

(ECU)

CCT heading No	Description	Quota volume
(a) ex 50.09	Handwoven fabrics of silk, of noil or other waste silk	2 244 000
(b) ex 55.07	Handwoven cotton gauze	2 000 000
ex 55.09	Other handwoven fabrics of cotton	
ex 58.04	Handwoven pile fabrics and chenille fabrics (other than terry products of cotton falling within heading No 55.08 and fabrics falling within heading No 58.05) of cotton, woven on hand looms	

2. Within these tariff quotas the Common Customs Tariff duties shall be totally suspended.

As regards these tariff quotas, Greece shall apply the duties calculated in accordance with the relevant provisions laid down in the 1979 Act of Accession.

3. For the purposes of this Regulation:

(a) 'handwoven fabrics' means fabrics woven on looms moved exclusively by hand or foot;

(b) 'customs value' means the value as defined in the relevant Community rules.

4. Admission under these quotas shall, however, be granted only for fabrics, pile and chenille:

(a) accompanied by a certificate of manufacture recognized by the competent authorities of the European Economic Community and conforming to one of the examples in Annex I endorsed by one of the recognized authorities of the country of manufacture appearing in Annex II. However, the specimen certificates used previously, and in particular those annexed to Regulation (EEC) No 3181/80, may continue to be used until 31 December 1982;

(b) bearing, at the beginning and end of each item, a stamp approved by the said authorities [1];

(c) carried direct from the country of manufacture to the European Economic Community.

[1] It is agreed that this subparagraph shall not prevent a lead seal approved by the authorities from constituting performance of the terms of this subparagraph.

5. In this respect, the following shall be considered to have been carried direct:

(a) goods which, in carriage, do not cross the territory of a non-member country of the European Communities. Goods temporarily held in power of non-member countries shall not be excluded from the definition of direct carriage provided that they are not transhipped there;

(b) goods which, in carriage, cross the territory of one or more non-member countries of the European Communities or are transhipped in such a country, provided that they cross such territory while covered by a single transport document drawn up in the country of manufacture.

Article 2

1. A first successive amount of a value corresponding to 1 144 000 ECU for the products falling within heading No ex 50.09, and to 1 520 000 ECU for the products falling within heading Nos ex 55.07, ex 55.09, and ex 58.04, shall be allocated among the Member States; the respective shares of the Member States, which subject to Article 5 shall be valid from 1 January to 31 December 1982, shall correspond to the following values:

(a) for the products falling within heading No ex 50.09, referred to in Article 1 (1):

	(ECU)
Benelux	54 000
Denmark	54 000
Germany	494 000
Greece	37 400
France	270 000
Ireland	35 400
Italy	109 000
United Kingdom	90 200

(b) for the products falling within heading Nos ex 55.07, ex 55.09 and ex 58.04, referred to in Article 1 (1):

	(ECU)
Benelux	54 000
Denmark	98 000
Germany	206 500
Greece	13 000
France	588 000
Ireland	35 400
Italy	54 500
United Kingdom	470 600

2. The second successive amount of each of the quotas referred to in Article 1 (1) and corresponding to 1 100 000 and 480 000 ECU, respectively, shall constitute the reserve.

3. The provisions of Regulation (EEC) No 3308/80, and in particular Article 2 thereof, shall apply for the purposes of determining the equivalent value in national currencies of amounts expressed in ECU.

Article 3

1. If 90 % or more of one of a Member State's initial shares as specified in Article 2 (1), or of that share minus the portion returned to the reserve where Article 5 is applied, has been used up, that Member State shall without delay, by notifying the Commission, draw a second share equal to 15 % of its initial share, rounded up where necessary to the next unit, to the extent permitted by the amount of the reserve.

2. If, after one or other of its initial shares has been used up, 90 % or more of the second share drawn by a Member State has been used up, that Member State shall, in accordance with the conditions imposed by paragraph 1, draw a third share, equal to 7·5 % of its initial share, rounded up where necessary to the next unit.

3. If, after one or other of its second shares has been used up, 90 % or more of the third share drawn by a Member State has been used up, that Member State shall, in accordance with the same conditions, draw a fourth share equal to the third.

This process shall continue to apply until the reserve is used up.

4. By way of derogation from paragraphs 1, 2 and 3, a Member State may draw shares lower than those fixed in those paragraphs if there are grounds for believing that those fixed may not be used up. It shall inform the Commission of its reasons for applying this paragraph.

Article 4

Supplementary shares drawn pursuant to Article 3 shall be valid until 31 December 1982.

Article 5

Member States shall return to the reserve, not later than 1 October 1982, the unused portion of their initial

share which, on 15 September 1982, is in excess of 20 % of the initial amount. They may return a larger quantity if there are reasons to believe that such quantity might not be used.

Each Member State shall, not later than 1 October 1982, notify the Commission of the total quantities of the said goods imported up to the including 15 September 1982 and charged against the appropriate Community tariff quota, and any quantities of the initial shares returned to the corresponding reserves.

Article 6

The Commission shall keep an account of the shares opened by the Member States pursuant to Articles 2 and 3 and shall, as soon as it has been notified, inform each State of the extent to which the reserves have been used up.

It shall inform the Member States, not later than 5 October 1982, of the amounts still in reserve after amounts have been returned thereto pursuant to Article 5.

It shall ensure that the drawing which uses up a reserve is limited to the balance available and to this end shall specify the amount thereof to the Member State making the last drawing.

Article 7

1. The Member States shall take all measures necessary to ensure that supplementary shares drawn pursuant to Article 3 are opened in such a way that imports may be charged without interruption against their accumulated shares in the Community tariff quotas.

2. The Member States shall ensure that importers of the said goods established in their territory have free access to the shares allocated to them.

3. The Member States shall charge imports of the said goods against their shares as and when such goods are declared for customs purposes to be for free circulation.

4. The extent to which a Member State has used up its share shall be determined on the basis of imports charged in accordance with paragraph 3.

Article 8

At the request of the Commission, Member States shall inform it of imports of the products concerned actually charged against their shares.

Article 9

The Member States and the Commission shall cooperate closely in order to ensure that this Regulation is observed.

Article 10

This Regulation shall enter into force on 1 January 1982.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 3 December 1981.

For the Council

The Presidnet

T. KING

BILAG I — ANHANG I — ΠΑΡΑΡΤΗΜΑ I — ANNEX I — ANNEXE I — ALLEGATO I — BIJLAGE I

MODELLER TIL FREMSTILLINGSCERTIFIKAT

MUSTER DER HERSTELLUNGSBESCHEINIGUNG

ΥΠΟΔΕΙΓΜΑΤΑ ΠΙΣΤΟΠΟΙΗΤΙΚΩΝ ΚΑΤΑΣΚΕΥΗΣ

MODEL CERTIFICATE OF MANUFACTURE

MODÈLES DE CERTIFICAT DE FABRICATION

MODELLI DI CERTIFICATO DI FABBRICAZIONE

MODELLEN VAN CERTIFICAAT VAN VERVAARDIGING

1 Eksportør (navn, fuldstændig adresse, land)

2 Nummer 00000

CERTIFIKAT
VEDRØRENDE HÅNDVÆVEDE PRODUKTER AF SILKE ELLER BOMULD

udstedt med henblik på opnåelse af præferencetoldbehandling i Det europæiske økonomiske Fællesskab

3 Modtager (navn, fuldstændig adresse, land)

4 Fremstillingsland

5 Bestemmelsesland

6 Sted og dato for indskibning — transportmiddel

7 Supplerende oplysninger

8 NØJE BESKRIVELSE AF VARERNE — Mærker og numre — Antal kolli og disses art	9 Antal (1)	10 Værdi fob (2)

11 DEN KOMPETENTE MYNDIGHEDS PÅTEGNING

Undertegnede erklærer, at:

— nedenfor beskrevne forsendelse udelukkende indeholder håndvævede produkter fremstillet af landsbyhåndværkere i det land, der er anført i rubrik nr. 4;

— hvert stykke er:

— i hver ende forsynet med et godkendt stempel (3),

— forsynet med en plombe nr. ..... (3)

12 Kompetent myndighed (navn, adresse, land)

Sted ..... Dato .....

(Underskrift) (Stempel)

Hvorvidt det drejer sig om antal dele, meter, m^2 eller kilo.
Valuta, der er anført i købekontrakten.
Ikke anvendte overstreges.

1 Ausführer (Name, vollständige Anschrift, Land)

2 Nummer 00000

BESCHEINIGUNG
FÜR AUF HANDWEBSTÜHLEN HERGESTELLTE ERZEUGNISSE AUS SEIDE ODER BAUMWOLLE

ausgestellt für die Zulassung zur zolltariflichen Vorzugsregelung in der Europäischen Wirtschaftsgemeinschaft

3 Empfänger (Name, vollständige Anschrift, Land)

4 Herstellungsland

5 Bestimmungsland

6 Ort und Datum der Verladung — Beförderungsmittel

7 Zusätzliche Angaben

8 GENAUE BESCHREIBUNG DER ERZEUGNISSE — Zeichen und Nummern — Anzahl und Art der Packstücke	9 Menge (1)	10 Wert fob (2)

11 SICHTVERMERK DER ZUSTÄNDIGEN BEHÖRDE

Der Unterzeichnende bescheinigt, daß die vorstehend bezeichnete Sendung ausschließlich auf Handwebstühlen in ländlichen Betrieben des unter Nr. 4 angegebenen Landes hergestellte Gewebe enthält;

— Jedes Stück { am Anfang und am Ende mit einem zugelassenen Stempel (3) / mit einer Plombe Nr. ..... (3) } versehen ist.

12 Zuständige Behörde (Name, vollständige Anschrift, Land)

Ort ..... Datum .....

(Unterschrift) (Stempel)

Angeben, ob es sich um Stück, Meter, Quadratmeter oder Kilogramm handelt.
In der im Kaufvertrag angegebenen Währung.
Nichtzutreffendes streichen.

1 Ἐξαγωγέας (ὄνομα, πλήρης διεύθυνση, χώρα)	2 Ἀριθμός	00000
	ΠΙΣΤΟΠΟΙΗΤΙΚΟ ΟΣΟΝ ΑΦΟΡΑ ΤΑ ΜΕΤΑΞΩΤΑ Ἤ ΒΑΜΒΑΚΕΡΑ ΥΦΑΣΜΑΤΑ ΠΟΥ ΕΧΟΥΝ ΥΦΑΝΘΕΙ ΜΕ ΑΡΓΑΛΕΙΟ	
3 Παραλήπτης (ὄνομα, πλήρης διεύθυνση, χώρα)	**παραδίδεται γιά νά χρησιμεύσει γιά τήν ἐπίτευξη τῆς ἀπολαβῆς τού προτιμησιακοῦ δασμολογικοῦ καθεστῶτος τῆς Εὐρωπαϊκῆς Οἰκονομικῆς Κοινότητος**	
	4 Χώρα κατασκευῆς	5 Χώρα προορισμοῦ
6 Τόπος καί χρονολογία ἀποστολῆς — Μέσον μεταφορᾶς	7 Συμπληρωματικά στοιχεῖα	

8 ΛΕΠΤΟΜΕΡΗΣ ΠΕΡΙΓΡΑΦΗ ΤΩΝ ΕΜΠΟΡΕΥΜΑΤΩΝ — Σημεῖα καί ἀριθμοί — Ἀριθμός καί εἶδος τοῦ δέματος	9 Ποσότης (1)	10 Ἀξία fob (2)

11 ΕΠΙΚΥΡΩΣΗ ΤΗΣ ΑΡΜΟΔΙΑΣ ΥΠΗΡΕΣΙΑΣ

Ὁ ὑπογεγραμμένος πιστοποιεῖ ὅτι:

— ἡ ἀποστολή μέ τήν παραπάνω περιγραφή περιέχει ἀποκλειστικά ὑφαντουργικά προϊόντα πού ἔχουν ὑφανθεῖ μέ ἀργαλειό ἀπό οἰκοτεχνίτες τῆς χώρας πού ἀναφέρεται στό τετράγωνο ἀριθ. 4*

— κάθε τόπι φέρει:

— στήν ἀρχή καί στό τέλος, ἐγκεκριμένη σφραγίδα (3)*

— μολυβδασφάλιση ἀριθ. . . . (3).

12 Ἁρμόδια ὑπηρεσία (ὄνομα, πλήρης διεύθυνση, χώρα)	Ἐν ..... τῆ .....
	(Ὑπογραφή) (Σφραγίδα)

Ἀναφέρατε ἐάν πρόκειται περί ἀριθμοῦ τεμαχίων, μέτρων, τετραγωνικῶν μέτρων ἤ κιλῶν.
Στό νόμισμα τῆς συμβάσεως πωλήσεως.
Νά διαγραφεῖ ἡ περιττή ἔνδειξη.

1 Exporter (Name, full address, country)	2 Number	00000

CERTIFICATE
RELATING TO SILK OR COTTON HANDLOOM PRODUCTS

issued with a view to obtaining the benefit of the preferential tariff regime in the European Economic Community

3 Consignee (Name, full address, country)	4 Country of manufacture	5 Country of destination

6 Place and date of shipment — Means of transport	7 Supplementary details

8 DETAILED DESCRIPTION OF GOODS — Marks and numbers — Number and kind of packages	9 Quantity (1)	10 FOB value (2)

11 CERTIFICATION BY THE COMPETENT AUTHORITY

I, the undersigned, certify that:

— the consignment described above contains only handloom textile products of the cottage industry of the country shown in box No 4,

— to each piece is attached:

  — at the beginning and end, an approved stamp (3).

  — a seal No ..... (3).

12 Competent authority (Name, full address, country)	At ....., on .....
	(Signature) (Seal)

State whether in pieces, metres, square metres or kilograms.
The currency of the contract of sale.
Delete as appropriate.

1 Exportateur (Nom, adresse complète, pays)	2 Numéro	00000
3 Destinataire (Nom, adresse complète, pays)	**CERTIFICAT CONCERNANT LES PRODUITS DE SOIE OU DE COTON, TISSÉS SUR MÉTIERS A MAIN** **délivré en vue de l'obtention du bénéfice du régime tarifaire préférentiel dans la Communauté économique européenne**	
	4 Pays de fabrication	5 Pays de destination
6 Lieu et date d'embarquement — moyen de transport	7 Données supplémentaires	

8 DÉSIGNATION DÉTAILLÉE DES MARCHANDISES — Marques et numéros — nombre et nature des colis	9 Quantité (1)	10 Valeur fob (2)

11 VISA DE L'AUTORITÉ COMPÉTENTE

Je soussigné, certifie que l'envoi décrit ci-dessus contient exclusivement des produits textiles fabriqués sur métiers à main par l'artisanat rural du pays indiqué dans la case n° 4;

— chaque pièce est munie { au début et à la fin, d'un cachet agréé (3) / d'un plomb n° ..... (3).

12 Autorité compétente (Nom, adresse complète, pays)

À ....., le .....

(Signature) (Sceau)

(1) Indiquer s'il s'agit d'un nombre de pièces, de mètres, de m^2 ou de kilogrammes.
(2) Dans la monnaie du contrat de vente.
(3) Biffer la mention inutile.

1 Esportatore (nome, indirizzo completo, paese)	2 Numero	00000
	CERTIFICATO RELATIVO AI PRODOTTI DI SETA O DI COTONE LAVORATI SU TELAI A MANO **rilasciato per ottenere il beneficio del regime tariffario preferenziale nella Comunità economica europea**	
3 Destinatario (nome, indirizzo completo, paese)	4 Paese di fabbricazione	5 Paese di destinazione
6 Luogo e data d'imbarco — Mezzo di trasporto	7 Dati supplementari	

8 DESIGNAZIONE DETTAGLIATA DELLE MERCI — Marche e numeri — Numero e natura dei colli	9 Quantità (1)	10 Valore fob (2)

11 VISTO DELL'AUTORITÀ COMPETENTE

Il sottoscritto certifica che :

— la partita descritta sopra contiene esclusivamente prodotti tessili fabbricati su telai a mano dall'artigianato rurale del paese indicato nella casella n. 4 ;

— ogni pezza è munita:

— all'inizio e alla fine, di un marchio riconosciuto dalle autorità (3).

— di un sigillo di piombo n. ..... (3).

12 Autorità competente (nome, indirizzo completo, paese)	A ..... il .....
	(Firma) (Sigillo)

(1) Indicare se si tratta di un numero di pezze, di metri, di m^2 o di chilogrammi.

(2) Indicare il valore fob nella moneta del contratto di vendita.

(3) Cancellare la menzione inutile.

1 Exporteur (naam, volledig adres, land)	2 Nummer	00000
	CERTIFICAAT BETREFFENDE OP HANDWEEFGETOUWEN VERVAARDIGDE PRODUKTEN VAN ZIJDE OF KATOEN **afgeleverd met het oog op het bekomen van de voordelen van het regime der tariefpreferenties in de Europese Economische Gemeenschap**	
3 Geadresseerde (naam, volledig adres, land)	4 Land van vervaardiging	5 Land van bestemming
6 Plaats en datum van inlading — vervoermiddel	7 Bijkomende gegevens	

8 NAUWKEURIGE OMSCHRIJVING VAN DE GOEDEREN — Merken en nummers — aantal en soort	9 Hoeveelheid (1)	10 fob waarde (2)

11 VISUM VAN DE BEVOEGDE AUTORITEIT:

Ik, ondergetekende, verklaar dat de hierna omschreven zending uitsluitend produkten bevat welke in de huisindustrie op handweefgetouwen zijn vervaardigd in het land aangeduid in vak nr. 4.

— Ieder stuk is voorzien { aan het begin en aan het einde, van een erkend stempel (3) / van een loodje nr. ..... (3)

12 Bevoegde autoriteit (naam, volledig adres, land)	Te ..... de .....
	(Handtekening) (Stempel)

Aantal aan te duiden in stukken, meters, vierkante meters of kilogrammen.
De munt van het verkoopcontract.
Onnodige schrappen.

BILAG II — ANHANG II — ΠΑΡΑΡΤΗΜΑ II — ANNEX II — ANNEXE II — ALLEGATO II — BIJLAGE II

Fremstillingsland Herstellungsland Χώρα κατασκευῆς Country of manufacture Pays de fabrication Paese di fabbricazione Land van vervaardiging	Kompetent myndighed Zuständige Behörde Ἁρμόδια Ὑπηρεσία Competent authority Autorité compétente Autorità competente Bevoegde autoriteit
Indien Indien Ἰνδία India Inde India India	Textile Committee { eller (for stoffer af silke) / oder (für Gewebe aus Seide) / ἤ (γιά μεταξωτά ὑφάσματα) / or (for silk fabrics) / ou (pour les tissus de soie) / o (per i tessuti di seta) / of (voor weefsels van zijde) } Central Silk Board
Pakistan Pakistan Πακιστάν Pakistan Pakistan Pakistan Pakistan	Export Promotion Bureau
Thailand Thailand Ταϊλάνδη Thailand Thaïlande Tailandia Thailand	Department of Foreign Trade
Bangladesh Bangladesch Μπαγκλαντές Bangladesh Bangladesh Bangladesh Bangladesh	Export Promotion Bureau
Laos Laos Λάος Laos Laos Laos Laos	Service national de l'artisanat et de l'industrie
Sri Lanka Sri Lanka Σρί-Λάνκα Sri Lanka Sri Lanka Sri Lanka Sri Lanka	Department of Commerce
El Salvador El Salvador Ἐλ Σαλβαδόρ El Salvador El Salvador El Salvador El Salvador	Dirección de comercio internacional

Fremstillingsland Herstellungsland Χώρα κατασκευῆς Country of manufacture Pays de fabrication Paese di fabbricazione Land van vervaardiging	Kompetent myndighed Zuständige Behörde Ἁρμόδια Ὑπηρεσία Competent authority Autorité compétente Autorità competente Bevoegde autoriteit
Honduras Honduras Ὀνδούρα Honduras Honduras Honduras Honduras	Dirección general de comercio exterior
Indonesien Indonesien Ἰνδονησία Indonesia Indonésie Indonesia Indonesië	Ministeriet for handel og kooperativer Ministerium für Handel und Genossenschaften Ὑπουργεῖο Ἐμπορίου καί Συνεργατισμῶν Department of Trade and Cooperatives Ministère du commerce et des coopératives Ministero del commercio e delle cooperative Ministerie van Handel en Coöperatieven
Guatemala Guatemala Γουατεμάλα Guatemala Guatemala Guatemala Guatemala	Dirección de comercio interior y exterior
Argentina Argentinien Ἀργεντινή Argentina Argentine Argentina Argentinië	Secretaria de Estado y comercio y negociaciones económicas internacionales

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 29 October 1981

relating to a proceeding under Article 86 of the EEC Treaty (IV/29.839 — GVL)

(Only the German text is authentic)

(81/1030/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 86 thereof,

Having regard to Council Regulation No 17 of 6 February 1962 [1], and in particular Article 3 thereof,

Having regard to the applications made to the Commission pursuant to Article 3 of Regulation No 17 by Interpar on 9 April 1979 and by the performing artists Avory, Bennett, R. Davies, D. Davies, Marvin, Webb, Welch, Scarano and Skorsky on 12 September 1980 in respect of the conduct of the Gesellschaft zur Verwertung von Leistungsschutzrechten, Hamburg, Federal Republic of Germany,

Having regard to the Commission Decision of 25 August 1980 to initiate a proceeding in this case,

Having heard the Gesellschaft zur Verwertung von Leistungsschutzrechten mbH in accordance with Article 19 of Regulation No 17 and with Commission Regulation No 99 of 25 July 1963 [2],

Having regard to the opinion delivered on 17 June 1981 by the Advisory Committee on Restrictive Practices and Dominant Positions in accordance with Article 10 of Regulation No 17,

Whereas:

THE FACTS

This Decision concerns the conduct of the Gesellschaft zur Verwertung von Leistungsschutzrechten mbH (hereinafter called 'GVL') towards performing artists who are neither of German nationality nor resident in the Federal Republic of Germany (hereinafter called 'Germany').

I. Organization of GVL

1. GVL, which has its registered office in Hamburg, is a German collecting society set up to manage rights and claims which are vested pursuant to the German 'Gesetz über Urheberrechte und verwandte Schutzrechte' (Law on copyright and related rights, hereinafter called 'Urheberrechtsgesetz' — abbreviated to UrhG) in performing artists, film artists (hereinafter called 'artists'), visual and sound recording manufacturers and promoters or which are assigned to manufacturers and promoters.

   GVL is responsible for the exploitation in Germany of 'performers' rights', i.e. rights which

[1] OJ No 13, 21. 2. 1962, p. 204/62.
[2] OJ No 127, 20. 8. 1963, p. 2268/63.

arise out of the reproduction of the author's creative work. The activities of such collecting societies are governed by the German 'Gesetz über die Wahrnehmung von Urheberrechten und verwandten Schutzrechten' (Law on the management of copyright and related rights, hereinafter called 'Wahrnehmungsgesetz' — abbreviated to 'WahrnG').

2. GVL was created jointly by the 'Deutsche Orchestervereinigung eV', Hamburg, which represents the interests of performing artists — principally musicians — and the 'Deutsche Landesgruppe der IFPI eV' (International Federation of Producers of Phonograms and Videograms), Hamburg, which represents the interests of sound and visual recording manufacturers. The Deutsche Orchestervereinigung eV and the Deutsche Landesgruppe der IFPI eV are the sole members of GVL, which is a limited liability company.

II. The rights of artists and manufacturers under German copyright law

3. Pursuant to Article 73 *et seq.* UrhG, artists enjoy rights similar to copyright protection. Artists are entitled under Articles 74, 75 and 76 (1) UrhG to ensure that their performances are utilized in public, recorded on visual or sound recordings, reproduced or broadcast only with their consent (primary exploitation). As a rule, they give such consent only on payment of a fee.

4. Articles 76 (2) and 77 UrhG confer on artists, moreover, a statutory right to payment of royalties where a performance which has been recorded on a visual or sound recording with their consent is subsequently broadcast or otherwise made public (secondary exploitation). Artists are also entitled pursuant to Article 53 (5) UrhG to claim payment of a fee from manufacturers of reproduction equipment (royalty in respect of equipment).

5. Where an artist's performance has been recorded with his consent on visual or sound recordings and the recordings have been published, the artist may no longer prevent the broadcasting or public reproduction of such recordings on the strength of his rights as a performer.

6. Pursuant to Article 86 UrhG, manufacturers of sound recordings, hereinafter called 'manufacturers', have, for their part, with regard to the artist's right to payment of a royalty in respect of secondary exploitation, a claim against the artist for a reasonable share of such royalty.

Manufacturers and artists, therefore, have an equal interest in the royalty payable in respect of secondary exploitation. As far as the pursuit of such claims against parties liable for payment (broadcasting companies, theatres, hotels, restaurants, etc.) is concerned, their interests run parallel. A conflict of interest occurs only when the royalty has been paid and the question arises of the 'reasonable share of the manufacturer'.

III. The rights of artists and manufacturers in other Member States and under the Rome Convention

7. Whilst in all Member States artists are entitled to withhold their consent to primary exploitation, a comparable statutory right to payment of a royalty in respect of secondary exploitation exists in only a few Member States.

8. In Denmark and Italy, sound recording manufacturers and artists have a statutory right to payment of a royalty for public performances and broadcasts. In the United Kingdom and Ireland, only sound recording manufacturers have a statutory right to prohibit unauthorized public reproduction. Artists share in the income earned by sound recording manufacturers from public reproduction by concluding collective agreements with them. In Greece, so far only artists and not sound recording manufacturers have a statutory right at present to payment of a royalty. In the Netherlands, Belgium, Luxembourg and France, no legislation has yet been passed concerning the payment of royalties for secondary exploitation. In practice, however, in Belgium and the Netherlands agreements concerning the payment of royalties for secondary exploitation have been concluded between Belgian or Dutch sound recording manufacturers and the respective broadcasting authorities, and in France such agreements have been concluded with at least some broadcasting companies. The respective artists' associations receive their share of the royalties through collective agreements with the sound recording manufacturers.

9. Under Article 12 of the International Convention on the protection of performers, producers of phonograms and broadcasting organizations of

26 October 1961 (Rome Convention), Contracting States must ensure that users of published sound recordings pay the sound recording manufacturer or the artist, or both, a single, equitable remuneration in respect of broadcasting or any communication to the public.

10. The Rome Convention, however, has not yet been ratified by all Member States. When ratifying the Convention, Germany expressed a reservation to the effect that, in the case of sound recordings manufactured by a national of another Contracting State, the extent and duration of the protection afforded to manufacturers and artists were to be limited to the extent and duration of the protection granted by that State to sound recordings which were first made by a German national.

11. The performers' rights described above (points 3 to 6) are also in principle vested in artists having a foreign nationality irrespective of their place of residence. Where the artist concerned is not a national of a country which has ratified the Rome Convention, Article 125 of the UrhG confers on him the same rights as on German artists if his performance takes place in Germany or — where it has been recorded with his consent on visual or sound recordings — if such recordings have been published in Germany. Such foreign artists also enjoy the same rights as German nationals in respect of broadcasts where the latter are transmitted in Germany.

IV. The rules contained in the Wahrnehmungsgesetz

12. Under Article 1 WahrnG, any person who exploits rights of use, rights of consent or rights to payment of royalties pursuant to the Urheberrechtsgesetz on behalf of several copyright holders or owners of similar rights for their collective benefit requires official authorization, irrespective of whether he acts in his own name or on behalf of another person.

There is a legal right to such authorization where certain basic pre-conditions relating to the pursuit of this activity are satisfied.

13. The Wahrnehmungsgesetz does not confer a legal monopoly on collecting societies. The establishment of 'competing' associations is perfectly possible in law.

14. Collecting societies authorized under the Wahrnehmungsgesetz must apportion the income earned from their activities in accordance with strict rules.

15. Under Article 11 WahrnG, collecting societies must, on the basis of the rights which they exploit, grant any individual on request rights of use or consent on reasonable terms (obligation to contract).

16. Under Article 6 WahrnG, however, collecting societies must manage the rights and claims falling within their field of activity on reasonable terms at the request of their proprietors where the latter are German nationals within the meaning of the basic law or are resident in the area in which the Wahrnehmungsgesetz is in force and where the rights or claims cannot otherwise be effectively exploited (obligation to manage).

17. Compliance with these statutory obligations and the activities of collecting societies are monitored by the German Patent Office (Article 18 *et seq.* WahrnG).

V. The legal position of GVL in Germany

18. GVL is the only collecting society engaged in Germany in the exploitation of performers' rights. The other collecting societies in Germany exploit other rights.

19. Under the Urheberrechtsgesetz, certain rights vested in copyright holders, artists or manufacturers may be asserted only through collecting societies. This is true, for example, of the abovementioned (point 4) claim to payment of royalties against manufacturers of reproduction equipment pursuant to Article 53 (5) UrhG (royalty in respect of equipment).

20. For legal reasons, as far as the royalty in respect of equipment is concerned, and also for practical reasons in the case of claims for payment of royalties in respect of secondary exploitation, it is practically impossible for artists themselves effectively to assert such rights. Any attempt to do so is bound to fail because the individual artist is not able to verify and prove in individual cases whether, when, by whom and how often his performance has been broadcast or otherwise made public. He would, moreover, as an individual in an economically weak position,

have to enter into contractual relations with a multitude of economically strong users (e.g. broadcasting companies), from whom he is entitled to claim only the payment of a reasonable royalty, and whom he may not prohibit from using his performance.

VI. The management of secondary exploitation rights by GVL

1. *Management agreements*

21. To manage rights arising out of secondary exploitation, GVL concludes so-called 'management agreements' with manufacturers and artists. Pursuant to Article 1 of the management agreement with artists, the person entitled assigns to GVL for management in its own name for the duration of the agreement all his present and future rights of performance and all claims to termination, suppression and damages vested in him.

22. This assignment of rights covers, in particular, the right to payment of a royalty where published visual or sound recordings are broadcast or otherwise made public, as well as the right to royalties in respect of equipment.

23. In return, GVL undertakes to pay to the person entitled the royalties collected, the interest due on sums invested pending their distribution and any other proceeds according to a scale drawn up by itself, less essential administrative expenses, which amount to between 5 and 10 % of the sums received by GVL.

24. In practice, it is often not the individual artist who assigns his rights to GVL in the case of performances on sound recordings. As a rule, the sound recording manufacturer himself ensures that all the necessary rights, including the artist's secondary exploitation rights, are secured. He then transfers the rights assigned to him by the artist to GVL. Under this agreement between manufacturers and GVL, artists have a direct claim for payment against GVL (agreement for the benefit of third parties). Artists who conclude a management agreement with GVL without assigning their performer's rights to the manufacturer (e. g. in the case of a broadcasting company's own productions in Germany) receive their royalties direct from GVL.

25. Where foreign sound recording manufacturers have rights of use in respect of Germany for disposal, they assign their rights to their domestic representatives or licensees; the latter, as offerors of rights in respect of secondary exploitation, are then placed by GVL on the same footing as domestic sound recording manufacturers.

2. *Agreements relating to use*

26. GVL has concluded agreements with users of sound recordings, who are obliged under the copyright law to pay royalties (broadcasting authorities, commercial broadcasting companies, theatres, discotheques, hotel and restaurant associations, etc.), entitling them to use sound recordings the brands of which have been indicated to GVL by the manufacturers and which are on sale in Germany. GVL gives notice of the brands and manufacturers which it represents and indemnifies the other parties to the agreements in respect of all claims relating to performer's rights which might be asserted by artists, manufacturers and promoters on grounds of use of sound recordings whose brands GVL represents (cf. Article 5 of the sound recording broadcasting agreement).

27. Since either artists and/or manufacturers or the domestic licensees of foreign manufacturers (e.g. importers, marketing companies, etc.) have concluded management agreements with GVL, GVL is able to offer users of sound recordings practically the entire 'world repertoire' of performances recorded on sound recordings, in so far as they have been published in Germany. These also include a large number of performances by foreign artists.

28. For the use of such sound recordings users pay, in discharge of their obligations under Articles 76 (2) and 77 UrhG, an annual flat-rate fee to GVL according to a scale worked out by the latter in detail.

3. *Income from royalties in respect of equipment*

29. Royalties in respect of reproduction for personal use — royalties in respect of equipment — are

collected by the Zentralstelle für Private Überspielungsrechte (ZPÜ), which is entrusted with this task by GVL and in which GVL holds a financial interest, from manufacturers or importers of reproduction equipment. GVL receives from the amount thus collected, which may not exceed 5 % of the net profit made by manufacturers (importers) from the sale of such equipment — less ZPÜ's administrative expenses — a share of 42 %. This sum is included in the amount to be distributed by GVL among artists and manufacturers.

4. *The distribution of GVL's income*

30. GVL's income is distributed according to a scheme drawn up annually. In principle, royalties are shared equally between artists and manufacturers.

31. Prior to the 1979 accounting year, the distribution was made among individual artists in proportion to the fees received by them in the respective calendar year in Germany in respect of the primary exploitation of the performance. An artist who was entitled to make a claim had to specify on a form the amount of fees he had received in Germany for an artistic activity in the field of broadcasting and recording in the calendar year in question and provide documentary proof thereof. The higher the fees received by an artist from primary exploitation in Germany, the greater was his share of the royalties distributed by GVL in respect of secondary exploitation, though the ratio of royalties to fees decreased as the fees rose.

32. GVL has concluded management agreements with approximately 20 000 holders of rights. Nevertheless, since not all those entitled to claim receive fees each year in respect of primary exploitation, nor do they always notify GVL each year of their claims, GVL distributes the royalties collected on average only to about 10 000 claimants a year. According to data supplied by GVL, in 1980 it collected a total of around DM .....

VII. GVL's conduct towards foreign artists

33. Prior to 21 November 1980, GVL refused to conclude management agreements with foreign artists having no residence in Germany — irrespective of whether they were artists from Member States of the European Economic Community — or otherwise to manage their performer's rights in Germany. GVL does not deny that foreign artists are entitled to payment of royalties in respect of secondary exploitation in Germany. GVL used to point out, however, to foreign artists who sought to conclude a management agreement with it that it concluded management agreements only with holders of rights who were German nationals or resident in Germany.

34. GVL's general meeting decided on 21 November 1980, in future, to conclude management agreements also with eligible artists who were nationals of a Member State of the Community without requiring such foreign artists to furnish proof that they were resident in Germany. Moreover, holders of rights from other Community Member States, whose rights GVL had refused to manage on an individual basis, were thereafter afforded the opportunity retrospectively of sharing in the income from royalties.

35. Following the adoption by GVL of this new policy regarding management, royalties collected in respect of broadcasting, public performance, hire and reproduction are distributed among artists in proportion to the income earned by them during the financial year in question from primary exploitation on the domestic, i.e. German, market (Article 2, paragraph 4a of the new articles of association). It is now no longer necessary for the fee payable in respect of primary exploitation to be paid in Germany, and even a fee paid abroad serves, after notification by the artist, as a basis for calculation where part of the fee can be attributed to exploitation of the performance in Germany. In that event, the foreign artist participates in the distribution of the royalties in proportion to this part of the fee.

36. This amended basis of calculation presupposes, if it is to give a balanced result, that the person liable to pay the fee for the primary exploitation, i.e. as a rule the manufacturer, is accurately informed as to the manner of distribution of the sound recordings. Only if he is aware of the extent to which sound recordings produced abroad have reached Germany is the person liable to pay the fee in a position to determine the proportion of the fee payable in respect of Germany. When calculating the share of royalties, therefore, sound recordings which

reach Germany through distribution channels other than those of which the manufacturer is aware are disregarded.

VIII. The position adopted by GVL

37. GVL has always acknowledged that it is not prevented by law from acting on behalf of foreigners having no residence in Germany, but it has persistently maintained that it is not legally obliged to do so.

38. Such an obligation cannot be derived from Community Law, because the restriction of the activity of providing management facilities to artists having German nationality or a residence in Germany (domestic connection) is in keeping with the non-uniform and complex legal position with regard to the recognition of performers' rights. The domestic connection provides an objectively justifiable pre-condition for the management of rights. Since German artists are at present still unable to exploit their performers' rights abroad, it is only right that foreigners with no connection with Germany should be prevented from sharing in the income from royalties.

39. Moreover, GVL should be regarded as an undertaking providing services of general economic interest. Its monopoly with regard to the management of rights is comparable to an administrative monopoly within the meaning of Article 90 (2) of the EEC Treaty, and the performance of its tasks would be obstructed *de facto* by an obligation to act for foreigners not resident in Germany.

40. Furthermore, pursuant to Article 222 of the EEC Treaty, the rules in Member States governing the system of property ownership are in no way prejudiced, and the specific nature of German performers' rights and of the German system of management of those rights form part of the system of property ownership in Germany.

41. GVL acknowledges that to apportion royalties on the basis of numbers of broadcasts and of the duration of broadcasts and reproduction of the performance would be a means of complying most fully with the principle of a reasonable royalty within the meaning of the German copyright law. For practical reasons, however, GVL considers itself unable to apply such a method of calculation. Broadcasting companies would not make the necessary information available to it. Moreover, for reasons of cost and efficiency GVL cannot be expected, with a total amount to be distributed of more than DM .... and about 20 000 potential claimants, to ascertain the amount of broadcasting time devoted annually in Germany to performances by particular artists. In addition, it often happens that several artists who are entitled to claim are involved in a performance in various capacities (e. g. orchestra, conductor and other artistic collaborators), with the result that, although it would be desirable, calculation of the royalty according to broadcasting time is impracticable in GVL's case. Only about 60 % of GVL's income consists of broadcasting royalties, i. e. that provided by broadcasting companies. The remainder is composed of earnings from public reproduction in restaurants, hotels, discotheques, etc. and from royalties on equipment. The 'frequency of reproduction' or 'duration of reproduction' cannot be determined at all in the case of the latter part.

LEGAL ASSESSMENT

APPLICABILITY OF ARTICLE 86 OF THE EEC TREATY

42. Article 86 prohibits as incompatible with the common market any abuse by one or more undertakings of a dominant position within the common market or in a substantial part of it in so far as it may affect trade between Member States.

A. Conduct prior to 21 November 1980

1. *GVL as an undertaking*

43. GVL is an undertaking within the meaning of Article 86. By offering in return for financial reward the performances of performing artists transferred onto sound recordings to broadcasting companies, theatres, restaurants, hotels, discotheques and other music users and by managing the performers' rights and claims vested in artists and manufacturers, it exercises an entrepreneurial activity consisting in providing services both to those in whom the performers' rights are vested and to users of sound recordings who are liable for the payment of royalties. GVL therefore participates in the commercial exchange of services and is hence subject to Article 86.

44. The lack of a profit motive is irrelevant to the concept of undertaking within the meaning of Article 86. 'Non-profit' undertakings are also covered by the prohibition of abuses contained in Article 86.

The Court of Justice of the European Communities confirmed this in its judgment of 27 March 1974 in Case 127/74 (BRT II/1974/ECR 313 *et seq.).*

2. *The dominant position of GVL*

45. The market in services relating to the management of secondary exploitation rights vested in performing artists and manufacturers in Germany, which can be precisely differentiated from the activities of other associations engaged in the exploitation of rights, is to be regarded as the materially and geographically relevant market in which GVL is active.

GVL is the only company dealing in Germany with the management of such secondary exploitation rights. It has no competitors. GVL's monopoly in Germany, which constitutes a substantial part of the common market, is due not to legal factors but to factual circumstances.

3. *Abuse of a dominant position on the market within the meaning of the first paragraph of Article 86*

46. The prohibition of abuses contained in the first paragraph of Article 86 must, as the judgments of the Court of Justice show, be viewed in the light of, and having due regard to, the general principles laid down in the EEC Treaty. One of these principles is embodied in Article 7 of the EEC Treaty, which provides that any discrimination on grounds of nationality shall be prohibited. As a rule, therefore, discriminatory treatment by a dominant undertaking on grounds of nationality must be regarded automatically as an infringement of Article 86 (cf. also judgment of the Court of Justice of 30 April 1974, Case 155/73, Sacchi/1974/ECR 409).

47. The refusal by GVL as a *de facto* monopoly undertaking to conclude management agreements with foreign artists having no residence in Germany constitutes discrimination on grounds of nationality and hence an abuse within the meaning of Article 86. This applies *a fortiori* since such foreign artists were entirely dependent on the services of GVL, being denied access to other collecting societies, and since this refusal meant that they were placed at a financial disadvantage compared with German and domestic artists and led to their being unable to assert their rights.

4. *Discrimination within the meaning of Article 86 (c)*

48. GVL's conduct also falls under the special prohibition of discrimination contained in Article 86 (c), since GVL has discriminated against certain trading partners on grounds unrelated to the transaction involved.

(a) Foreign artists as trading partners

49. Artists generally take part in German economic life by having their performances transferred onto sound recordings, broadcast or otherwise presented in public in Germany and by receiving fees and royalties therefor. The transaction ('trade') within the meaning of Article 86 (c) between artists and GVL consists in the fact that GVL's service, namely affording management of rights is provided only in return for valuable consideration, i.e. GVL's administrative share of the royalties collected. The sole decisive factor is the fact that GVL's activity, namely the provision of services, corresponds to a material consideration moving from the artist. Artists are thus the 'natural' trading partners of GVL.

50. Conversely, GVL is the 'natural' trading partner of artists, since claims by artists for the payment of royalties can be met in practice by GVL alone. Both GVL and artists are entirely dependent on each other. The business aim of GVL is to safeguard the rights of artists to the payment of royalties and, without GVL, artists are unable to assert their secondary exploitation rights.

The argument that foreign artists were not trading partners of GVL because the latter had not concluded management agreements with them cannot be accepted.

51. A dominant undertaking cannot counter the accusation of discrimination by maintaining that

the 'trading partner' criterion is lacking, when it prevents some of its natural trading partners from becoming actual trading partners by imposing an additional requirement.

Foreign artists could, by their conduct, namely by taking up residence in Germany, have made themselves actual trading partners of GVL. This shows that foreign artists were also 'trading parties' within the meaning of Article 86 (c) and that they were prevented from becoming actual trading partners of GVL only by the additional requirement of residence in Germany imposed by GVL on this category in general.

(b) The discriminatory treatment

52. Prior to 21 November 1980, GVL also discriminated against foreign artists as compared with German artists in that it imposed on foreign artists seeking management services an additional requirement, namely residence in Germany, which it did not impose on German nationals. GVL's conduct therefore consisted, not in a specific refusal to act on behalf of individual foreign artists, but in the imposition of an additional, general requirement on foreign artists. If foreign artists fulfilled this requirement, GVL was prepared to conclude management agreements with them. To this extent, GVL applied generally dissimilar conditions to its trading partners.

(c) Equivalent transaction

53. The prohibition of discrimination contained in Article 86 (c) presupposes, moreover, the existence of equivalent transactions with the trading partners concerned. Foreign artists, like German and domestic artists, transfer their performers' rights in Germany to GVL for exploitation. The transaction effected by the foreign artists, namely assignment of their performers' rights in Germany to GVL, is the same as that effected by German and domestic artists. It may, of course, be that it is more difficult for foreign artists to furnish proof of their rights in Germany than it is for German and domestic artists. But this does not alter the substantive transaction effected by foreign artists, which, where the existence of performers' rights in Germany is proved, does not differ in any respect from that effected by German and domestic artists.

The transaction proposed by foreign artists to GVL is therefore 'equivalent' within the meaning of Article 86 (c).

5. *The placing of foreign artists at a competitive disadvantage*

54. Competition takes place among artists in respect of their performances, both on the German market and on that of the other Member States. Every artist has a special interest in ensuring that his performance is broadcast or otherwise reproduced in public as often as possible and that the sound recordings of his performance are sold in large numbers.

55. Because of the discriminatory conduct on the part of GVL, foreign artists not resident in Germany were placed at a disadvantage in this competition among artists. Foreign artists, who received no royalties in respect of the secondary exploitation of their performances in Germany despite the fact that the right to payment thereof was vested in them, incurred financial losses as compared with German or domestic artists. These categories of beneficiary, which enjoyed preferential treatment as a result of GVL's conduct, were, on the other hand placed in a stronger economic position. They thus had an economic advantage over foreign artists, which was capable of affecting competition with the latter. For, in the case of artists as well, even slight financial disadvantages have a considerable impact on their trading position on the market.

6. *Absence of justification*

56. The sole circumstance in which the application by GVL of different conditions to equivalent transactions by foreign artists does not constitute an abuse is if it can be justified on objective grounds (cf. Commission Decision of 17 December 1975 (Chiquita) (OJ No L 95, 9. 4. 1976, p. 1.))

57. The main objections raised by GVL to an obligation to manage the rights of foreign artists and the arguments put forward to justify its conduct — even after the changes made to its practice relating to management — consist in the

non-uniform and complex legal position with regard to the recognition of performing rights within the Community.

58. The Commission is aware of the difficulties facing artists, collecting societies and other associations which collect royalties for artists and manufacturers in respect of secondary exploitation, as a result of differences in the legal position within the Community. It is aware that at present a statutory right on the part of manufacturers and artists to receive royalties is granted only in certain Member States and that the remaining Member States grant similar statutory rights either only to artists or only to manufacturers or not at all. In the countries without statutory performing rights there are nevertheless as a rule contractual agreements, with the result that in almost all Member States, in the final analysis, artists and manufacturers do receive royalty payments in respect of secondary exploitation.

59. However desirable it may be to achieve a uniform legal position with regard to secondary exploitation within the Community, this differing legal position cannot justify conduct which deprives artists of an opportunity to assert their rights in another Member State. GVL has, by its refusal, placed an obstacle in the way of artists wishing to receive royalties for the secondary exploitation of their performances.

60. GVL's contention that an obligation to protect foreign artists would discriminate against German artists, who have no right to payment of royalties abroad, must also be rejected. An obligation to manage rights based on the competition rules follows from the right vested in foreign artists to payment of royalties in respect of secondary exploitation in Germany.

Such an obligation to manage rights applies also to comparable dominant undertakings in other Member States, in so far as German artists possess rights to royalties in those Member States or in so far as they suffer discrimination on the part of such undertakings in comparison with other artists because of their nationality.

An obligation to manage the rights of foreign artists imposed on GVL would, therefore, not discriminate against German artists but would bring about equal treatment for all artists whose performances have been made public in Germany.

7. *Effect on trade between Member States*

61. GVL's abuse of its dominant position also affects trade between Member States.

62. Trade within the meaning of the competition rules consists of all commercial and business activities, including the provision of services (cf. judgment of the Court of Justice in 155/73, Sacchi). The sole criterion is whether GVL's conduct was likely directly or indirectly, actually or potentially, to restrict freedom of trade in goods or services in a manner which ran counter to the attainment of the objectives of a single market between States (cf. judgment of the Court of Justice of 13 July 1966, Costen and Grundig v. Commission/1966/ECR 299).

63. GVL's refusal to assume responsibility for exploitation of the rights in Germany of foreigners not resident in Germany but resident in one of the Member States hindered the creation of a uniform market for services in the Community. Unlike Germans, such foreigners could not avail themselves of GVL's services. The cross-frontier movement of services which would have developed had it not been for GVL's refusal was thus hindered within the Community. This restriction of the movement of services was appreciable, moreover, since a multitude of foreign holders of rights were prevented from exploiting their rights.

It is irrelevant that GVL restricted its activity to the territory of one Member State. As the Commission has stated in several Decisions, an agreement or conduct which relates to only one Member State may lead to a restriction of trade where trading partners in other Member States are excluded from the agreement or from the advantages of the conduct (Decision of 29 December 1970 — Keramische Fliesen (OJ No L 10, 13. 1. 1971, p. 15) and Decision of 23 July 1974 — Papiers peints de Belgique (OJ No L 237, 29. 8. 1974, p. 3)). In the present case, there can be no doubt as to the direct restriction of trade caused by the discrimination against foreign artists resident in another Member State. The discrimination had the effect of erecting artificial barriers to the provision of services between GVL, as provider of the services in

Germany, and foreign artists, as recipients of the services in another Member State, i.e. to economic relations between Member States.

64. The economic discrimination suffered by foreign artists also affected their cross-frontier competitive position. This discrimination was likely to place foreign artists in a less favourable position than favoured German and domestic artists, with whose performances they were in competition within the Community, and hence to affect trade between Member States.

INAPPLICABILITY OF ARTICLE 90 OF THE TREATY

65. Pursuant to Article 90 (2), undertakings entrusted with the operation of services of general economic interest shall be subject to the rules contained in the Treaty, and in particular to the rules on competition, only in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. Private undertakings may also come under that provision where they are entrusted with the operation of services of general economic interest by an act of the public authority (cf. judgment of the Court of Justice in BRT II). Since Article 90 (2) permits, in certain circumstances, an arrangement which derogates from the Treaty, the concept of an undertaking which may rely on this provision must, however, be interpreted strictly.

66. GVL is not entrusted, either by an official Act or otherwise, by the public authority with the operation of services. Admittedly, it carries on its activities subject to official authorization, but no specific task is assigned as a result of this 'precondition of authorization'. Official authorization is granted subject merely to a check as to whether the company requesting the authorization satisfies the preconditions relating to associations for the exploitation of performers' rights laid down in the Wahrnehmungsgesetz.

Such granting of authorization is, therefore, by its very nature not an assignment of particular tasks, but only a permission to carry on certain activities. Authorization, which merely overrides a statutory prohibition, has a completely different legal content from the entrusting of a task, whereby specific responsibilities and hence specific obligations are officially conferred upon an undertaking. The necessarily strict interpretation of the concept 'undertaking' contained in Article 90 (2), therefore, shows that GVL does not fall under that provision.

67. Even if it were accepted, however, that GVL had been 'entrusted' with the operation of services, such services must be 'of general economic interest'.

68. GVL protects only the private interests of artists. The Court of Justice of the European Communities held in its judgment in BRT II that such a general interest is not protected where an undertaking manages private interests, including property rights protected by law. This also applies to GVL.

INAPPLICABILITY OF ARTICLE 222 OF THE TREATY

69. GVL's argument that, pursuant to Article 222 of the EEC Treaty, the German statutory rules governing performers' rights and the activities of collecting societies can be in no way prejudiced by the competition rules is unfounded.

70. First, the German legislative authority has not prohibited collecting societies from acting on behalf of foreigners not resident in Germany, but has left this question open. Secondly, an interpretation of Article 222 such as that proposed by GVL would completely undermine the application of the provisions of the EEC Treaty in the field of industrial property rights. Furthermore, an obligation on the part of GVL to manage foreigners' rights merely enables the latter to avail themselves of 'their property', i.e. their substantive claims to the payment of royalties in Germany. The legal existence of claims by German artists and foreigners resident in Germany is not thereby affected, nor is the German system of property ownership as such.

B. Conduct after 21 November 1980

71. By amending its articles of association and standard management agreement, GVL ended its discrimination against artists not having German nationality in so far as it affected Member States' nationals or artists resident in one of the Member

States. The present apportionment procedure applies equally to German and to such foreign artists.

72. The present apportionment procedure is by no means perfect, because artists share in the income from royalties in Germany only in proportion to the fee for primary exploitation paid to them by manufacturers in relation to Germany. Thus, for example, sound recordings which reach Germany through marketing channels other than those predetermined by the person liable for payment of the fee are left out of account by the method of assessment, since for them such person pays no fee 'in relation to Germany'.

73. In the light of the information currently available, however, this cannot be regarded as an abuse. In view of the great practical difficulty referred to by GVL of apportioning royalties fairly, the manner of settlement chosen by GVL based on the fees received by the artist in relation to the German market is, under the circumstances, a method which satisfies the requirement of an equitable and cost-effective apportionment.

APPLICABILITY OF ARTICLE 3 OF REGULATION No 17

74. GVL committed an infringement until 21 November 1980. Even now, it still considers itself justified, in view of the uncertain legal position, in excluding artists not having German nationality or a residence in Germany from availing themselves of its management services. A Decision is therefore needed to clarify the legal position, both for the benefit of the complainants and in order to prevent identical or similar infringements in future. This should above all make it clear that differences in Member States' laws do not justify discrimination by dominant undertakings,

HAS ADOPTED THIS DECISION:

Article 1

GVL's conduct prior to 21 November 1980, characterized by its failure to conclude management agreements with foreign artists where the latter were not resident in Germany, or otherwise to manage performers' rights vested in such artists in Germany, constituted, in so far as such artists possessed the nationality of a Member State of the European Communities or were resident in a Member State, an abuse of a dominant position within the meaning of Article 86 of the EEC Treaty.

Article 2

This Decision is addressed to the Gesellschaft zur Verwertung von Leistungsschutzrechten, Esplanade 36a, Hamburg.

Done at Brussels, 29 October 1981.

For the Commission

Frans ANDRIESSEN

Member of the Commission