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THE SYSTEM OF TRADE IN CULTURAL GOODS
IN THE NINE MEMBER STATES OF THE
EUROPEAN ECONOMIC COMMUNITY

STUDIES AND PROPOSALS

A study carried out on behalf of the
Commission of the European Communities

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This study has been prepared entirely independently and the opinions expressed and proposals made commit no one but the author himself, to the exclusion, in particular, of his nationality and his official functions.

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INTRODUCTION

The improvement of the free movement of cultural goods throughout the European Community is an exciting objective, but difficult to achieve and even hard to define.

It is not necessary to stress, here, what has already been achieved along the road towards the harmonization of goods at European level. Although Customs Union is not yet complete, and although there remains much to be done in the field of procedures and regulations of all kinds which are still proper to each Member State and have their effect on intra-Community trade, it has to be admitted that a great deal has been achieved to date. Tariff union, when the last customs duties in force between the original six Community countries were abolished on 1 July 1968, is already far behind us. The results are there to be seen: trade between the Member States has increased four or five-fold. Although there is no need, at this point, to make fine distinctions as to their scope or definition, it is obvious that cultural goods have greatly benefitted from this general movement: firstly, because they are goods as such, albeit of a more lofty nature; secondly, because the general trend of trade has entailed, embraced and encouraged the movement of persons, ideas, art and culture. Thus, dealers in goods are not to be disparaged. They have helped towards disseminating the arts, knowledge and culture. No merchandise is vulgar if it is necessary to the development of mankind, and the tradesman, even if he is not a "patron of the arts" - although he is more likely to be one than is generally believed - can be the disseminator of culture. We must not, therefore, place the tradesmen of Europe in the opposite camp to that of the poets and artists of Europe; they are interrelated and the free movement of products must nourish that of ideas.

Although there can be no question of attempting to re-create an anachronistic cultural community, such as existed in the Middle Ages - a somewhat mythical one at that and restricted to clerks, in the Latin sense of the term, i.e., a scholar - there are two main obstacles to the dissemination of culture in Europe:

- first of all, there are the regulations governing trade, in which there is a 'de facto' assimilation of cultural with other types of goods; consequently, the essential economic requirements of the Member States are applied to trading in all such goods;

- then there is the development of the very concept of State or system, which makes of culture either a national heritage, or a prisoner of an ideology.

Conversely, however, no frontier can check the spread of ideas, sounds or images; firstly, this is because people themselves travel and secondly, and more important, radio and television are not halted by political boundaries. The multi-spined television aerials that one sees on Belgian roofs, des-

signed to receive the programmes of five or six nations are already, in a way, a confirmation of receptiveness to a European culture.

Through this medium, an event occurring anywhere in the world is witnessed elsewhere almost simultaneously and is thus shared by all peoples: history is being made minute by minute, nowadays.

Cultural goods, however, whose transmission requires material transfer, to which restrictions arising from old prejudices or reflecting current reactions may be more easily applied, have remained behind, compared to the said evolution. With certain exceptions, cultural goods are much less free within the Community than products.

This is so much the case that there is a risk of seeing the more popular forms of culture - and sometimes non-culture as well - being more easily spread than fundamental knowledge. A broadcast cannot entirely replace a book. A concert played over the air waves cannot create the communication which exists between performers and the audience in the concert hall itself; moreover, many radio and television productions are so uninspired that they lead to the spread of a false culture, which makes no demand on the listener or viewer and is distinguished only by its mediocrity. For the masses, modern development of the mass media means they are being enveloped by an international sub-culture consisting of mass-produced music, advertising and superficial pictorial knowledge (for instance, the "picturesque" aspect of a country is given more prominence than its deeper reality).

So that not only games know no frontiers (like "It's a Knock-out!") and so that true culture can develop at least as easily as "gimmick" culture, as much facility must be given to the material movement of cultural goods, as to the transmission of commercially oriented broadcasting.

There will be no attempt made to hide the fact that the highest ideals are often achieved by very down-to-earth methods. To facilitate the movement of cultural goods throughout the Community is to promote the adoption of certain specific measures to be applied through regulations and procedures, the scope and limits of which would have to be defined; this definition could be found in the restrictions which the Treaty itself places on proposed actions, or it would be necessary to define the difference between free movement and the pillaging of cultural values, which would inevitably lead to the maintenance or setting-up of certain controls.

Once such definitions and limits have been laid down, it will be possible to examine methodically whether or not the rules and practices at present in force in the Community correspond to these principles. Finally, suitable amendments could then be provided for and, perhaps, a new basic system for the movement of cultural goods throughout the Community established.

This is the plan on which this study is based.

CHAPTER I

DEFINITION OF CULTURAL GOODS

As has been already pointed out briefly, the attempt to improve trade in cultural goods throughout the Community immediately runs into two opposing considerations : culture is without limit and cannot be defined - it thrives; nevertheless, in order to increase its vigour and its development, with a view to promoting cultural trade, a certain number of rules must be laid down which require a precise definition of their scope.

A survey made of formalities in force in each of the Member States (dealt with in Chapter III of this report) shows that no national authority has been able to escape this difficulty. The formalities imposed are mostly applied to lists of products but, almost always, a more general clause is added to these lists referring to other goods which, in certain cases, can be of a cultural nature; this would seem to allow the authority applying these rules considerable power of discretion, which, in turn, gives this same authority the power to define culture - whether directly or otherwise. Culture cannot be pinned down in this way and only narrow observance of academic traditions permit precise definitions.

A few examples can be quoted 'a propos' :

The entrance to a 'Metro' station in 1900 (the "noodle" style), furniture, circa 1925 (the so-called 'Nancy School'), a Benz motor car, 1898 model, were, in their respective heydays, purely industrial products in which international trade - if there had been any - would have been conducted as such. In the present age they are 'objets d'art' or collectors' items; even a front-wheel drive Citroën, circa 1956, is now taking the same route. Objects which are even more a part of everyday life, such as kitchen utensils, oil lamps, coffee grinders, copper pans or agricultural implements become, once their utilitarian function has been superseded by electric gadgets, ornamental objects of socially historical significance.

In art itself, the limits imposed are highly subjective : a lover of classical music will deny that 'pop' or 'beat' music is art. A uniformly pink picture with a few vertical razor-edge stripes will make some swoon and others flee. As the Customs authorities in a certain European country once said : "... when you find a canvas showing a tin of Campbell's Soup - apparently no more than a vulgar advertisement - it is difficult to believe that this work, painted by Andy

Warhol, fetched 79,000 francs in 1972". The criterion of price alone is quite insufficient. The craftsmanship of art can produce numerous copies of works at relatively low prices. Access to art is not the preserve of millionaires. A Thai statuette, in wood, can be bought in a Bangkok supermarket specializing in national folklore for a few dollars; there are hundreds exactly like it. But, in the apartment of a Parisian typist, who once splashed out on an inclusive tour, this banal object becomes an authentic link with a different sensitivity and culture.

Similarly, paperbacks or cut-price records of the more popular classical pieces belong to the domain of cultural goods. Albinoni's adagio has perhaps become hackneyed, but it has helped to improve the ear of many people !

*

* *

All these examples show that the dividing line between commercial and cultural goods - if one exists - is very blurred. We believe that such a line does not exist. Any product can become, or be, a cultural object. "What is a work of art? What are cultural goods? An ordinary pebble may be priceless" (1). We would add that an ordinary pebble may have a price-less "significance".

The dividing line becomes even more blurred as cultural goods become the subject of commercial transactions. A musical work is cultural; the recording of it, produced in millions of copies raises commercial problems of distribution. An industrially manufactured object, or a machine part, may not only be industrially aesthetic, but become an 'objet d'art', either intrinsically or by assembly, as evidenced by many modern sculptors.

What is important in the last analysis is the way an object is perceived, seen and felt by the person with whom it comes in contact - literally speaking. To the one, it will be a tool or a utensil; to the other, it will be an open door to, or a means of expression of, culture.

Thus, one can say that some works are cultural by nature and that all others can become so.

Any attempt to create free movement of cultural goods within the Community to the optimum degree must, therefore, take into account these two concepts, the consequences of which are fundamental to the remainder of this study.

Indeed :

(1) Where commercial transactions are concerned, a precise definition must be given of what constitutes "cultural goods" and what does not. Perhaps it is desired to encourage the distribution of books. The sale of tape recorders or transistor radios, for instance, is an entirely commercial problem for which the cultural sector cannot accept responsibility. A definition that is as clear and exhaustive as possible is thus proposed below.

(1) A. Boddard, Interpol Director, International Review of the Criminal Police, no. 276, March 1974.

(2) In all cases where individuals are concerned - persons who transfer any kind of goods from one Community country to another - it is he who must make the final assessment, subject to his undertaking commitments on :

- the true destination for cultural purposes;
- non-use for commercial purposes (1).

These principles having been laid, an attempt may be made to define cultural goods in commercial transactions and formulate regulations to embrace the faculty for every private person to opt for the cultural status of products which he is transferring for non-commercial purposes.

PROPOSAL FOR A DEFINITION OF CULTURAL GOODS

The proposed definition is not a philosophical one. It is inspired essentially by two considerations : not to enclose culture within stultifying limits; to constitute an operational framework which can be used directly for the application of concrete measures which will be proposed in Chapter IV.

*

* *

1. The term: "cultural goods", comprises all production in the literary, musical and artistic fields, whatever may be the mode or form of expression, provided they have a material "vehicle".
 2. The term "cultural goods" also comprises production in the scientific field which is used solely for the dissemination of science to the exclusion, consequently, of materials or equipment used for purposes of research or industrial or commercial applications.
 3. In particular, 'objets d'art', collectors' items and antiques, as described in Chapter 99 of the common customs tariff (2), constitute cultural goods.
 4. Objects, articles and products also constitute cultural goods when - although covered by common customs tariff positions other than those referred to in paragraph 3 above - they are by their nature or purpose cultural "vehicles", but at the same time constitute goods and works : books and other products of graphic art, photographs, films, records, tape recordings containing cultural elements, etc.
 5. Goods, products or objects can be assimilated to cultural goods when - although not in themselves cultural goods - they are used to assist in the dissemination of culture or its development: such as, exhibition equipment, theatrical accessories (for decoration or stage direction), orchestral instru-
- (1) Which would not lead to a prohibition of subsequent resale, but would prohibit transfers for purely commercial purposes.
- (2) The "explanatory notes" on the customs tariff give a clear description of the contents of this chapter.

ments and equipment, materials and installations for circuses, etc.

6. Goods, products or objects can be assimilated to cultural goods, whatever their nature, when they are destined for the sole use of a private person and provided this person declares, according to the forms and the obligations laid down by the regulations in force, that he wishes to use them solely for his own cultural development, to the exclusion of any commercial use or purpose.

CHAPTER II

LIMITATIONS ON THE FREE MOVEMENT OF
CULTURAL GOODSII.1. - INTRODUCTION

No one conceives of a free movement which is total. In order to function normally, freedom requires certain rules and a minimum degree of organization. The free movement of cultural goods is no exception to this general rule, and even less so as the sensitivity of people has increased in this field. The concept of national heritage is now familiar to the public at large : no Frenchman would tolerate the Mona Lisa being sold abroad, although he ignores the manner in which this tableau became part of the same national heritage in the first place; no Englishman would accept - and with the same good conscience - the disappearance abroad of the archaeological treasures of the British Museum.

With regard to trade in cultural goods, two main categories of limitations arise : firstly, there is the limitation which the Treaty of Rome itself places on its general guidelines in favour of the Member States; this is the scope of Art. 36, which is often invoked and solicited.

Secondly, there are the essential requirements of the security of cultural goods. The creation of a cultural whole throughout the Community must not lead to the establishment of a vast area where traffickers, plunderers and forgers can circulate freely.

We shall examine in turn these two categories of limitations on trade in cultural goods which exist at present.

II.2. - ARTICLE 36 OF THE TREATY OF ROME

The provisions of Art. 36 of the Treaty of Rome more or less constitutes the sole escape clause in the rules of the Treaty which can be claimed to be general in scope. Paradoxically, it is also one of the rare articles which has not been the subject of implementing regulations. Thus, it is the case law of the Court of Justice which has to be examined. Apologies are made for the length of this legal study on the general scope of Art. 36 before going on to other matters, but the provisions of this article are of very special importance to the cultural sector.

II.2.1. The scope of Article 36, according to the case law of the Court of Justice

Article 36

"The provisions of Articles 30 to 34, inclusive, do not obstruct prohibitions or restrictions on imports, exports or transit, which are justified by considerations of public morals, public order, public safety, the protection of the health or the lives of persons and animals, or the preservation of plant life, the protection of national treasures having an artistic, historical or archaeological value, or the protection of industrial and commercial property.

Nevertheless, these prohibitions or restrictions must not constitute either a means of arbitrary discrimination, or a disguised restriction in trade among the Member States".

Art. 36, like other articles in the Treaty (Arts. 48, 56 and 66, for instance), allows a certain autonomy to the Member States to legislate, either in certain specific sectors (e.g., industrial property), or for certain reasons (e.g., mainly those of public order). The danger to the Community of allowing such freedom to the Member States is obvious. In addition, in the absence of laws on the subject, it is to the Court of Justice that has been left the task of defining the powers of the Member States, or their nationals, within the framework of this article.

In order to fulfil its role completely, the Court of Justice has adopted a somewhat curious attitude : the Court has always endeavoured to interpret this article, not in its letter, but in its spirit. Indeed, it has conceived this article as establishing a general derogation to the principle of free movement of goods and it is on this basis that the Court has sought to counteract it, without necessarily concerning itself with whether or not the wording of the article empowered it to set aside the claim of the party invoking the article. It is with this state of mind that the case law of the Court has to be examined.

This case law has been developed around two principles :

- the field of application of Art. 36 must be specified;
- the scope of the article within this field must be determined.

II.2.1.1. Field of application of Article 36

Since this provision has the character of a derogation to the fundamental objectives of the Treaty of Rome, strict interpretation is necessary and such has been the attitude of the Court. Nevertheless, certain compromises have been reached or proposed.

II.2.1.1.1. Strict interpretation

The Court has held :

- on one occasion, that Art. 36 did not establish a generic safeguard clause;
- on another occasion, that Art. 36 justified only measures derogating from Arts. 30 to 34 of the Treaty of Rome.

II.2.1.1.1.1. Article 36 does not establish a generic safeguard clause

Such was the finding expressed in the Judgement of 19 December 1961 (1).

The facts are as follows : Italy, disregarding procedures laid down for the application of safeguard clauses, had suspended imports, from any origin, of certain products in the pigmeat sector (by reason of an excessive drop in the price of these products); most of these products were included on the list of products liberalized by application of the decisions of the O.E.E.C. of 14 January 1955. The Commission submitted the matter to the Court of Justice, considering that Italy had not observed its Community obligations.

In its defence, Italy invoked Art. 36 - among other arguments - which, she said, allowed her to decide to impose restrictions on imports unilaterally, when such measures were justified for reasons of public order.

The Court did not uphold the arguments of the Italian government : it held, in fact, that this article "referred to hypothetical cases of a non-economic nature which were not likely to adversely affect the principles laid down by Arts. 30 to 34". The Court specified, moreover, that "Art. 36 did not establish a generic safeguard clause complementing that contained in Art. 226, permitting Member States to derogate from the procedures and guarantees laid down in this article by unilateral action".

Since Art. 36 was not a generic safeguard clause, it became necessary to specify the situations which it did concern.

II.2.1.1.1.2. Article 36 legitimizes only quantitative restrictions under the terms of Articles 30 to 34

Such was the finding expressed by the Court in its Judgement of 10 December 1968 (2).

The facts are the following : on 1 June 1939 a law came into force in Italy giving protection to objects of artistic or historic interest; this law contained various provisions pertaining to the export of such objects. Thus, according to the

(1) Case 7.61: Commission versus the Italian Government. 19 December 1961. Compendium 1961, p. 635.

(2) Case 7.68: Commission versus the Italian Republic - 10 December 1968 Compendium 1968, p. 617.

individual case, an exporter could find himself faced with an absolute prohibition to export, or be compelled to produce a licence, or have to pay a progressive tax on the value of the object rising from 8 to 30 %. The Commission had analysed this tax as a duty equivalent to customs duty and thus asked the Italian government to abolish it. Italy's delay in adopting this measure led the Commission to lay the matter before the Court.

In her defence, Italy invoked the provisions of Art. 36 :
 - she felt that, in the first place, this article authorized any measure which was justified by reasons based on the protection of national treasuries;

- she felt that, in the second place, the tax in dispute, since it did not prohibit all exports, was more in the nature of a quantitative restriction than a customs duty and thus appeared to be preferable to a measure of prohibition.

The Court upheld the view of the Commission. It held in fact :

- that Art. 36 was contained in a chapter dealing with the abolition of quantitative restrictions among Member States and that quantitative restrictions should be taken to mean (1) any measure having the character of a total or partial prohibition, made evident by a constraint on the decisions of commercial operators;

- that such measures were distinct from customs duties, or similar duties, of which the sole purpose was to make exporting or importing more costly.

The Court concluded, therefore, that Art. 36 could not authorize the maintenance of the tax in dispute, specifying that in order to benefit from Art. 36, the Member States had to remain within the limits laid down by its provisions with respect to both the objective to be attained and the nature of the means.

This very rigid position adopted by the Court has been attenuated in some cases, made necessary by considerations of a practical and theoretical nature.

II.2.1.1.2. Possible extensions of Article 36

Having regard to the doctrine and case law of the Community, it is possible to envisage an extension to Art. 36 for two reasons :

- a practical reason : some situations, certainly coming within the scope of Art. 36, were not provided for by this article;

- a theoretical reason : by way of the concept of goods, case law has expanded the scope of the Treaty of Rome.

 (1) It must be borne in mind, however, that the concept of "measures having equivalent effects" has been the subject of very wide interpretation on the part of the Court of Justice.

II.2.1.1.2.1. The shortcomings of Article 36

Two problems have been raised to date :

- that of the possible application of Art. 36 to situations covered by Art. 37;
- Problems of the validity of a law to enlarge the scope of one of the matters "protected" by Art. 36.

(a) Possible extension to Art. 37

Such was the opinion of the Commission in a case : *Italian Public Ministry v. Sail* (1).

The situation was the following : a Royal Decree of 1929 allowed all communes in Italy to set up dairy product centres with a monopoly on sales throughout the particular commune. An undertaking by the name of Sail having ignored this rule, it was brought before the Italian courts; the company claimed that the Royal Decree was contrary to the provisions of Art. 37 of the Treaty of Rome. The Commission issued the following opinion on this matter : "although the Pretore of Bari had not consulted the Court on the interpretation of Art. 36, it could well be applicable in this case. Indeed, Art. 36 would seem to permit the maintenance or imposition of prohibitions or restrictions on imports, justified by reasons of public health or safety; since Art. 37 simply reinforces the special rules for the application of Articles 30 to 34 of the Treaty to special cases; the exception of Art. 36 could also be opposed to obligations arising from Art. 37".

(b) The problem of the evolutive character of Art. 36

Art. 36 mentions a certain number of fields (concept of national treasures or industrial and commercial property), without specifying their nature. Moreover, such concepts vary in scope from one Member State to another. Such is the case with regulations on indications of origin which, in France, are an integral part of industrial and commercial property, whereas, in Germany this particular concept was unknown until a law was passed in 1971 and the system of common law on competition was applied, a system which is not subject to the provisions of Art. 36. The Commission felt that the German law of 1971, which did not conform to the Treaty for other reasons, could not be justified by considerations based on the legal system of industrial and commercial property, having regard to the fact that the subject of this law was foreign to the German legal system. The German government claimed before the Court (2) that Art. 36 did not forbid a specific and rigid national system of protection of industrial and commercial property, but rather permitted Member States to adjust and develop this system.

(1) Case 82.71 *Italian Public Ministry v. Sail*. 21 March 1972. 1972 Compendium, p. 119.

(2) Case 12.74 *Commission v. Fed. Rep. of Germany* Decree of 20 February 1975.

On this point, the Court recognized the right of Member States to legislate on indications of origin, within the limits of Art. 36. A law which enlarges one of the fields embraced by Art. 36 is thus likely to be supported by this article.

II.2.1.1.2.2. Extension of Article 36 by means of the concept of goods

The Court held that Art. 36 was a derogation to the principle of the free movement of goods. Thus, the substance of the concept of "goods" had to be specified. This is what the Court attempted to do in the aforesaid case no. 7.68. Italy had, in fact, claimed that artistic treasures, both on the basis of their special nature and on that of the wording of Art. 36, were exempt from Treaty rules, except of course for Art. 36 itself. The Court did not uphold this reasoning. It declared that the Community was founded on a customs union which extended to all trade in goods and specified that "goods" must be taken to mean: "all products assessable in terms of money and likely as such to be the subject of commercial transactions" (1) & (2).

(1) This Community definition must be aligned with the French definition of goods: "all things likely to be appropriated individually and transmitted" (J.P.C. 1973 no. 17585. Decree of 20 April 1972).

The Court of Justice adopted an economic concept of goods, whereas French case law adopted a material one. It would seem that the application of these definitions could create serious problems with respect to certain goods:

Example: a cheque: - according to French precedent, this is an item considered as a commercial good (see above-mentioned Decree);

- according to Community case law, it is an item assessable in terms of money; what is transmitted, however, is the credit and not its material substance; thus, it would seem that a cheque cannot be considered as a commercial good.

(2) French administrative case law has made no pronouncement on the concept of commercial goods, particularly the problem of periodicals. See decree of 16 March 1971. Paris Administrative Court. Garot, "Le Point" newspaper versus the State. Quarterly review on European law 1971, p. 857 and note by M. Bonnefoy. Quarterly review of European law 1972, p. 465.

In this case, the Administrative Court, without looking into the legal nature of newspapers, declared that a national measure adopted for reasons of public order with respect to foreign publications, was not contrary to the provisions of the Treaty of Rome, having regard to its Art. 36.

This fairly broad definition of goods embraces many goods, particularly national treasures which, when they conform to this definition, "are subject to the rules of the Community, with the exception only of those derogations expressly provided for by the Treaty".

This solution that any goods, when they have the nature of commercial goods, can be made the subject of a unilateral measure by a State on the basis of Art. 36, when the State observes this article. Such a situation would seem to be dangerous for the Community and the customs union in particular. Moreover, after having specified the scope of Art. 36, the Court defined the rights accruing to States by virtue of this article.

II.21.2. Scope of Article 36

Article 36 exempts, in its first sentence, certain fields or certain measures from the prohibition on measures of equivalent effect, as stated in Art. 30. In its second paragraph, however, it specifies that this exemption only applies as long as there are no disguised restrictions in trade between Member States. The entire problem thus resides in the scope of these two paragraphs. In order to define this scope, the Court has laid down a distinction between the existence of these rights, guaranteed by the first paragraph, and their exercise, governed by the second (1). Nevertheless, this distinction is no longer absolute at present and we shall see that after having specified the exercise of rights, the Court posed certain conditions as regards their existence.

II.2.1.2.1. The exercise of rights

On one occasion, the Court admitted that Art. 36 could protect the exercise of rights, but not in all situations.

On another occasion, the Court declared that the exercise of rights was entirely subject to Community law.

(1^o) Protection guaranteed by Article 36

In the first cases submitted to the Court, it adopted a so-called theory of the "relative guarantee" provided by Art. 36.

This theory was derived from two well-known judgements :

- the Grundig judgement (2);
- the Parke-Davis judgement (3), concerning industrial property; the first concerned trade marks and the second concerned patents.

(1) It is very difficult, in practice, to define the concepts of the existence and the exercise of a right (see, however, the article by M. Johannes: "Industrial property and copyright under Community law", particularly the chapter entitled "The distinction between the existence of industrial property rights and their exercise". Quarterly review of European law - 1973, No. 4).

(2) Cases: 56-64 and 58-64, Grundig v. Commission - 13 July 1966. Compendium 1966, p. 431.

(3) Case: 24-67 Parke-Davis v. Probel. 29/2/68. Comp. 68, p. 83.

In the first case, the Court had to decide on the validity of an action undertaken by the Commission on the basis of Art. 85. The Commission had, in fact, found that the agreement between Grundig and its agent concerning the registration of a trade mark ("Gint") was contrary to the provisions of Art. 85 because it provided for total exclusivity for the agent within the territory. Grundig accused the Commission of having violated Art. 36 of the Treaty by its action since, it claimed, this article guaranteed the respect of industrial property rights.

In the second case, Messrs. Parke-Davis, holders of a Dutch brevet, applied to the Netherlands courts for a prohibition on the introduction into that country of products similar to theirs by three companies, including Messrs. Centraform. This latter company, which had bought the products in dispute in Italy, a country which did not deliver patents for this type of product, alleged that - having regard to the circumstances - Parke-Davis was using its patent in violation of Arts. 85 and 86 of the Treaty of Rome.

In these two cases, the Court set aside the theory of total protection by Art. 36 - which consisted of stating that Community law could not, under any circumstances, be applied to situations protected by this article. Finding that this provision of the Treaty was not in conflict with all points of Community law, the Court thus adopted the theory of "relative guarantee" and agreed that protection ceased in a case of the abuse of rights in order to circumvent Community law, as was the case with Grundig. On the other hand, it did not hold that there had been any abusive use of the patent in the Parke-Davis case, despite a difference in price between the Dutch produced products and the Italian produced ones.

(2°) The abandonment of protection under Article 36

The Court decided that, in future, the exercise of rights would be subject to Community law, despite Art. 36. This finding was derived from two judgements :

- the Deutsche Grammophon judgement (1)
- the Marimex judgement (2).

(a) The Deutsche Grammophon judgement

The situation was rather complex : the Deutsche Grammophon company had delivered records to its subsidiary "Polydor"; some of these had found their way back to the German market - after several manipulations - through the intermediary of Metro. Deutsche Grammophon proposed to forbid this latter company from importing their records, invoking the law on

- (1) Case: 78.70 Deutsche Grammophon v. Metro. 8 June 1971. Compendium 1971, p. 487.
- (2) Case: 29.79. SpA Marimex v. Italian Finance Administration. 14 December 1972. Compendium 1972-8, p. 1309.

copyright and similar rights (1).

The Court was asked to pronounce on the compatibility of the application of the above-mentioned provision of German law with the Community rule. In its opinion, the Court stated that such application had to be considered both from the point of view of free movement and that of free competition, even where rights are protected by Art. 36. Indeed, it went on, this article protected the existence of rights but not their exercise - which was subject to prohibitions imposed by the Treaty - except in the hypothetical case of protected rights being menaced (2).

(b) The Marimex judgement

The facts were the following : Marimex had imported from Germany into Italy a consignment of beef and veal and live bovine animals. At the Italian frontier post, this consignment was subjected to a health inspection conducted by a government veterinary surgeon and a health tax was raised on it. Marimex considered that this tax was contrary to the provisions of the Treaty of Rome and thus claimed reimbursement from the Trente court which, in turn, asked the Court of Justice for a preliminary ruling.

All parties, both claimants and interveners, agreed to recognize the right of the Italian government to impose a health inspection, by virtue of Art. 36. Conversely, opinions diverged considerably as to the exercise of this right and, in particular, the imposition of the tax in dispute. In rebuttal of the arguments advanced by Marimex, which considered that this tax had an equivalent effect to a customs duty, the Italian government maintained that the tax was raised in return for a government service and thus came within the scope of Art. 36.

The Court of Justice rejected this argument; it held that although "Article 36 was not an obstacle to health inspections, it could not, however, be interpreted as permitting 'ipso facto' the raising of duties on imported goods subject to such inspections and designed to cover the cost of same; that, in fact, the raising of this tax was not intrinsically necessary to the exercise of the powers invested in Art. 36 and was thus likely to constitute an additional obstacle to intra-Community trade".

Two essential ideas were derived from these two cases :

- It is not necessary for there to be an abusive exercise of rights before protection afforded by Art. 36 ceases.

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- (1) N.B. It must be noted that the Court accepted that copyright and similar rights were protected by Art. 36 as industrial property, whereas the legal nature of copyright is quite different to that of patents or trade marks.
 - (2) Case law initiated in the Sirena case (case 40-70 - 18.2.71. Compendium 1971, p. 69) and since established. (See e.g., cases 15.74 and 16.74 Centraform v. Steeling Dung & Winthrop Compendium 1874 p. 1147 and 1183; also case: Van Zuylen Bros. v. Hag. 3 July 1974. Compendium 1974, p. 731).

- In the case of infringement of Community rules, the holder of a right may not claim protection under Art. 36 except in a case where the exercise of his right is necessary to safeguard it.

It also arose from the cases referred to that the Court had never contested or limited the existence of rights. Its recent judgements seem to have demonstrated a change of attitude in this respect.

II.2.1.2.2. The existence of rights

The Court had always taken care to distinguish carefully between the exercise of rights, which it controlled and the existence of rights, which was protected absolutely by Art. 36. In two judgements, the Court invaded this sanctuary of sovereignty preserved by the Member States.

(1°) Procureur du Roi (King's Prosecutor) versus Dassonville

The facts were the following : the Dassonville family had purchased bottles of Scotch whisky from French distributors; this whisky had been cleared by Customs in France with a view to its resale in Belgium. Following an inspection carried out in one of their Belgian establishments, it was found that the bottles bore no certificates of origin of the said whisky, although this was made compulsory by the Belgian law of 18 April 1927, supplemented by a Royal Decree of 2 December 1934, which provided for a certain number of penalties. The family were prosecuted by the Procureur du Roi for importing whisky without a document certifying officially that it was entitled to the designation "Scotch Whisky". The Court of Brussels, which heard the case, referred it to the Court of Justice for a preliminary ruling on the validity of the obligation to produce a certificate of origin, with reference to Arts. 30 to 36.

The Belgian government submitted that, in the case where a measure of equivalent effect was concerned, the Belgian regulation, which concerned only proof of the right to registered designations of origin, played a part in the protection of public health and was an integral part in the protection of public health and, therefore, as such, Art. 36 should be applicable.

The Commission, agreeing with the argument put forward by the Dassonville family, felt that two conditions had to be fulfilled before Art. 36 could be applied in the event that the measure came within its ambit :

- the declared objective (protection of public health) had to be endangered (fraud was cited as an example); in other words, the Commission invited the Court to rule on the existence of rights;
- "softer" measures enabling this objective to be achieved ought not to exist; it was both a control of the exercise and of the existence of rights.

(1) Case: 8.74. Procureur du Roi v. Dassonville - 11 July 1974. Compendium 1974-5, p. 837.

It was the latter position which was adopted by the Court. Indeed, it laid down the principle that measures taken by a State should be reasonable in character and "without even seeking to establish whether such measures are justified under the terms of Art. 36 they may not, in any case, by virtue of the principle expressed in the second paragraph of this article, constitute a means of arbitrary discrimination or a hidden restriction in trade between the Member States". Thus, the Court did not apply the distinction between existence and exercise.

The Court took this reasoning even further, however, by applying Art. 36 to the existence of rights.

(2°) The Commission versus the Federal Republic of Germany (1)

The facts in the case were : a German wine law of 1971 reserved the designations :

- "Sekt", for domestic sparkling wines, or those originating in a producing country where German was the official language;
- "Prädikatssekt", for a "Sekt" containing at least 60 % domestic wines;
- "Weinbrand" for products entitled to the designation "potable spirits made from quality wine" and provided German was the official language in all the producing countries.

Specific designations were also provided for with respect to foreign wines. The Commission concluded that such designations constituted measures having equivalent effect to quantitative restrictions and submitted the case to the Court of Justice.

The Federal Republic of Germany claimed before the Court that the designations "Sekt" and "Weinbrand" which, at one time, had been generic descriptions, had come to designate essentially German products, manufactured according to processes defined by German legislation, thus becoming indications of indirect origin. This legal description thus placed them within the ambit of Art. 36, with reference to its provisions on public order and the protection of industrial and commercial property. The Commission, on the other hand, submitted that Art. 36 was not applicable. The Advocate General, Mr. WARNER, proposed a compromise solution to the Court :

- that Art. 36 could not be applied to "Prädikatsekt";
- that Art. 36 was applicable to "Weinbrand" and that para. 2 should be ignored;
- with respect to "Sekt", he asked for a preparatory enquiry.

The Court adopted a very severe attitude towards the claims put forward by the F.R.G.

- (a) Rejection of the protection afforded by Article 36 of industrial and commercial property

We have already seen that the Court had affirmed the right of

(1) Background: Case 12.74 of 20 February 1974.

each State to legislate within the scope of Art. 36, particularly in matters of indication of origin, even where the object of the law was to provide protection specifically for such indications. However, the Court was quick to recall Art. 36 para. 2 and to conclude :

"that, in the present case, the system in force in the Federal Republic of Germany concerning indications of origin, while coming within the right of competition, would evolve towards that of industrial and commercial property; "that such an unrestricted evolution might progressively limit the scope of the Treaty" and would thus be likely to "fall under the axe" of Art. 36; that "such would be the case where the national legislative body granted protection provided for indications of origin, to indications having only the nature of generic designations at the time when such protection was granted".

In this judgement, the Court applied the brake severely to the claims made by States, invoking Art. 36 as a justification for the existence of rights.

(b) Rejection of the protection afforded by Article 36 of public order

The Court went on to specify to what extent public order intervened in the existence and exercise of rights. While pointing out that the concept of public order had not been defined by Art. 36, the Court felt that this article authorized only necessary - that is, indispensable - derogations. Measures adopted within the framework of Article 36 must, therefore, constitute a last recourse for a State, after it has exhausted all other possibilities. From that it can be deduced that the concept of public order is more closely related to the idea of a state of necessity than to a simple disturbance in the affairs of a State.

II.2.2. Conclusion of the legal study

The overall conclusion to be drawn from this preliminary legal study is :

(1^o) firstly, that Art. 36 is only rarely applied at present;

secondly, that its applicability would be even more limited if the Court upheld the Commission's submission that : "although the existence of a right is not necessarily to be identified with its exercise, there is no doubt that, when such exercise leads to fencing off of national markets, the right itself is shown to be incompatible with the principles of the Community" (1).

(2^o) that the provisions of Art. 36 - and this appears essential - are not intended actually to restrict trade, but help to improve the organization of trade. These provisions are applicable only when there are no "softer" (see above) measures available and must be interpreted in a positive manner. In other words, there is no fundamental contradiction between the provisions of the Treaty as a whole and those of Art. 36 but, within the structure of the Community, the use of national provisions is permitted only when there are no other means for protecting certain interests which are essential to everyone.

(1) Case 12.74, abovementioned.

II.3 - THE SCOPE OF ARTICLE 36 IN THE FIELD OF CULTURAL GOODS

There are several concepts expressly referred to in the wording of Art. 36 which concern the cultural sector.

The concepts are those of :

- "public morality public order, public safety";
- "protection of national treasures of artistic, historical or archaeological value...".

Let us bear in mind that, incidentally, the concept of "industrial and commercial property" can have consequences in the cultural field (copyright, for instance).

II.3.1. Public morality, public order, public safety

The concepts of public morality order and safety are dependent upon their meaning in a particular society at a given moment.

Two observations can be made in this connexion :

- firstly, the Treaty deals essentially with the recognition of a political fact. Sovereignty is still on a national level and every government, whatever its form, ideology or whatever it thinks to be acceptable by the society it governs, would have its own concept - that is, geared to its own safeguard - of what it felt necessary for public order or health;
- secondly, a particular State could accept much more easily the evolution of customs within its own territory, than the influence - on the society which it feels it represents - of the evolution of other societies represented by other States.

This factual situation frequently has the consequence that restrictions and controls imposed on what comes from elsewhere are more important than rules imposed on "domestic production". Many restrictions or prohibitions imposed on imports by the different Member States (see Chapter III) are absolutely incomprehensible viewed against what is freely exhibited in these same Member States in bookshops and cinemas. Could this be a translation of the old adage whereby one is always more demanding towards others than towards oneself, or is it that a 'de jure' situation always follows behind a 'de facto' one? The second alternative would appear more likely adding to this that it is always easier to control trade with foreign countries - where frontiers have to be crossed - than movements within one's own borders. Although such an attitude is explainable, however, it must be noted - and stressed - that this difference in treatment between domestic production and that of other Member States is in direct contradiction to the provisions of the Treaty.

Having said this, an entirely free field cannot be left to interpretation. At the operational level, and as stupid as it may appear to minds developing in an atmosphere free from daily cares, it is necessary for the customs officer, the policeman and, finally, the ordinary citizen, to have precise definitions of what is, or is not, pornography or a deliberate attack on the safety (physical or mental) of others.

It is much more important - in a sphere where States do not appear to be at all prepared to abandon their prerogatives - that reflection be encouraged and a structure of concerted action be created at European level. All in all, it would seem to be preferable - rather than deplore current divergencies - to adopt a positive attitude in this delicate sphere : no longer the moral attitudes of this or that province, but those of Europe as a whole.

II.3.2. Protection of national treasures having an artistic, historical or archaeological value

II.3.2.1. The right of States to restrict or prevent the export of cultural goods

The actual wording of Art. 36 of the Treaty is quoted in this heading quite deliberately. Every word deserves reflection.

First of all, "protection" does not mean sterilization. Then there is the word "treasures". Although this word is widely used in everyday language, it must preserve a clear meaning in a field as specific as that covered by the Treaty. Art. 36 is addressed to States and not to private individuals. Thus, only "works", etc., having a national dimension are concerned and provided, moreover, that they have an artistic, historical or archaeological "value".

Two comments on this subject :

- the above is a strictly exclusive enumeration and may not be extended;
- a value must be involved and not simply an interest, which gives the concept an objective character, removing from it any possibility of subjective appreciation.

It is, therefore, quite clear that interpretation of these provisions must be precise, limited and - as has already been said - undertaken in a positive manner. The movement towards the revival of regional cultures - fairly general at present - has great significance in this connexion.

At national level, it would seem to be incongruous to remove regional works from their context, as, conversely, to forbid their removal totally. Apart from extremists, everyone agrees that a national heritage is created by interplay of regional cultures which vary in depth, but are nonetheless real. National cultures are not monolithic, but are additions to, and syntheses of, cultural contributions from various sources - whether elaborate or simple in form. At the same time, it is recognized that many works are estimated at their true value and can only be really understood in the environment which gave birth to them.

The same reasoning can be applied to a European context : it is from the juxtaposition and a kind of synthesis of national heritage of the different countries that the idea of a common culture is derived : it is based on, or expressed by, a European heritage - a concept to which we shall return. The quite normal protection of national heritage should not be

taken as a defensive reflex, but as willingness to preserve the elements necessary for the building up of this common heritage.

There are two opposing arguments in this connexion which are often advanced : for some, a work is only valid when contained within its entourage; for others, some dispersion is necessary as a 'sine qua non' for the spread of culture.

If certain other major works had been left where they were in former times, they would have remained unknown for an indefinite period. Nowadays, however, it is no longer necessary to bring works of art to those likely to be interested in them; the development of means of transport enables experts, art lovers and even the public at large to go to see them. Rather than transfer works from one place to another, it is preferable to aid cultural tourism.

In a concise - but precise - case, let us quote a statement made by the French Academician Maurice DRUON, at the Council of Ministers of 30 January 1973, relative to the possible sale of a painting by la Tour to an American museum (1)

"I would prefer to give the "Madeleine" to millions of adoring visitors from the United States, rather than to know it was invisible in the apartment of a private collector".

This argument is not unsound, but to recognize that everyone is right has never enabled a problem to be solved.

At operational level, two kinds of criteria are proposed in Chapter IV :

- a criterion of national interest, pure and simple : it is difficult to imagine, for example, the British selling the Tower of London or the French selling the Arc de Triomphe to foreigners. A simple declaration of principle in favour of the retention of significant works of history within their environment and the genius of a people would suffice;

- criteria linked to rareness, quality, value and, to a certain extent, the date (2) of cultural goods, sub-divided as follows:

(i) first of all, works which, because of their nature or their age, can be held to be of national interest and which should, therefore, be subject to systematic supervision in case of their being declared for export, and

(ii) secondly, works which do not conform to the above precise criteria, but which the State considers to be of national interest and would include them in a public inventory of necessarily limited proportions.

II.3.2.2. The protection of cultural heritage in the Member States against theft

(1) Article by J,C, Halle. Paris Match no. 1329 of 26.10.74.

(2) Although, (see Chapter III) the usual limit beyond which there is control is 100 years, it must be noted, firstly, that this limit is not quoted in Art. 36 and, secondly, it is obvious that much more recent works can properly, and for various reasons, be considered of national interest by a State.

If producers, distributors and acquirers of cultural goods are to be bothered no longer, it follows that thieves and traffickers must continue to be very much bothered. The EEC was not set up for their convenience.

In view of this factor, which no one would dispute, it has to be admitted that the creation of a huge territory - that of the Nine - within which cultural goods can circulate free of control would make the prevention and especially the repression of theft much more difficult. It is easier, generally speaking, to supervise defined areas, where it is possible to control transfers from one to another.

It is, therefore, normal and desirable for Member States to adopt measures designed to prevent the exit from their national territories of stolen cultural goods (1). But it is necessary:

(i) for the procedures introduced to be harmonized and, if possible, standardized. All Member States are members of Interpol, but it would perhaps be easier to propose effective procedures within the more restricted area of the Community;

(ii) for control procedures in this field to be derived from transfer procedures; in other words, that there should be no additional formalities, but that normal export procedures should be used for control.

Proposals will be put forward in this connexion (see Chapter IV).

Summary of conclusions in Chapter II to be included in the proposals made in Chapter IV.

(1) The provisions of Art. 36 of the Treaty are narrow and rigid.

(2) The provisions of Art. 36 may only be used in the absence :

- of Community provisions likely to achieve the same objective;
- of national provisions which do not contain restrictions or prohibitions also likely to achieve the same objective.

(3) "National treasures having an artistic, historical or archaeological value" are taken to mean objects or works of all kinds, or movables and immovables by nature or purpose (2) which satisfy one or more of the following criteria :

(1) In 1973, 3,700 paintings were stolen in France, as against 2,712 in 1972. In the same year (1973), there were 245 recorded thefts from churches and 127 burglaries of 'chateaux'.

(2) This concept, familiar in countries with written law, perhaps requires an explanation. Certain objects are immovables by their very nature: for instance, a chapel or a monument. Others, which may be movables by nature, can become immovables as a result of the use to which they are put. For instance, a statuette is a movable, but if it is incorporated into the front gate of a church, it becomes an "immovable by purpose". The converse may also be true.

- (a) objects linked so closely to the history or the life of a country that their departure therefrom would constitute a loss of national importance;
 - (b) objects of such aesthetic value that the artistic heritage of a country would be diminished in their absence;
 - (c) objects whose individual value, or that of the collection of works of which they form part or to which they are attached, would be appreciably reduced in the case of the separation of these objects from the 'ensemble';
 - (d) objects of inestimable importance to the study or understanding of a particular field of the arts or history.
- (4) The procedure of intra-Community trade in cultural goods should comprise provisions designed to repress thefts of works of art.
- (5) Member States must co-operate in the struggle against thefts of works of art and, to this end, should :
- strengthen and harmonize national legislations and regulations;
 - determine the methods by which public authorities can effectively assist each other from country to country.

C H A P T E R I I I

PRESENT CONDITIONS OF TRADE IN
CULTURAL GOODS BETWEEN THE MEMBER
STATES

Having regard to the date of this study (the second half of 1975), it would seem that the question of customs duties can be disregarded in analysing conditions under which trade in cultural goods is carried on between the Member States of the Community. Abolished between the six countries of the original Community seven years ago, customs duties will be reduced to 20 % of their initial amount on 1 January 1976. They must disappear completely by 1977 - thus, by too close a date for practical measures concerning them to be usefully proposed.

Similarly, since the Florence Agreement (UNESCO 1950) does not comprise compulsory provisions except on questions of exemptions from customs duties, it may be considered 'a priori' as being outside the scope of this study.

Nevertheless, although the question of customs duties may reasonably be considered as having been settled, the same does not apply to customs procedures.

Even when they do not result in the raising of customs duties it is still customs procedures that are used in trade between the Nine; the same customs declarations must be made as those required for imports coming from third countries. It is the nomenclature of the common customs tariff that serves as the basis for the application of national regulations of all kinds. Very generally, it is also customs authorities who are responsible for supervision, even where trade is subject to the additional intervention of other authorities or bodies.

Instead of compiling all the regulations relating to cultural goods, State by State, it has been thought preferable to undertake an analysis, per category of measures adopted, of the provisions in force in each country, so as to establish - in each case - a composite comparative table from which the measures for improvement to be proposed can be deduced in an almost visual manner.

Thus, after having analysed the conditions of the application of the UNESCO agreements - only briefly, since they bear, in principle, on exemption from customs duties - we shall first of all examine the restrictive measures, for reasons of public order or the protection of national heritage, based - either implicitly or explicitly - on the provisions of Art. 36 of the Treaty. Then, the tax system governing cultural goods in the Community countries will be made the subject of a special study. Finally, the systems and procedures designed - at

least in principle - to promote trade; in particular, temporary export and import, will be examined.

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III.1 - CONDITIONS GOVERNING APPLICATION OF THE UNESCO AGREEMENTS

The UNESCO agreements are examined briefly only in order to complete the overall picture created by this study. It must be stressed that all the Member States signed the agreement "on the import of objects of an educational, scientific or cultural character" in Florence in July 1950; the agreement came into effect on 21 May 1952 and the Commission undertook to ensure its application in as uniform a manner as possible, particularly through the adoption, by the Council, of EEC Regulation no. 1798/75 concerning the import - free of common customs tariff duties - of objects of an educational, scientific or cultural character. As to matters of principle, all Member States apply the Florence agreement in the same way: that is, they apply all the provisions in Art. 1, para. 2, which permit them "... to raise on imported objects :

- taxes or other internal taxation of any kind whatsoever ...".

It can be stated, therefore, that - customs duties having been abolished, the Florence agreement has virtually no effect on relations between Member States, which treat imports of objects described above in the same way as those of a purely commercial nature (1).

III.2 - RESTRICTIVE MEASURES APPLIED TO THE MOVEMENT OF CULTURAL GOODS

III.2.1. Public order measures

Under this heading of "public order", we are including all measures adopted by States designed to protect society. It covers both public order as such - which is reflected in observance of current laws and institutions - and measures intended to protect current moral attitudes, the control of dangerous publications (incitement to violence, racial hatred, etc.), and finally, it embraces measures designed to guarantee honesty in transactions: prohibitions of the sale of fake paintings, counterfeit currency, fake postage stamps, etc.

(1) It will be seen, however, in section III.2.3. - Tax System - that some countries grant tax exemption when objects have certain privileged destinations (for instance, bodies of public interest).

The following analysis of measures in force in the Member States is divided into three categories :

- Public order as such, protected by measures designed to maintain the integrity of the State and its authority. To the extent that they are aimed at maintaining the system in force, whatever it may be, these provisions are, finally, of a political nature.
- Measures of public morality, designed for the protection of same.
- And, in addition measures for the protection of the morality of the market: that is, those concerning forgeries.

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III.2.1.1. Belgium

A/ Analysis

A.1. Public order

It is forbidden to import into Belgium :

" (a) writings, printed matter, images or emblems of such a nature as to threaten public safety or harm the credit of the State (revolutionary propaganda, attacks on national unity, incitement to violence, encouragement of military personnel to be insubordinate, etc.);

(b) writings, printed matter, images or emblems of a nature likely to offend members of the royal family " (Customs circular DL 3/19.690).

The provisions also apply to films.

A.2. Public morality

It is forbidden to import into Belgium :

".... (a) books and brochures, newspapers and periodicals, writings, printed matter and other publications of the same kind, contrary to public morality;

(b) emblems or objects contrary to public morality;" (same Customs circular and Art. 383 of the Penal Code).

The Law of 11 April 1936 confers upon the King the power to forbid, by decree, the introduction in Belgium of obscene foreign publications.

The Minister of Communications has the power, in particular by virtue of Art. 383 of the Penal Code, to exclude certain publications from transmission by post or rail.

A.3. Forgery

No special provisions for foreign trade.

Internal Belgian law is applicable.

B/ Procedures

The following provisions govern the application of the above-mentioned measures.

- (1°) The import of objects concerned here may only be effected through customs offices (branch offices excluded).
- (2°) Lists of works (and films, etc.) which are forbidden to be imported, are published.
- (3°) Customs agents retain "publications which they consider as coming within one of the above-mentioned categories and submit the case to the "Procureur du Roi" (Public Prosecutor) of the local jurisdiction". This officer then decides on the steps to be taken, including seizure of the materials.
- (4°) The measures in question are applicable neither to travellers, nor to transit operations.
- (5°) The measures are applicable in Benelux.

C/ Conclusion

- (1) There is no definition in Belgian law of what is termed "contrary to public morality", or "of an obscene character". This assessment is left either to legislators (Royal decrees), or to the customs service which finally submits cases to magistrates.
- (2) The exclusion of "branch offices" for customs treatment is not really an inconvenience, commercial traffic currently borrowing the use of offices in full operation.
- (3) The concession granted to passengers of "a single sample of each kind, clearly intended for their use".

III.2.1.2. Denmark

There is no law in force restricting the import or export of anything for reasons of public order or public morality.

Internal legislation governing pornographic materials has been abolished.

III.2.1.3. France

A/ Analysis

A.1. Public order

Newspapers or periodicals forbidden by a decision of the Minister of the Interior (Law of 29 July 1881, Art. 14, modified by the decree of 6 May 1939), are prohibited from import.

The import of printed matter of all kinds, images, sound recordings, designs and engravings that are contrary to provisions on matters of public order (Law of 6 May 1841, Ordinance of 13 December 1842 and Decree of 14 July 1853), may also be forbidden.

A.2. Public morality

"The import and export of printed matter, writings, designs, posters, engravings, paintings, photographs, films, stereo-type plates, type moulds or photographic reproductions, emblems, objects or images contrary to public morality are prohibited by the Penal Code (Art. 283) when effected knowingly for purposes of trade, distribution, hire, bill-posting or exhibition".

The same applies to "pernicious publications destined for young persons" (Law 49.956 of 16 July 1949): that is to say, "those which extol banditry, lying, vice, laziness, cowardice, hatred, debauchery, or any excesses qualified as felonies or misdemeanours, or of such a nature as to demoralize children or young persons, or encourage racial prejudice".

A.3. Forgery

Forgeries of books are absolutely prohibited, including their handling in transit and their warehousing, even when they belong to private collections (Law 57.298 of 11 March 1957).

B/ Procedures

- (1) None of the articles described above may be exported or imported except through specific customs offices, but the list comprises more than 150 offices throughout the territory.
- (2) Films, however, may not, in practice, - for material reasons of projection - be controlled except by a very limited number of customs offices - mainly in Paris (viewing by the control commission).
- (3) Control is exercised by officials of the Ministry of the Interior, to whom customs officials must submit consignments.
- (4) The measures analysed above are not applicable to imports and exports effected by private individuals for non-trade purposes.
- (5) The import of books written in French, ownership of which is established abroad, or which are foreign editions of French works that have become public property, must be accompanied by a certificate of origin indicating the title of the work, the place and date of its printing and the number of volumes published.

C/ Conclusion

- (1) There is no more definition of public morality, public order, etc., in France than there is elsewhere. The Law of 1881 confers extensive powers of assessment upon the Minister of the Interior.

- (2) Customs offices through which traffic is authorized are very numerous.
- (3) Two administrations are permanently involved: the customs service and the police.
- (4) Travellers benefit from concessions for their personal effects.

III.2.1.4. Great Britain

A/ Analysis

A.1. Public order

The Constitution allows for the repression of offences against the State. Legislation is very vague otherwise; the attitude is purposely liberal. This does not prevent the adoption of measures appropriate to the individual case.

A.2. Public morality

Prohibitions exist on the importation of :

- "horror" comics and materials (printing plates, etc.) used for their reproduction;
- printed matter, paintings, photographs, films, books, maps, lithographs, engravings, etc., as well as any other articles of an obscene or indecent nature (Customs Consolidation Act of 1876).

A.3. Forgery

Forgeries are generally prohibited from importation, particularly, imitation banknotes, coins and forged postage stamps. Incidentally, the holder of a copyright can have the importation of copies of his works prohibited.

B/ Procedures

- (1) The above-mentioned controls are exercised by the Customs service at permanent offices.
- (2) With respect to films, the Customs service deals only with pornographic material. Foreign films are subject, after importation, to the same censorship as domestic films by local authorities (Cinematograph Acts, 1909 and 1952), or by the British Board of Film Censors, instituted in 1912, at national level.

C/ Conclusion

- (1) Regulations are liberal and their application is even more liberal.
- (2) Exceptions to the application of all these measures is provided for with respect to travellers and, for films, with respect to private projections.

III.2.1.5. Ireland

A/ Analysis

A.1. Public order and public morality A.2. Public order and public morality

The two concepts are fairly widely confused. In accordance with the provisions of the acts on the censorship of publications (1929 to 1967), books, periodicals and other written matter, films, etc., are subject to censorship and may be forbidden if they are considered to be :

- (a) indecent or obscene;
- (b) an encouragement of contraceptive practices and abortion;
- (c) or, for similar reasons, they devote too much space to the publication of matters relating to crime.

In the relative legislation (the Censorship Acts) "the term 'indecent' embraces anything which suggests or incites sexual immorality, unnatural vices or, in the same vein, anything that is likely to corrupt or deprave".

A.3. Forgery

There are no special regulations regarding external trade. It may be mentioned, incidentally, that the holder of a copyright can have the importation of copies of his works forbidden by the Customs service.

B/ Forgery

- (1) The Customs service submits articles described above to the Censorship of Publications Board.
- (2) This latter authority publishes a register of forbidden publications. Derogations may be granted by the Ministry of Justice.

C/ Conclusion

- (1) Irish law prohibits the sale and distribution of articles described above.
- (2) Travellers consequently benefit from derogations for their personal effects which must not be used for commercial transactions.

III.2.1.6. Italy

A/ Analysis

A.1. Public order and public morality A.2. Public order and public morality

Italian law forbids "the introduction into the country, the

purchase, retention or export - for purposes of trade or distribution - of writings, designs, images or other objects likely to offend public morals, decency, or moral behaviour".

A.3. Forgery

No regulations other than internal legislation.

B/ Procedures

(1) The Customs service decides on the nature and destination of imported or exported objects corresponding to the above criteria.

(2) Films are submitted to a censorship committee, like domestic films.

C/ Conclusion

(1) Real definitions of what constitutes decency, public morality, etc., have not been found

(2) Concessions are granted to travellers.

III.2.1.7. Luxembourg

A/ Analysis

A.1. Public Order

The only restrictions, embodied in the constitution, apply to offences against the reigning family.

A.2. Public morality

The Law of 29 December 1937 provides for the prohibition of imports of obscene foreign publications by Grand Ducal decree.

A.3. Forgery

No special regulations other than internal legislation.

B/ Procedures

(1) Lists of prohibited publications are published in the "Memorial".

(2) Regulatory decisions are, therefore, taken on the basis of the individual case and implemented by the Customs service.

C/ Conclusion

(1) Any prohibition is aimed at importation "for purposes of trade, distribution or exhibition" (Law of 29.12.37, Art. 2).

(2) Consequently, such prohibitions do not apply to :

- (a) the personal effects of travellers;
- (b) items dispatched (by post or other means) to private persons.

III.2.1.8. Netherlands

A/ Analysis

A.1. Public Order

Constitutional provisions of a general nature deal with offences against the State and the royal family.

A.2. Public morality

In the Netherlands, a censorship visa is granted for domestic or foreign films. Apparently, this visa is always granted without difficulty.

A.3. Forgery

No special regulations.

B/ Procedures

Customs and Excise officers are not - in principle - entrusted with the application of legal provisions relating to public order, public morality, etc. Thus, there is no special procedure on export and import. The only regulations on the matter which exist are purely internal ones.

C/ Conclusion

A situation of almost total freedom.

III.2.1.9. Federal Republic of Germany

A/ Analysis

A.1. Public Order

The Law of 24 May 1961 prohibits absolutely the importation or transport of writings, sound recordings and images, reproductions and representations with a content contrary to the provisions of the Constitution. Such prohibition is absolute and applies even to matter read while travelling. The secrecy of the posts is also limited in this respect.

A.2. Public morality

(1) It is forbidden to import into, or export from, the F.R.G., writings, sound recordings and images, reproductions or repres-

entations which "depict acts of violence against persons in a cruel or inhuman manner, or which minimize the importance of such acts, or which incite people to racial hatred" (Art. 131, Penal Code).

(2) The same prohibitions apply to writings, films, etc., of a pornographic nature (Art. 184 of the Penal Code). German law in this sector applies not only to normal trade, but to trade by correspondence as well (Art. 184, para. 4) and circulation to minors of under 18 years of age, even outside commercial transactions.

(3) The import and export of "written material likely to endanger the morals of children and adolescents" (Law of 29.4.1961) are also forbidden. The same provisions apply also to sound recordings, images and other reproductions.

A.3. Forgery

There is no special law on external trade.

B/ Procedures

(1) Control is exercised by the main Customs offices. If an office establishes, on customs clearance for import or export, that there are writings, sound recordings or images, reproductions or representations which might infringe one of the rules mentioned above, the consignment is detained and the competent public ministry is advised accordingly. Improper postal consignments are rejected.

(2) A list of writings or publications liable to endanger young persons has been established by the federal authorities. It has been published in the official journal.

(3) In application of the abovementioned provisions, films must be submitted to a control committee within one week after importation. It is essentially films with an anti-constitutional content that are concerned here.

C/ Conclusion

(1) Definitions are precise enough with respect to attacks on the Constitution (films, writings, etc., likely to constitute a means of propaganda against the liberal democratic order, or against the concept of understanding among peoples ...). Pornography is not defined.

(2) The extension of protection by the Constitution to "matter read while travelling" is explained by historical reasons.

(3) On the other hand, as regards pornographic material, etc., the provisions do not apply to articles "... of small quantity, which are not intended ... to be distributed or otherwise made accessible, in a general sense, and in fact are destined only for the personal use of the owner or the consignee" (Vorschriftensammlung. Dienstanweisung. S.V.02.16 Para. 4).

III.2.1.10. PUBLIC ORDER AND OTHER MEASURES
(SUMMARY)

(I or E signifies applicablility to exports or imports)

Country	Public order prohibitions	Public morality prohibitions	Forgeries
BELGIUM	Writings, printed matter harmful to public safety or offensive to the royal family	works contary to public morality	law applicable to the domestic market
DENMARK	none	none	
FRANCE	Writings, etc., contrary to public order Writings, etc., depending on a decision by the Minister of the Interior	- printed matter, etc. contrary to public morality for commercial purposes or distribution (I.E.) - publications dangerous to young persons	prohibition on forged books + domestic law on forgeries
GREAT BRITAIN	Offences against the State	- printed matter, etc. "horror comics" or obscene or indecent publications (I)	Prohibition on forgeries (I), particularly banknotes, postage stamps and coins
IRELAND	Writings, books, etc., indecent or obscene, encouraging contraception or abortion or "for similar reasons"		Law applicable to the internal market
ITALY	Writings, etc., "likely to offend public morals, decency, or moral behaviour"		Law applicable to the internal market

Procedure	Exemptions	Remarks
<ul style="list-style-type: none"> - Customs offices - list of forbidden works - cases referred to the Procureur du Roi 	Travellers and goods in transit	exemption is granted for works destined for the personal use of travellers

<ul style="list-style-type: none"> - Customs offices in full operation - control exercised by the Ministry of the Interior - control committee for films - publication of lists of prohibited works - certificate of origin for books in French edited abroad 	travellers and non-commercial transit operations undertaken by private persons for their sole personal use	forgeries of books are absolutely prohibited, even when destined for private collections

<ul style="list-style-type: none"> - Customs offices in full operation - control exercised by the Customs service - national censorship board or local board for films 	<ul style="list-style-type: none"> - travellers - films for private projection 	for personal use

<ul style="list-style-type: none"> - the Customs service submits works to a censorship committee - publication of a list of prohibited works 	<ul style="list-style-type: none"> - travellers 	for personal use

<ul style="list-style-type: none"> - Customs offices - control exercised by Customs service - list of prohibited publications 	<ul style="list-style-type: none"> - travellers 	

Country	Public order prohibitions	Public morality prohibitions	Forgeries
LUXEMBOURG	Offences against the royal family	obscene foreign publications	law applicable to the internal market
NETHERLANDS	Offences against the royal family	?	- ditto -
FEDERAL REPUBLIC OF GERMANY	Offences against the Constitution	Writings, etc., of a violent or pornographic nature, dangerous to young persons	- ditto -

Procedure	Exemptions	Remarks
<p>-----</p> <ul style="list-style-type: none"> - Customs offices - publication of lists of prohibited works <p>-----</p>	<p>travellers consignments destined for private persons</p>	<p>importation "for purposes of trade, distribution or export" is forbidden</p>
<p>-----</p> <ul style="list-style-type: none"> - censorship of foreign films, in principle <p>-----</p>	<p>the Customs service is not responsible for any special control in this sector which remains within the powers of the police within the national territory</p>	
<p>-----</p> <ul style="list-style-type: none"> - main Customs offices - list of prohibited works - limitation of secrecy through the posts - Customs control and notification of the public ministry - special committee for films, after import 	<p>travellers, except for anti-constitutional works</p>	

III.2.1.11. General remarks

Passing over details of definitions and procedures, the following general characteristics can be summarized from the preceding study :

Public order

All Member States have constitutional or legislative provisions concerning offences against the State (either directly, or through the reigning family). These are provisions of political order whose application is jealously guarded by governments.

Public morality

Almost all States have provisions concerning public morality and prohibit obscene publications. But definitions are rare - which is understandable, considering the changeable character of morals. This absence of a clear definition has led to considerable powers of discretion being left to authorities. For instance, it is very often for the Customs service to decide whether to let the operation continue or submit the consignment to the police or to a magistrate. The situation becomes more positive with respect to danger to young persons: incitement to violence, racial hatred, etc.

Procedures

(1) Places of customs clearance

All Member States restrict the exercise of special controls in this sector, where they exist, to Customs offices as such (main offices, offices in full operation, etc.), which excludes simple exit and entry points. Such a restriction is not inconvenient, in that concessions granted to travellers may apply when they take secondary routes as well.

(2) Competent authorities

In almost all cases, two authorities intervene either simultaneously or successively (Customs and police). This dual control can lead to complications and delay.

(3) Films

The principles are much the same with regard to control of films, but the procedures vary, as do criteria of assessment.

Concessions

Apart from the special case of works offending against the Constitution of the F.R.G., concessions are general with respect to objects carried by travellers and destined for their personal use. There, we can see the concept of attribution, provided a non-commercial operation is concerned. Consignments to private persons are generally excluded - with one

exception : sales by correspondence; thus, a commercial operation.

III.2.1.12. Proposals to be included in Chapter IV

- (1) To standardize, if not the definition - which is very difficult - at least the formulation of references to public order, public morality, pornography, etc.
- (2) To standardize lists or enumerations of works affected by these regulations. Lists are already very similar to one another.
- (3) To standardize procedures in such a way that users know what formalities they have to undergo.
- (4) To arrive at clear definitions in as many fields as possible: for instance, those of incitement to violence and racial hatred. This will be more difficult with regard to pornography, a concept which is very dependent on the development of societies.
- (5) Consequently, for the fields referred to under (4), to abolish national controls. The Member State of destination would accept the results of control exercised on its own territory by the Member State exporting the objects.
- (6) To affirm the principle of freedom, as regards strictly personal and non-commercial use.

III.2.2. Measures for the protection of national heritage

After the study set out in Chapter II, it is unnecessary to go into detail on the concept of national heritage. We shall analyse here - on the model already used for public order measures - everything which, in the regulations of the Member States, refers to the safeguarding of national heritage as such, even with respect to normal commercial transactions. Finally, the analysis will deal with everything tending to ensure honest transactions, by forbidding international trade in stolen cultural goods, or those whose situation is irregular, whatever it may be. We shall touch only lightly on matters concerning artistic ownership as such (copyright, problems of reproduction, etc.), matters which must form the subject of a special study at European level.

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III.2.2.1. Belgium

A/ Analysis

A.1. National treasures

The protection of national heritage is provided for by Belgian law, although practical implementing legislation has not been

passed to date.

This means that the Customs service has no special control to exercise in this sector and that exporters, consequently have no need to request authorization. Special measures can be adopted in a case where the authorities or public opinion consider it necessary to prohibit the export of a work of art.

A.2. 'Objets d'art' and stolen works

There is no special machinery of a permanent nature for the search for stolen works of art, etc., on export. The Belgian police, however, can alert Customs authorities in individual cases. Interpol notices are sometimes circulated.

B/ Procedures

There is, consequently, no permanent procedure for the protection of the national heritage with respect to external trade.

C/ Conclusion

A very liberal situation, which might, however, lead to serious difficulties for normal trade in the case of strict control following a major theft.

III.2.2.2. Denmark

A/ Analysis

A.1. National treasures

There are no regulatory provisions on the export of works of art in Denmark and the Danish authorities have no right of pre-emption.

Reference must be made, however, to a Royal decree of 1683 which attributes ownership of precious metals (gold and silver) found in the soil to the State and, consequently, forbids their export.

A fairly wide interpretation is given to this law - which has not fallen into disuse - under which the export of an historical or archaeological object can be prevented, even if it is not made of precious metals.

A.2. Protection against theft

No general measures.

III.2.2.3. France

A/ Analysis

A.1. National treasures

(1) It is forbidden to export movable objects (or parts of im-

movable objects which have become movables) which have been "classified": that is, included, by ministerial decree, on a list by virtue of the Law of 31.12.1913 on historical monuments (modified by the Law of 23.12.70, no. 70.1219, Art. 4).

The following may be classified : ".... Movable objects, being either movables as such, or immovables by destination, whose preservation from an historical, artistic, scientific or technical point of view is of public interest".

It must be noted that movable objects belonging to private persons can only be classified with the consent of the owner.

(2) The export of the following objects is subject to the production of a licence (known as an O2 licence) :

Tariff numbers	Description of products
Ex 99.01	Pictures, paintings and designs produced entirely by hand (excluding industrial designs no. 49.06 and manufactured articles decorated by hand), <u>other than pictures, paintings and designs produced by artists living at the date of export, or executed after 1 January 1920 by an artist who is deceased at the date of export.</u>
Ex 99.02	Original engravings, prints and lithographs more than one hundred years old.
Ex 99.03	Original statuary art and sculpture produced in any material, <u>other than works produced by artists living at the date of export, or executed after 1 January 1920 by an artist who is deceased at the date of export.</u>
Ex 99.05	Collections and specimens destined for zoological, botanical, mineralogical or anatomical collections, <u>other than those to be used for instruction in the natural or medical sciences; objects for collections which have an historical, archaeological, palaeontological, ethnological or numismatic value, with the exception of coins and medals less than one hundred years old.</u>
Ex 99.06	Antique objects more than one hundred years old, <u>with the exception of musical instruments, books, engravings, geographical maps and all other products of the graphic arts.</u>

A licence is necessary for all exports - permanent or temporary - of objects with a declared value of over 500 F, whether they are of national origin or foreign objects placed on the French market.

(3) Articles listed under tariff nos. 99.01 - 99.02 - 99.03 - 99.05 and 99.06, which are not shown in the above table are free to be exported.

Nevertheless, articles described under tariff nos. 99.01 and 99.03: that is, pictures, paintings and designs produced entirely by hand and originals products of statuary art and sculpture produced by an artist living at the date of export or executed after 1 January 1920 by an artist deceased at the date of export, may only be exported if they are accompanied by a special certificate issued by the Professional Committee of Art Galleries. This formality is designed to inform the control authority on the character of contemporary creation of the works in question. It is not an authorization in any form, which is confirmed by the fact that no derogations are allowed for, even in favour of artists exporting their own works.

A.2. Measures against theft

Notices are distributed regularly to the Customs service. The provisions set out above under A.1. constitute simultaneously effective protection for the objects they refer to.

B/ Procedures

B.1. Objects subject to obtention of a licence

(1) 02 licences are issued on the advice of the Secretary of State for Culture.

(2) Export is controlled by the Customs service and by representatives of the Directorate of the Museums of France.

(3) This Directorate holds the right of pre-emption which it may exercise within a period of one month.

B.2. Other articles

The other articles mentioned in Chapter 99 of the Customs tariff (requiring a certificate, or not) must be exported through authorized Customs offices, of which there are fifteen located in the largest centres. Collectors' postage stamps (99.04) are also exported through specialized offices.

C/ Conclusion

The machinery existing is very efficient and functions smoothly. It may appear to be cumbersome for professional people who export only occasionally and especially for young artists who export their own works and are required to furnish a certificate from the Professional Committee.

It must be noted, however, that this certificate does not constitute an authorization to export in any way. Some operators feel, however, that by the wealth of information thus made available, a professional sector can benefit unduly from a detailed knowledge of the market.

III.2.2.4. Great Britain

A/ Analysis

A.1. National Treasures

All antiques, manufactured or produced more than 100 years prior to the date of export, including books, works of art and musical instruments, are subject to the issue of a "C" export licence. Manuscripts, archives, photographs (prints and negatives) are subject to obtaining an export licence if they were produced more than 70 years prior to the date of export. Postage stamps are not so subject.

(1) An export licence is not required if the objects were imported into the United Kingdom less than 50 years prior to the date of export.

(2) Articles whose value per unit is under 4,000 pounds are exempt. This exemption does not apply to documents (archives, etc.), diamonds or archaeological objects.

A.2. Search for stolen objects

There are no permanent measures in existence, but lists or individual descriptions are circulated as and when required.

B/ Procedures

Applications for a "C" licence must be submitted to the Board of Trade. If an expert adviser, consulted by the Board, considers that the work is of national importance and that an export licence should be refused, the case is submitted to the Revisions Committee on the export of works of art, for fresh consideration.

The exporter and the expert may both submit memoranda to the Committee and be present or represented during its deliberations. Among the Committee's terms of reference there is: "the possibility of making a reasonable offer to purchase the work to ensure its retention within the country".

Those who regularly export documents, archives, photographs, etc., can obtain global licences for the purpose, but individual licences must be applied for with respect to certain articles (e.g., Persian coloured prints, Books of Hours, etc., of a unit value of more than 2,000 pounds, or for those which the exporter considers to be of importance to the nation.). It is recommended that "the exporter should consult the Director of the National Portrait Gallery when he is intending to export a portrait - whatever its value - of a British personality included in the National Biographical Dictionary".

C/ Conclusion

(1) British regulations are strict in principle but flexible in practice.

(2) In fact, the two main exemptions from having to produce an export licence enable the essential requirements of the art market to be taken into account. The upper limit of 4,000 pounds is sufficient for the burden of formalities not to be disproportionate to the value of the objects concerned. The exemption covering all objects imported within the last 50 years is commensurate with the characteristics of a market where the turnover is considerable.

(3) Finally, the greatest attention is paid to the position of the exporter himself. He must make an assessment as to whether or not the object is of value to the nation; he is "recommended to consult". Briefly, his civic sense is relied on.

(4) By reason of the numerous original elements in these regulations, it has been thought a good idea to reproduce the British brochure on the subject as an annex to this study.

III.2.2.5. Ireland

A/ Analysis

A.1. National Treasures

Exports of the following objects are subject to issue of a licence :

- archaeological objects (1). Archaeological objects are understood to be any object - whether partially or totally manufactured, or not at all - which, by reason of its archaeological value, either inherent or by association with a national event or an Irish person, has a substantially much greater value than its intrinsic value (including its artistic value);
- documents more than 100 years old;
- paintings of all kinds;
- any document declared by the Ministry of Education to be of national, historic, genealogical or literary interest.

A.2. Search for stolen objects

No permanent machinery, but distribution of information according to need.

B/ Procedures

Licences must be applied for from the Ministry of Education.

C/ Conclusion

Irish regulations are simple. It should be noted, incidentally that the market is not a very active one.

 (1) National Monuments Act, 1930.

III.2.2.6. Italy

A/ Analysis

A.1. National treasures

Italian regulations in this sector have been made the subject of a judgement, no. 7/68 of 10 December 1968, by the Court of Justice of the European Communities. This judgement held that Law no. 1089 of 1 June 1939, particularly its Art. 35, was incompatible with the Treaty of Rome.

Italy modified this law successively by the decree of 5 July 1972 and the law of 8 August 1972. At present, the machinery can be analysed as follows :

(1) The export of objects corresponding to the following definition, is forbidden : "... items of movable and immovable national assets which are of artistic, historical, archaeological or ethnological interest, particularly :

- (a) objects of interest in the fields of paleontology, pre-history and primitive civilizations;
- (b) objects of numismatic interest;
- (c) manuscripts, autographs, correspondence, interesting documents, incunabula, as well as books, prints and engravings that are rare and have a certain value.

Works by living authors or those written within the last 50 years are not subject to the provisions of the present law".

(2) This prohibition applies when these objects :

"in themselves, or in the historico-cultural context to which they belong, are of artistic, historical, archaeological, ethnological, bibliographical, documentary or archival interest, in the opinion, giving reasons, of the competent export departments of the Directorate of Antiquities and Fine Arts, as well as that of the Directorate of Libraries and the Directorate of Archives.

For the purposes of assessment required within the meaning of the preceding paragraph, the competent departments base their opinions on criteria of a general character defined respectively by the General Directorate of Antiquities and Fine Arts, by the General Directorate of Conservation and Libraries and the dissemination of culture of the Ministry of Education and by the General Directorate of Archives of the State, at the Ministry of the Interior.

At all events, the objects referred to in the present article may not be exported if they have not previously been examined by the competent Directorates".

(3) Objects of national interest are listed in an official inventory, even if they belong to private individuals.

(4) The State may exercise a pre-emption right within a period of three months with respect to these objects.

(5) Following the judgement issued by the Court of Justice (referred to above), exports - when they are authorized - to EEC countries, are exonerated from the progressive tax on exports to third countries (Art. 37 of the aforesaid Law no. 1089).

A.2. Measures against theft

There are no permanent provisions, but descriptions of stolen objects are regularly distributed to various departments, including the Customs service.

B/ Procedure

- (1) Exporters must apply for a licence, indicating the amount of the sale they propose to make.
- (2) The Minister of Education has the option of acquiring the objects in question at the declared value within 90 days following declaration.
- (3) Litigation arising as to the value of objects is settled by a committee to which the exporter may appoint one of the two experts composing it, under the chairmanship of a magistrate.
- (4) The fulfilment of Customs formalities follows afterwards.

C/ Conclusion

- (1) The former system, which was the subject of the judgement rendered by the Court of Justice, has been maintained for exports to third countries, in particular with respect to the raising of progressive tax.
- (2) The obligation to fulfil the formalities is not restricted to objects set out in the inventory. Indeed, bearing in mind all the above-mentioned provisions of Art. 35 of Law no. 1089, all objects listed in this article must be submitted for examination by the "competent directorates".
- (3) This system may appear to be severe. By submitting all exports of works of art to special 'de facto' and 'de jure' controls, it should enable - at least in principle - the export of stolen works to be prevented.

III.2.2.7. Luxembourg

A/ Analysis

A.1. National treasures

The protection of cultural heritage is ensured by the Law of 21.3.1966. No exports may be made of any object - without authorization - having a cultural value and which is more than

100 years old, the authors of which have been deceased for more than 50 years.

A.2. Protection against theft

Lists of stolen objects are circulated to customs services.

B/ Procedures

(1) Authorization is to be applied for at the Ministry of Cultural Affairs. This is presumed to have been given if the Ministry has not replied otherwise within one month.

(2) Experts from this ministry take part in the examination of goods on export.

C/ Conclusion

Luxembourg regulations in this sector do not cause any serious difficulty, by virtue of the narrowness of the market.

III.2.2.8. Netherlands

A/ Analysis

A.1. National treasures

The only measure in force is the obligation - on export - to produce a "certificate of non-opposition" for pictures of a value above 80,000 florins and for other works of art, of a value above 20,000 florins.

A.2. Protection against stolen works

No special measures other than that of the need to produce the certificate referred to above.

B/ Procedures

The certificate of non-opposition must be applied for at the Ministry of Cultural Affairs, of Recreation and of Social Activities.

C/ Conclusion

Regulations are very liberal. It may be pointed out, in particular, that the values above which a certificate is necessary are high (for pictures, the amount is more than 4 times that fixed in Great Britain: 4,000 pounds).

III.2.2.9. Federal Republic of Germany

A/ Analysis

A.1. National treasures

(1) Basic law : the Law on the protection of German cultural goods of 6 August 1955.

(2) Products concerned : nos. 99.01, 99.02, 99.04, 99.05, 99.06 of the Customs Tariff, with the exception of books and other printed matter produced after 1950.

(3) Works of art and archives, of which "removal from the national territory would constitute an essential loss to German cultural heritage", are registered in each "Land", even if they belong to private owners, and are then included in two national inventories.

(4) Exports of goods entered in inventories are forbidden, unless authorized by the federal Ministry of the Interior.

(5) There is no pre-emption right.

A.2. Protection against theft

There is no special system of a permanent nature. The police furnish Customs authorities with information as and when required.

B/ Procedures

(1) During customs clearance for the export of works of art listed under the tariff numbers set out in para. A.1. above, the following must be presented to Customs authorities :

(a) if the export is effected by a dealer or by the artist himself, where his own works are concerned, a declaration by the exporter that the works are not included in the national inventory and that their registration is not underway;

(b) if the export is effected by other persons, a declaration from the cultural service of the "Land" in which the last owner of the work is domiciled, certifying that the work may be exported;

(c) if an object appearing in the inventory is concerned, authorization from the federal Ministry of the Interior must be produced.

(2) The system is applied, 'mutatis mutandis' to archives, but since these can be composed of a wide range of articles, it is the Customs service which - if it considers that archives of importance to the national heritage are concerned - demands the application of the provisions mentioned under paras. (a), (b) and (c) above, as appropriate.

C/ Conclusion

(1) The system in Germany is similar to that applied in Great Britain in that it is based to a great extent on the declarations made by the exporter, particularly when a dealer is involved.

(2) It should be noted, however, that there is no exemption from formalities by virtue of the value of objects.

III. - 2.2.10 Measures for protection
of cultural heritage

COUNTRY	NATURE OF MEASURES	PRODUCTS CONCERNED
BELGIUM	Law on protection of heritage	No practical applica- tion to date
DENMARK	Prohibition on export on arch- aeological objects and trea- sures	Treasures found in the soil
FRANCE	(1) Inventory of classified objects	All objects whose conservation is of public interest
	(2) Export subject to author- ization	Objects under nos. 99.01, 99.02, 99.03, 99.05, 99.06, subject to exceptions (artist living, or works later than 1920, in partic- ular)
	(3) Export subject to author- ization	Articles under nos. 99.01 not subject lic- ence (paintings, etc., sculpture, statues, etc) that is, executed by a living artist or one deceased since 1920
GREAT BRITAIN.	Export subject to authori- zation	Antiques and works of art of 100 years of age
		Archives more than 70 years old
IRELAND	Export	Archaeological objects, documents over 100 years old, paintings of all kinds, documents of national interest

PROCEDURES

OBSERVATIONS

According to the individual case

Export prohibited

Classification does not apply to private property except with the consent of the owner

Export subject to production of 02 licence and verification by the "museums of France"

State pre-emption right, period 1 month

Certificate of Professional Committee for Art Galleries

For all works of art under Chap. 99, export limited to about 15 customs offices

Export subject to production of C licence

Exemption from licences for articles of a value below 4,000 pounds (except archives and archaeology)

In case of refusal, possibility of appeal to Revisions Committee

Exemption also for objects imported within last 50 years

Possibility of global licence for archives

- pre-emption right ("reasonable offer to ensure retention in State")

Licences issued by Ministry of Education

COUNTRY	NATURE OF MEASURES	PRODUCTS CONCERNED
ITALY	Inventory of classified objects Export subject to authorization	All objects of national interest - do. - The regulations concern all objects of national interest, except those of living authors or those manufactured within the last 50 years
LUXEMBOURG	Export subject to authorization	Objects of an archaeological nature Works of art more than 100 years old or whose author has been deceased for more than 50 years
NETHERLANDS	Export subject to authorization	Paintings of a value over 80,000 florins Other works of art of a value over 20,000 fl.
GERMAN FED. REP.	Inventories of works of art and archives Export subject to authorization	Objects under nos. 99.01 02, 03, 05, 06 of the Tariff, except impressions later than 1950 Archives (in the broadest sense)

PROCEDURES

OBSERVATIONS

Application for licence

All cultural goods likely to be of national interest are subject to dual control by customs and a specialized service.

Pre-emption right within 3 months. Inventory applies even to objects belonging to private owners.

Pre-emption right is exercised at the price declared on the application for a licence.

Authorization issued by the Ministry of Cultural Affairs (presumed granted one month after application)

Export control exercised by experts of this Ministry

Certificate of "non-opposition" issued by Ministry of Cultural Affairs, recreation and social activities

For objects of nos. as opposite and archives not included in inventories, certificate of dealer or author

Inventories register private goods

For private persons, official certificate

For objects included in inventory, authorization for export given by Ministry of Interior.

For archives, customs decide whether they will apply procedure described opposite or not.

III.2.2.11. Overall observations

(1) In practice, every country protects its national heritage. Whether a licence, authorization, or a certificate of "non-opposition" is required, the principle remains the same. The most liberal countries would not permit works of fundamental national importance to leave their shores.

(2) The apparently liberal nature of regulations in some countries can be misleading. Mostly, the more liberal countries are those which do not have much to protect. It is significant, in any event, that licences (by whatever other name they may be called) exist in six out of the nine Member States and three of the largest (in terms of land area) have inventories. Pre-emption rights exist also in three Member States.

Overall, it is noted that those countries with the most active markets for works of art have the strictest measures of control - which is perfectly logical.

(3) No country has established a permanent control system designed to prevent the export of stolen works of art. In fact, protection is given in two ways :

- (a) by the distribution of Interpol notices or information sheets (lists, etc.) compiled nationally;
- (b) and especially by the application of control procedures established for the protection of the national heritage. Every time works of art and other cultural goods are subjected to special controls on export, it is easy to verify, not only the nature of the transaction, but also its legality.

(4) Thus, the restrictive measures implemented by the Member States cannot be altogether condemned :

- (a) by reason of the legitimacy of the protection of national treasures (see Chapter II) and by virtue of the common sense embodied in the Treaty;
- (b) by reason of the security against thefts which they provide. If works of art are subjected to strict controls, those not legitimately handled may only be smuggled abroad; this adds to the difficulty of such operations and thus reduces the risk of them happening.

(5) What interferes with trade is not the principle of control, but the conditions under which it is applied: authorization to be requested in advance; transport through certain points and at certain times; material controls carried out by several different authorities and the right of pre-emption hanging like a sword of Damocles for several months at a time. In the most

significant cases, the entire process may take six months, even if no interim procedure complicates matters.

(6) Regulations in Britain seem to be an interesting example (see annex). The national heritage is closely guarded, but :

- the derogation granted up to a value of 4,000 pounds and to objects imported within the last 50 years enables the market to function;
- great importance is attached to the good faith of exporters, particularly dealers.

It would appear advisable to follow the lead set by the United Kingdom.

III.2.2.12. Proposals to be included in Chapter IV

(1) Establish a definition of "national treasures" and conditions of application of Art. 36 of the Treaty (Chapter II).

(2) Establish, consequently, a Community enumeration of categories of cultural goods subject to controls on export, setting up a dual procedure :

- (a) restrictions applicable to exports from each Member State;
- (b) restrictions applicable to exports from the Community. In this field the States would offer each other mutual assistance.

(3) Establish a uniform procedure for the issuing of authorization.

(4) Improve conditions under which controls are exercised by making them coincide with the issuing of authorization for export.

(5) Establish a system of mutual assistance in discovering the whereabouts of stolen works of art, taking existing legal instruments as a basis - even if they are not entirely satisfactory; this should be done at Community level, similar to the terms of the Rome Convention of 7 September 1970 on mutual assistance in Customs matters, concluded by the Member States.

The UNESCO Agreement of 14 November 1970, already referred to, which has not yet been ratified by any of the Member States, contains provisions in this field which could serve as a basis for a Community instrument.

From a practical point of view, the system set up by Interpol - that of the distribution of descriptive notices concerning the more important works of art stolen - could be improved on a Community basis.

Note

It will be seen that no proposals have been made concerning inventories or classifications; it is felt that these are internal measures which the Member States are free to adopt if they see fit. The important fact is the way in which registration in an inventory affects external trade: that is, the scope of restrictions on exports; it is here that the greatest effort must be made. Similarly, and we shall be returning to this, it would be useless, impracticable and dangerous to propose the compilation of a European inventory. The cultural heritage of the Community will not be built up by registration.

III.2.3. The tax system governing cultural goods

It may be surprising to see such a large amount of space in this study devoted to the tax system governing cultural goods, under the heading of restrictions on trade. Since customs duties have disappeared, it is taxation - with its different levels - that has the main effect on relations between the Member States. It is evident that this is a global problem affecting all trade in goods, whether cultural or otherwise. Nevertheless, the impact on many cultural goods is probably more direct than that on ordinary merchandise. It is, in any event, more felt: there exists a kind of latent consensus of opinion that products of the mind should not suffer the same vulgar fate as commercial goods, insofar as is possible.

Without forgetting that the solution to this problem is linked to a global agreement - at present expressed by the many times remoulded sixth directive on VAT (29 June 1973) - we shall thus proceed with an analysis of the tax system applied to cultural goods in each of the Member States, so as to determine whether appropriate improvements are possible in this special field. The analysis will, therefore, deliberately ignore tax aspects common to all goods (for instance, the rule of one month's time-lag here, or immediate deduction there), in order to concentrate on the special treatment given to cultural goods.

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III.2.3.1. Belgium

A/ Cultural goods

There is no special system or rate. VAT at 6 % is generally applied. Books imported by post are subject to flat-rate taxation at 700 BF per gross kg. (1)

B/ Dealers in works of art and other cultural goods

There is no special system.

(1) In our opinion, this rate is too high.

III.2.3.2. Denmark

A/ Cultural goods

- Exemption from VAT, to the same extent as exemption from customs duties, for certain destinations (institutions of public interest, etc.).
- Exemption from VAT for newspapers which appear at intervals of at least one week.
- Exemption from VAT for the importing of works of art (and sales within the country) under nos. 99.01 and 99.03 of the tariff, when importing and sales are effected by the authors themselves.
- Exemption from VAT by decision of the Ministry of Finance particular cases (objects destined for museums, tourist publications, etc.).

B/ Dealers in works of art and cultural goods

No special system, excepting exemption for sales effected by the authors of such works themselves (nos. 99.01 and 99.03).

VAT is thus raised at the rate of 15 % on all other sales of cultural objects.

III.2.3.3. FRANCE

A/ Cultural goods

Exemption from VAT for imports already exempted from customs duties by virtue of their destination to officially approved bodies.

Periodic newspapers which do not devote more than two-thirds of their space to advertising are exempted, on registration with the "joint committee on press publications and bodies".

Books, including printed manuals of music, are admitted at the reduced rate of 7 %.

Records, on the other hand, are subject to the increased rate of 33 1/3 %.

The following imports, with respect to works of art described under tariff nos. 99.01 - 99.02 - 99.03, are exempt from VAT:

- imports destined for sale by public auction;
- imports effected by undertakings approved by the Ministry of Cultural Affairs;
- Imports of works of art effected by their authors, or by their legal representatives, or by private persons who bought them directly from the authors, or their legal representatives.

Imports of works of art effected by private persons in cases other than those mentioned above, are subject to VAT at the normal rate of 20 %, but at 30 % of the customs value.

Antiques under tariff no. 99.06 are subject :

- to the increased rate (33 1/3 %), where works created in precious metals are concerned;
- to the rates applicable to the same objects - when new - in all other cases.

B/ Dealers in cultural goods

The importing of works of art under nos. 99.01, 99.02 and 99.03 are exempt from TVA when they are intended for dealers, for resale on the domestic market, or for re-export. A certificate must be produced.

The normal system is applicable with respect to all other objects.

III.2.3.4. Great Britain

A/ Cultural goods

The following articles are taxed at the "nil rate" (1) : books, newspapers (including newspapers containing only advertisements), picture books and books for colouring, printed music, maps and plans, and "sound books" (magnetic tape recordings). All supplies necessary for educational purposes are exempt.

(1) The nil rate permits taxes raised on an upward scale to be deducted, but does not permit exemption.

All other cultural goods are subject to the ordinary VAT rate of 8 %.

B/ Dealers in cultural goods

The first sale of a work of art by its creator is wholly taxable. Subsequent sales by dealers are taxable only on the difference between the selling price and the purchase price. Consequently, the dealer permitted to use this system may not deduct any taxes he has paid on his purchases "on a rising scale".

Similarly, articles covered by this system are exempt from taxation on import.

III.2.3.5. Ireland

There is no special system of taxation for cultural goods. They are subject to the general system (usual VAT rate: 19.5 %).

III.2.3.6. Italy

Cultural goods are subject to the normal tax system.

There is, however, exemption from tax on importation for objects exempt from duty by virtue of the provisions of Art. 14 of the preliminary provisions of the tariff (Decree no. 723 of 26.6.1965). This law refers in particular, to imports destined for approved institutions and materials for the blind.

III.2.3.7. Luxembourg

A/ Cultural goods

Cultural goods are subject to VAT at the normal rate of 10 %.

A reduced rate of 5 % is applicable to books and similar works, to periodicals, albums and picture books, music, maps, plans and printed advertising material.

B/ Dealers in works of art

No special system, but, like all Luxembourg businessmen subject to VAT, they benefit from a postponement of payment on import up to the time of making their periodic declaration (monthly, quarterly or annual).

III.2.3.8. Netherlands

A/ Cultural goods

Cultural goods are subject to VAT at the normal rate of 16 %.

The reduced rate of 4 % applies to :

- sculpture and other works created by hand;
- paintings and drawings, done by hand;
- engravings of all kinds;
- objects more than 100 years old and of a value of at least 1,000 florins;
- books and periodicals;
- works for the blind;
- postage stamps and old coins (Art. 20 of the law of 1968 on VAT).

Finally, the exemptions provided for by the UNESCO agreement (of Florence, 1950) for customs duties, are extended to VAT (Art. 58 of the decision of 1960). This important provision allows for exemption from VAT for imports of cultural goods intended for museums, non-profit making cultural associations, blind persons, etc.

B/ Dealers in cultural goods

There is no special system.

III.2.3.9. Federal Republic of Germany

A/ Cultural goods

Cultural goods are subject to VAT at the normal rate of 11 %, except in the following special cases.

Books, periodicals, albums, picture books, printed music, cartographic works of all kinds, postage stamps and similar items, works of art, art collections and antiques covered by items 99.01 to 99.03 and 99.05 of the customs tariff.

The following are exempt from VAT :

- imports of cultural goods destined for non-commercial activities undertaken by public or private bodies;
- imports of archives, undeveloped films, manuscripts, etc.;
- imports of books for research libraries, etc.;
- consignments by post, particularly books, which are of low value, etc.

B/ Dealers in cultural goods

There is no special system. It may be mentioned, however, that deliveries of 'objets d'art' by their creators are admitted at the reduced rate of 5.5 %. If the creator carries on a dual activity: for instance, an art tradesman and his professional activity, the two activities are dealt with separately.

III.2.3.10. TAX SYSTEM GOVERNING CULTURAL GOODS (VAT)

SUMMARY TABLE

Country	Rate	Exemption	Special national provisions
BELGIUM	6 %	Export	Tax on books imported through the post, at 700 BF per gross kg.
DENMARK	15 %	Periodicals 99.01 to 99.03 imported by the authors	Exemption for special decisions for museums, etc.
FRANCE	Increased rate 33 $\frac{1}{3}$ % normal rate 20 % reduced rate 7 %	Objects destined for approved bodies Sale at public auctions	Exemption for periodicals Increase for records Reduced rate for books
GREAT BRITAIN	8 %	"Nil" rate for books, newspapers, etc.	Exemption for everything destined for education
IRELAND	Increased rate 36.75 % normal rate 19.15 % reduced rate 6.75 %		
ITALY	10 %		Exemption for approved institutions
LUXEMBOURG	Normal rate 10 % Reduced rate 5 %		Reduced rate for books, newspapers, printed music, cards, etc.
NETHERLANDS	Normal rate 16 % Reduced rate 4 %		Reduced rate for works of art, books, newspapers, etc.
G.F.R.	Normal rate 11 % Reduced rate 5.5 %	Objects destined for approved bodies Archives and documents	Reduced rate for works of art, books, newspapers, antiques, etc.

 Application of the Florence agreement

 Procedure for dealers

 VAT raised

 Exemption from VAT

 Exemption for sales of items
under nos. 99.01 and 99.03
by the authors

 VAT raised (except case of exemp-
tion by virtue of other provisions).

 Exemption on importation by
dealers.
Ditto by authors themselves
or by non-commercial first
purchasers

 VAT raised (except case of exemp-
tion by virtue of other provisions).

 Sale by the author is fully
taxable. Subsequent resales
are taxable only on the
margins.

 Ditto

 None

 Exemption from VAT
(for certain products)

 None

 VAT raised

 Postponement of payment on
importation within the frame-
work of the general system.

 Exemption from VAT

 None

 Exemption from VAT

 Reduced rate for activities
concerning works of art.

III.2.3.11. Overall observations

- (1) Although their form varies - and despite some shortcomings in information - it is noted that the systems are very similar in the different countries (but this does not apply to the greatly varying rates).
- (2) Lists of products admitted at a reduced rate of VAT, in particular, are often very similar and could be standardized.
- (3) The situation is a little more complex with regard to exemptions, mainly because of the more or less extensive application of the Florence Agreement (1950). Some countries have restricted the exemption granted to customs duties, which is explicitly permitted by the Convention, whereas others have extended it to VAT.
- (4) Whether by virtue of the Florence agreement, or national provisions, almost all Member States grant exemptions for cultural goods destined for approved bodies or institutions; but criteria vary as well as procedures. It is here that some action can be undertaken.

III.2.3.12. Proposals to be included in Chapter IV

Without wishing to reform and harmonize all European tax systems with respect to cultural goods, some specific progress could be quickly achieved in the following fields :

- the drafting of a Community law on the detailed rules for the application of the Florence agreement, particularly with respect to its effects on exemption from VAT;
- the drafting of a Community law (which could perhaps be merged with the law mentioned in the preceding paragraph) laying down criteria, on the basis of which a particular body could be approved for the purpose of receiving goods that are totally exempted from duties and taxes;
- the harmonization of lists of cultural goods which are admitted at the reduced rate of VAT in each Member State.
- the harmonization of the tax system (VAT) governing authors. Exemption on the first sale by an author or his legal representatives should be the rule.
- the harmonization of the tax system governing dealers in works of art.

The French system, which exempts on a rising scale but taxes the realization, could serve as a model in this field.

- The establishment of an identical European rate of VAT applicable to certain cultural goods.

This is a measure whose psychological effects are very important; but it would seem that there would be no great difficulty involved in determining average rates likely to be accepted by all Member States for products as common as books and records. A "European rate" in these fields would be a concrete way - accessible to all - of showing evidence of the cultural unity of Europe.

III.2.4. Exchange control applied to trade in cultural goods

Exchange control, where it exists, is often cited as a cause of the difficulties present in international and intra-Community trade. It is, therefore, a good idea to describe the present situation, while pointing out that there are no special exchange control measures in any Community country governing cultural goods.

Belgium

There is an 'a posteriori' control. Import declarations or export advices model B are delivered to the customs authorities in respect of every operation having a value higher than 50,000 B.F.; the customs authorities then forward these documents to the Belgo-Luxembourg Institute of Exchange Control.

Denmark

None

France

In France, there is a system for the control of financial settlements. Information relating to settlements on export and import must appear on the customs declaration. An indication of domicile at a bank (the opening of an account for the operation at an approved bank) is compulsory where the value of the operation is over 50,000 B.F., after customs clearance for export and prior to customs clearance for importation. Authorization must be requested for international brokerage (purchase and resale abroad by a French company).

Great Britain

No special formalities.

Ireland

There are no restrictions on payments made for trade with foreign countries, but current payments are, however, subject to controls. Sellers may not grant terms of payment for periods over six months with respect to exports and they must repatriate the product of the sale through an approved bank.

Italy

Control of payments and repatriation through banks. No restrictions.

Luxembourg

Joint system with Belgium.

Netherlands

No special formalities.

Federal Republic of Germany.

None.

Conclusion

The situation is a simple one. :

- (1) No Member State has restrictions on the transfer of foreign exchange, either with respect to cultural goods or any other products.
- (2) In those Member States where there is exchange control, it is one of ensuring that payments are made in accordance with the regulations and that the required information is furnished.
- (3) In the circumstances, it cannot be said that all this is really a hindrance to trade. As things stand with regard to monetary integration, therefore, it does not appear to be either possible or advisable to propose the adoption of special measures in this sector.

III.3. MEASURES DESIGNED TO FACILITATE THE MOVEMENT OF CULTURAL GOODS

After having analysed the measures which tend, either directly or indirectly, to restrict the movement of cultural goods, we shall now examine the provisions which, at least in principle, if not in their application, are intended to facilitate trade in cultural goods. It is essentially temporary import and export procedures which are in force in the Member States that are dealt with here.

Before proceeding with this analysis, by country, it must be pointed out that the Customs Cooperation Council has issued several conventions which can be applied to the movement of cultural goods. They are :

- The customs convention relating to the temporary import of "tools of trade". Brussels, 8 June 1961.
- The customs convention relating to facilities granted on the import of goods destined to be shown or used at exhibitions, trade fairs, congresses or similar events. Brussels, 8 June 1961.
- The customs convention on the A.T.A. carnet for the temporary admission of goods. Brussels, 6 December 1961.
- The customs convention relating to the temporary importation of paedagogical equipment. Brussels, 8 June 1970.

All Member States of the Community are members of the Customs Cooperation Council and have signed all these conventions. The result of this has been that some degree of uniformity has been created, at least in principle, in the behaviour of the various States with respect to temporary importation and, conversely, to the temporary export of cultural goods. But these conventions - except the A.T.A. convention - do not set up an operational system. The result is that procedures are different everywhere. The A.T.A. system itself is based on the use of a carnet composed of several separate sheets on which goods are described. It may be used either for temporary export from one country, or for temporary import into another. It is a system which is much used, but the cost price is fairly high and, in some countries, formalities are somewhat severe. It is, in any event, quite abnormal for the sole operational system extant in this sector to be outside the Community. Whatever the advantages of the A.T.A. may be, the Treaty of Rome should, normally, permit greater simplification of procedures and ease of supplying guarantees and undergoing formalities than a convention concluded between countries which are foreign to one another.

III.3.1. Belgium

All the provisions mentioned below are applied in the same way, whether Member States or third countries are concerned. In the first case, they provide for the suspension of VAT alone; in the second, customs duties are suspended as well.

A/ Temporary import and export for trade shows, exhibitions, etc.

Goods and equipment destined for exhibitions, trade shows and similar events, as well as meetings, conferences and international congresses, are admitted temporarily, free of VAT (application of the CCC convention on exhibitions, trade fairs, etc.).

Goods similarly imported temporarily, free of VAT are the following original works of art, provided they are imported by their authors established in Belgium or abroad, or on their behalf :

- pictures, paintings and designs or drawings, executed entirely by hand, but excluding industrial, commercial or similar designs, manufactured articles decorated by hand, painted canvases used as theatre decorations, backdrops for workshops and similar uses;
- engravings, prints and original lithographs;
- Original productions of statuary art and sculpture of all kinds.

Tapestries and ceramics imported by their creators established in Belgium or abroad, or on their behalf, may also be imported temporarily, entirely free of VAT.

Dealers, art galleries or any other persons may thus only import, temporarily free of VAT, works which they have purchased and which they intend to exhibit privately in their galleries or private premises; VAT must, therefore, be paid on import. (instructions concerning exemption - 196 Annex H).

Temporary export of the goods described above, is treated as ordinary temporary export.

B/ Equipment for theatres, equipment and installations for circuses and similar manifestations, as well as equipment and instruments for orchestras may be imported temporarily, free of VAT, either under cover of national documents, or under cover of A.T.A. carnets.

Temporary export is treated as ordinary temporary export.

C/ Note

The use of the A.T.A. carnet is not authorized for temporary imports from Luxembourg into Belgium.

The prohibition imposed on dealers to import works of art temporarily can, in fact, be circumvented, because the artists can exhibit himself in the dealer's establishment. Thus, it is sufficient to declare everything in his name.

III.3.2. Denmark

Temporary importation is authorized according to the CCC conventions already referred to. However, as in Belgium, it does not extend to "goods destined for presentation, demonstration or use at exhibitions organized for private purposes in stores, etc., with the intention of selling products".

Temporary importation requires the constitution of a guarantee, except where exhibitions of a public nature are concerned.

The following objects may be admitted temporarily :

- costumes and 'décors' destined for filming;
- objects imported for international events (congresses, sport festivals, etc.);
- articles imported by artists residing in the country temporarily;
- equipment imported by circuses and amusement parks.

Stage costumes may be imported temporarily without guarantee, but the theatrical presentations for which they are to be used must be specified.

Orchestral equipment (instruments, etc.) also benefits from the waiving of a guarantee.

The maximum period of temporary residence is one year, unless an exception is granted.

The general rules apply to temporary exports.

III.3.3. France

France applies all the CCC conventions referred to above.

National temporary export and import procedures can thus be used.

In particular, the temporary admission of works of art is automatic; that is, no authorization has to be requested on the part of merchants and dealers in works of art. This may be undertaken with a view to sale and, in this case, temporary admission is rectified by means of a release for consumption. The dealer must keep a special register of works temporarily admitted and put up a surety. Only offices authorized for the final import of works of art are competent to deal with their temporary import (or export).

This particular authority is also valid with respect to operations undertaken with an A.T.A. carnet.

Trade shows, exhibitions, etc. may be constituted as an "ordinary private customs bonded warehouse" for as long as they continue. Temporary imports are then not subject to the provision of sureties.

III.3.4. Great Britain

The provisions of the above-mentioned CCC conventions are applied.

As in Belgium, temporary imports are not authorized for private exhibitions organized by dealers with a view to sale.

In principle, only those goods which belong abroad and which cost nothing to maintain, may be temporarily imported. Certain exceptions are made for equipment, such as that used for simultaneous interpretation.

A guarantee must be constituted, but when VAT alone is concerned, importers registered under VAT are exempted from providing a surety.

Goods must be re-exported one month after the end of the particular event and, in any case, within 6 months of their import.

With regard to temporary export, a simplified special procedure is applicable to the return of theatrical effects and accessories and articles for exhibition.

III.3.5. Ireland

The CCC conventions are applied.

Temporary import for trade shows, exhibitions, etc., is authorized, provided it is not for the purpose of resale. Re-export is the rule. A surety must be furnished.

Trade equipment of any kind (for films, theatre, circuses, television broadcasts, etc.) may be admitted temporarily provided it remains foreign property. A surety must be furnished.

III.3.6. Italy

The CCC conventions are applied.

In addition, cultural goods benefit from temporary import (or export) facilities under the general conditions (Art. 214, Section three, of customs legislative provisions), in respect of "cultural, artistic, sporting, technical, scientific and trade show events, etc."

Some operations do not require the provision of a surety, often according to the individual case.

Provisions imposed in relation to economic and monetary restrictions; health regulations and rules governing cinematography, national safety and protection of the national artistic heritage (1), are applicable to temporary imports and exports.

III.3.7. Luxembourg

The CCC conventions are applied.

Apart from that, national regulations are those of Belgium (Belgian ministerial Decree of 17.2.1960, in particular) (see under Belgium, above).

(1) Circular no. 27 of 14.1.72 issued by the Directorate-General of Customs.

A simplified procedure is, however, provided for when VAT alone is involved in trade with the Member States, provided the goods in question are destined for a person registered under VAT regulations in Luxembourg. No surety is called for in such a case.

This provision is not applicable to equipment for theatres, circuses and orchestras. In principle, the provision of a surety is required. Nevertheless, exceptions are granted for musical instruments imported by music societies and for accessories, instruments and costumes that a foreign artist transports with him.

III.3.8. Netherlands

The CCC conventions are applied.

Apart from this, Netherlands legislation on the matter possesses the following special aspects.

Musical instruments, decorations, animals imported by artists, troupes, etc., established outside Benelux, are admitted temporarily, as well as :

- matrices, stereotype plates and similar items loaned or hired for the impression of engravings, prints, etc., in news papers or books;
- objects and materials destined for shows, exhibitions, etc.

These goods may be declared verbally and admitted without surety up to a value of 750 florins. Above that level, a surety must be provided.

III.3.9. Federal Republic of Germany

The CCC conventions are applied.

Apart from them, general customs regulations are applied.

It should be noted, however, that the provisions extant apply equally to public institutions, dealers or private individuals.

Nevertheless :

- exemptions from providing sureties are applied to certain institutions;
- goods must not, in principle, be sold;
- the system of advance tax deduction which leads, in practice, to exemption from VAT, makes any procedure of temporary importation quite useless when imports are subject to this tax alone (imports freely transported from other Member States). This is, in fact, the case of almost all dealers.

Equipment and materials for theatres, circuses, etc., are admitted according to the same provisions, in principle for 6 months, unless an extension is granted.

III.3.10. Overall observations

(1) The marked similarity of facilities granted by the Member States in this sector does not require the compilation of a summarized table. This is due to the generalized application of CCC conventions.

(2) It should be noted that health controls, etc., are applicable in all the Member States. These apply, of course, to animals used in circuses.

(3) All national regulations permit, and even recommend, the use of the A.T.A. carnet.

(4) Nevertheless, national procedures vary widely. When the A.T.A. carnet is not used, national documents are employed - these differ from country to country - and a surety must be provided within the country itself. When the carnet is used, the forms are the same, but not always their use (use, or not, of transit sheets, powers of customs offices or agents, etc.).

(5) One essential difference is to be found in the treatment given to dealers in works of art. In many countries, temporary importation with a view to sale is forbidden, which is against the exigencies of the market. In France, it is authorized, provided a surety is furnished. In the Federal Republic of Germany, the system of advance deduction constitutes complete liberalization for those who benefit from it.

III.3.11. Proposals to be included in Chapter IV

(1) With regard to matters of principle, there is nothing to add to those defined by the CCC conventions already referred to.

(2) It is procedures which are an annoyance to both artists and dealers.

To harmonize all the stages of national procedures and to standardize all documents would constitute an almost Herculean task because such harmonization and standardization would affect all customs procedures in every Member State.

That is why it would be better to set up an entirely new Community system based on the use of a single document and a new form of surety. This is what is proposed in Chapter IV.

(3) The treatment given to dealers in the field of temporary importation with a view to sale should also be harmonized.

CHAPTER IV

PROPOSALS FOR THE IMPROVEMENT OF
TRADE IN CULTURAL GOODS

In this chapter, devoted to measures which could improve trade in cultural goods in the enlarged Community, it would not be sufficient simply to make an inventory and proceed with the verification of measures deemed desirable in relation to the analysis of the present situation.

Deeper reflection is required. All extant national regulations become polarized as follows : the protection of the moral interests of States (order, morality, artistic treasures) and the protection of their material interests (tax systems, essentially).

In organizing such protection - quite legitimate when not abused - the States implement either legal provisions or regulations, or procedures.

The former, although inspired by the same considerations, have only coincided - where this has occurred - entirely fortuitously. The latter differ widely and often constitute the main obstacle to the flow of trade in cultural goods.

Thus, the measures to be proposed come into focus :

- (1) To ensure the concordance of definitions and their field of application;
- (2) To deduce from the construction of a European cultural area, where identical concepts are applied, the possibility of imposing certain measures of control - at present purely national - at the external frontiers of the Community;

(3) To propose a procedure for trade which, by its very uniformity, would greatly simplify matters one might almost say, whatever the form of such a procedure.

From an operational point of view, it is the new procedure which must be privileged. It must, in a sense, permit present difficulties to be surmounted; moreover, it must afford the opportunity to arrive at definitions of practical measures which give them a concrete reality.

This is why pride of place has been given to the following draft Council regulation, the second part of Chapter IV being devoted to various measures not included in the draft regulation.

IV.1. DRAFT REGULATION

IV.1.1. Text of the draft

The Council of the European Communities,

Having regard to the Treaty setting up the European Economic Community, particularly Articles 2, 3, 36 and 235,

Having regard to the draft regulation submitted by the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas under the terms of the Treaty, the Community's mission is to "promote closer relations between its Member States"; and "that to this end the action undertaken by the Community comprises

(a) the elimination of customs duties between the Member States and the removal of quantitative restrictions on the entry and exit of goods, as well as all other measures having an equivalent effect;

(b)

(c) the elimination of obstacles to the free movement of persons, services and capital between the Member States

Whereas it is necessary, in order to promote the harmonious development of the Common Market, to ensure at least equal treatment to both cultural goods and other goods.

Whereas cultural goods are often, because of their nature, made the subject of restrictive measures arising from a broad interpretation of the concepts of public order and morality, or of the protection of national heritage, referred to in particular in Art. 36 of the Treaty.

Whereas, nevertheless, cultural goods - although they are goods as such - are also works to which protection and the widest possible distribution must be afforded simultaneously.

Whereas it is of the utmost importance that the Community should not be merely an economic entity, but the promoter of a cultural entity as well.

Whereas this cultural entity is constituted by the sum and product of common cultural elements; that is, by cultural similarities and affinities found - in addition to the original contributions to culture made by the individual populations - in all countries and in all regions of the Community.

Whereas, consequently, this cultural entity has a 'de facto' existence already within a Community heritage that must be made known and protected, while ensuring its development.

Whereas, while allowing the freest possible movement of cultural goods within the Community - and while ensuring that operations are carried out in accordance with the regulations in force - a Community system of trade in cultural goods should be instituted which would really contribute to a European dimension of culture.

Has enacted the present regulations :

Chapter I

General Provisions

Article 1 : The present regulations establish the rules which must be applied by the Member States in the sector of intra-Community trade in cultural goods.

Article 2 : The system of European cultural trade is understood to mean the special customs regime that is applicable to cultural goods exchanged between the Member States either on a temporary or definitive basis.

Article 3 : 1. Cultural goods are understood to mean - insofar as they have a material base - all products in the literary, musical and artistic fields, whatever the mode or form of expression.

2. "Cultural goods" are also understood to mean products in the scientific field which are used solely for the purpose of disseminating scientific knowledge, consequently excluding equipment or apparatus used for purposes of research or industrial and commercial applications.

3. In particular, 'objets d'art', collector's items and antiques described in Chapter 99 of the common customs tariff, constitute cultural goods.

4. Other objects constituting cultural goods are objects, articles and products which, although referred to under other headings in the common customs tariff than those mentioned in paragraph 3 above, are by their nature or use cultural accessories, but simultaneously constitute

goods and works : books and other products of the graphic arts, photographs, films, records, tape recordings containing cultural elements, etc.

5. Goods, products or objects which, although not constituting cultural goods in themselves, are used to help in the dissemination of culture or its development, may be assimilated with cultural goods; such goods are materials used in exhibitions, theatrical accessories (for decoration and stage direction), orchestral instruments and equipment, materials and installations for circuses and similar manifestations, etc.

6. Other objects, goods and products which can be assimilated with cultural goods, whatever their nature, are those destined for the sole use of a private person, provided that the said person declares in accordance with the regulations in force - and particularly the present regulations - that he wishes to use them solely for the purpose of his own cultural development, to the exclusion of any use of a commercial nature.

Article 4 : Insofar as they apply to trade in cultural goods, the provisions of Art. 36 of the Treaty are only applicable in the absence :

(a) of Community provisions likely to lead to the same result, particularly those contained in the present regulations;

(b) of national laws, regulations and administrative provisions which are also likely to lead to the same result, but which do not constitute restrictions or prohibitions.

Article 5 : "National treasures of artistic, historical or archaeological value" within the meaning of Art. 36 of the Treaty, are understood to mean objects or works of all kinds that are movable or immovable by nature or destination and which satisfy one or more of the following criteria :

(a) objects so closely bound up with the history or life of a country that their departure from that country would constitute a serious loss to it;

- (b) objects of such aesthetic value that the artistic heritage of a country would be diminished in their absence;
- (c) objects, whose own value, or that of the collection of works of which they form part, or to which they are attached, would be seriously reduced in the case of the dispersion of the elements of the collection;
- (d) objects of incalculable value to the study and understanding of a particular sector of the art or history of a country.

Article 6 : European heritage is understood to mean all cultural goods of any kind which have, for the Community or one or more of its Member States, a value commensurate with one or more of the criteria defined in Article 5, paragraphs (a) to (d) above.

Chapter II

The system of European Cultural Trade

- Article 7 : The system of European cultural trade applies to trade of any kind, between the Member States, in cultural goods, as defined in Article 3 above and which are freely exchanged on the territory of one of the Member States.
- Article 8 : Benefit from the system of European cultural trade is restricted to natural and legal persons established in the Community.
- Article 9 : The system of European cultural trade can replace - totally or partially, according to the purpose for which it is used - the customs regimes governing temporary or definitive export, temporary or definitive import, transit and warehousing.
- Article 10 : 1. All cultural goods, in order to move between the Member States under the system of European cultural trade, must be declared on a EUR C form, under the conditions laid down in the present regulations.

A EUR C declaration is understood to mean a declaration made on a EUR. C form, the model for which appears in Annex 1, accompanied, where necessary, by one or more forms EUR. C (a), the model for which appears in Annex 2.

2. Forms EUR. C and EUR. C (a) are printed and filled out in one of the official Community languages designated by the competent authorities of the Member State where the declaration is initially deposited. If required, the competent authorities of another Member State where this declaration is used may request its translation into the official language or one of the official languages of that Member State.

3. The EUR. C declaration is signed by the most interested party : that is, the person making a request to use the system of European cultural trade, or by his authorized representative. The number of copies to be deposited varies according to the customs regime chosen.

4. Supplementary documents annexed to the EUR. C declaration constitute an integral part thereof.

Article 11 : The most interested party is obliged :

(a) to observe the provisions relating to the system of European cultural trade;

(b) to observe the Community or national provisions proper to the customs regimes which the system of European Cultural Trade replaces.

Article 12 : To ensure the collection of all taxes and the fulfilment of commitments which a Member State would be justified in demanding for any transactions involving cultural goods, the most interested party is obliged to furnish a surety, except where provided otherwise in these regulations or by the laws and regulations of the Member State concerned.

Article 13 : 1. The surety may be furnished globally to cover several European cultural trade transactions, or separately for each individual transaction.

2. Subject to the provisions of paragraph 3 below, the surety consists of a joint and several guarantee of the presence of a natural or legal third party established or represented in the Member State where the surety is furnished and which is approved by the Member State.

3. A surety furnished separately for a European cultural trade transaction may consist of a deposit of cash at the customs office receiving the EUR. C declaration.

Article 14 : 1. The guarantee mentioned in Art. 13, § 2, must figure on a guarantee bond conforming to models I or II appearing in Annex 3.

2. When national laws, regulations and administrative provisions or practice so require, each Member State may have the guarantee bond drawn up in a different form, provided it contains identical information to that called for in the model.

Article 15 : 1. A global surety is constituted in a guarantee office.

2. The guarantee office shall determine the amount of the guarantee, shall accept the commitment of the surety and shall issue its prior agreement, permitting the most interested party, within the limit of the guarantee, to carry out any European cultural trade transaction in any Member State.

3. Every person having obtained prior agreement shall be issued with a certificate of guarantee in one or several copies conforming to the model appearing in Annex 4 and under the conditions laid down by the competent authorities in the Member States.

4. Reference to this certificate must be made in each EUR. C declaration for which this system of surety is used.

Article 16 : 1. The guarantee office may revoke the prior agreement when the conditions existing at the moment of its issue no longer obtain.

2. Each Member State notifies the other Member States of any revocation of the prior agreement.

Article 17 : 1. Associations, groups or other corporate bodies having a legal personality, either existing or to be established, may be comprised of natural or legal persons interested in trade in cultural goods for the purpose of providing the sureties stipulated in the present regulations.

2. Such associations of guarantors must be approved by one of the Member States and be represented in the Member States where they have to guarantee European cultural trade transactions.

3. A list of associations of guarantors is published and kept up to date by the Commission, to which the competent authorities of the Member States supply the necessary information in good time.

4. The approved association issues EUR C forms, bearing a mention of its approval and constituting a surety. These forms can be used in all the Member States towards which the association has undertaken a commitment, whoever might be the most interested party to whom the form has been issued by the association of guarantors.

5. The EUR C form containing the guarantee must include, in the box reserved for the mention of the surety (box no. 6), the following information - which may be already printed on the form : name and address of the guarantors - approval no. - issue no. of the EUR C form emanating from the guarantors - stamp of the person acting for the guarantors. The document is issued under the sole responsibility of the association of guarantors, particularly with respect to any fraudulent or improper use which is made of it.

Article 18 : The following transactions and operations are exempted from the provision of a surety :

(a) cultural trade transactions which correspond to European customs regimes under which a guarantee does not have to be constituted;

(b) cultural trade transactions, whatever may be the corresponding customs regime, concerning cultural goods of a value lower than (1) units of account;

(c) operations appearing on a list to be established by implementing regulations.

Article 19 : 1. The guarantor is freed from his commitments towards the Member States concerned in guarantee operations when European cultural trade transactions have been completed to the satisfaction of the competent authorities of the said Member States.

2. To this end, a copy of the EUR C form approved by the competent authorities is delivered to the most interested party after completion of the customs operation having been the subject of the constitution of a surety.

(1) Figure to be fixed later. It appears that a ceiling of 1,000 U A should meet with general agreement.

Article 20 : When he wishes to use the system of European cultural trade, the most interested party must :

- fill out and sign the EUR C form in as many copies as are required by national administrative regulations governing the customs regime concerned;

- indicate in the 'ad hoc' box on the copies of form EUR C, the nature of the customs regime chosen, according to the following terms :

- . ordinary export
- . temporary export
- . Community transit
- . temporary import
- . import for consumption
- . warehousing (the nature of the warehousing must be specified);

- furnish, if necessary, a surety according to one of the forms described in Arts; 12 to 19 above.

Article 21 : The most interested party must, in addition, where national provisions so demand, fill out or supplement those parts of form EUR C reserved for the use of Member States.

Article 22 : 1. The most interested party may request from the competent authority of the country in which he is carrying out one of the operations mentioned in Art. 20 above, authentication of one or more true copies of form EUR C intended for use in one or more other Member States.

2. In this case, the most interested party must, on each copy for which he is requesting authentication, specify the Member State in which he proposes to carry out this operation, as well as the customs regime chosen and according to the terms laid down in Art. 20 above.

Article 23 : 1. In a case where form EUR C is used for multiple movements, between several Member States, of cultural goods temporarily located there, the most interested party may request that this form be made valid for multiple use for a period not exceeding one year, starting from the date on which this form is accepted by the country from which the cultural goods are initially exported.

2. In the cases described in § 1 above, where a surety is demanded, the surety giver must enter the following mention in box 6 of form EUR C : "valid for multiple use for a period of".

Article 24 : Without prejudice to national or Community provisions establishing other cases for exemption, the most interested party is exempted by the competent authorities of the Member States - according to the individual case - either from the payment of all taxes, or from the obligation to re-export or reimport when the cultural goods :

- (a) have perished as a consequence of a case of 'force majeure' or of some fortuitous event which has been duly established;
- (b) or are recognized as missing by virtue of causes dependent on their nature (1).

Article 25 : 1. When it has been established that a breach or infringement has been committed in a particular Member State during the course of a European cultural trade transaction, the recovery of taxes which may be due is undertaken, without prejudice to any penal proceedings, by this same State in accordance with its laws, regulations and administrative provisions, as well as those provisions contained in Art. 11 of the present regulations.

2. When the system of European cultural trade is used for a transit operation, the provisions of Art. 36 of EEC Regulation no. 542/69 of the Council of 18 March 1969 relating to Community transit are applicable.

Chapter III

The protection of European heritage

Article 26 : The Member States render each other the assistance necessary to ensure the preservation and protection of European heritage and national and regional heritage of which it is composed.

Article 27 : As and when required, the competent authorities of the Member States communicate to each other observations, documents, reports, minutes and other information relating to operations carried out under the system of European cultural trade instituted in Chapter II above, as well as information on breaches and infringements of the regulations under this system.

(1) It may seem surprising to find the insertion of a clause applying to cultural goods which normally would concern goods subject to evaporation, dessication, etc. Cultural goods are, however, of so varied a nature that it is advisable to foresee any eventuality.

Article 28 : Validation by the competent authorities of a Member State of a form EUR C concerning cultural goods declared for export from this State, implies :

- (a) that the operation is in accordance with regulations, as far as the competent authorities are aware and,
- (b) that the controls instituted by this Member State within the framework of the provisions of Arts. 4 & 5 of the present regulations have been exercised and that, consequently, export is authorized.

Article 29 : When a form EUR C is validated for the export of cultural goods towards a Member State, the competent authorities of the exporting State may - within the framework of the provisions of Arts. 4 & 5 of the present regulations :

- (a) impose an obligation to re-import within a specific period determined by them; or,
- (b) while authorizing the export to another Member State, forbid the cultural goods in question to go outside Community customs territory.

Article 30 : The competent authorities of each Member State shall take the necessary steps to ensure that cultural goods located within its territory after having been improperly exported, in any way whatsoever, from another Member State, shall be returned to this latter State.

Chapter IV

Final provisions

(Chapter inserted for reference purposes. Most final provisions are related to the usual clauses. Others cannot appear until after this draft has been discussed).

A N N E X E S

TO THE DRAFT REGULATIONS

-:-

- Annex no. 1 MODEL OF FORM EUR. C
- Annex no. 2 MODEL OF FORM EUR. C (a)
- Annex no. 3 (a) MODEL OF GUARANTEE BOND FOR A SINGLE
 OPERATION
- (b) MODEL OF GLOBAL GUARANTEE BOND
- Annex no. 4 MODEL OF CERTIFICATE OF GUARANTEE

ANNEX No. 1

MODEL OF FORM IUR. C

EUR. C

VISA

VISA

VISA

VISA

VISA

(miscellaneous uses)

A N N E X No. 2

MODEL OF FORM EUR. C (a)

ANNEX II

	1 Office	No	2
EUR. C (a)			
=====	stamp and date	signature	

Accompanying sheet no.:	Customs procedure requested	4
-------------------------	-----------------------------	---

Trade marks, numbers, quantity and nature of packages	9 Name of goods	10
---	-----------------	----

	To be used for national statistics	11
Gross weight	12 Net weight 13 Value	12

DESCRIPTION OF CULTURAL GOODS		15
-------------------------------	--	----

Trade marks, numbers, quantity and nature of packages	9 Name of goods	10
---	-----------------	----

	To be used for national statistics	11
Gross weight	12 Net weight 13 Value	14

DESCRIPTION OF CULTURAL GOODS		15
-------------------------------	--	----

Signature

EXPLANATORY COMMENTS ON THE DRAFT
OF FORM EUR. C

GENERAL REMARKS

It is a standardized form - standard format on A 4 paper (21cm x 29.7cm) - printed on ruled paper ("formule-cadre de Geneve").

The face side of the form is used for the declaration itself and may be used for all customs procedures referred to in the draft regulations.

The reverse side of the form is reserved for the various customs authorizations. An attached list of separate sheets may be used in as many copies as required when the consignment comprises different products (EUR. C (a)).

EXPLANATORY REFERENCES

Face side EUR. C

2. For customs registration.
3. For commitments undertaken by the person making the declaration.
4. This box will contain the mention :
 - ordinary export
 - temporary export
 - Community transit, etc., according to the customs procedure chosen.
5. Box used for details proper to the customs procedure chosen (see 4). As required, this box will contain details of, for example, the period of temporary import or warehousing, the Member State of destination, etc. (see implementing regulations).
6. Mention of the type of surety given.
7. Number of copies of the declaration which the customs service of the Member State where this declaration is made will have authorized for their use in other Member States

8. No comment.
9. ditto.
10. Description according to the nomenclature.
- 11.)
- 12.) } No comment.
- 13.) }
14. Customs value.
15. Box for the description and other means of identification of declared works or objects. For instance : reference to special controls exercised on leaving the territory of a Member State, or special commitments undertaken by the person making the declaration.
17. List of documents, photos, etc., attached to the declaration.
18. Deduction of VAT, etc.

Reverse side

Various stamps of approval authorizing exit, entry, transit, etc.

Face side EUR. C (a)

Same layout as for EUR. C with respect to two articles. Only those items of information on the form which it is necessary to repeat on both documents, so that they form a whole, are repeated here. (Registration, customs procedure and signature of person making the declaration in particular).

A N N E X No. 3

C.E. E.F. E.G. E.C.

SYSTEM OF EUROPEAN CULTURAL TRADE

GUARANTEE BOND

(Surety to be furnished for a single operation)

I. UNDERTAKING TO FURNISH A GUARANTEE

1. The undersigned (1)
 domiciled at (2)
 represented by (3)
 his/her (4)
 duly authorized to act in this capacity by (5)
 hereby furnishes joint and several surety at the office of
 for an amount of
 to the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic
 of Germany, the French Republic, Ireland, the Italian Republic, the
 Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Kingdom
 of Norway and the United Kingdom of Great Britain and Northern Ireland
 for all of which (6)
 is or shall become liable towards the above-mentioned Member States of the
 European Communities, both as principal and supplementary guarantor, and
 for costs and additional payments due - excluding penalties - as duties,
 taxes, agricultural levies and other taxes, by virtue of breaches or
 infringements committed during the course of European cultural trade
 operations carried out by the most interested party of
 consigned to
 concerning the cultural goods described as follows :

2. The undersigned undertakes to pay the sums requested on the first
 written request to do so received from the competent authorities of the
 Member States referred to in paragraph 1, without having the right to
 defer payment

3. The present undertaking is valid as from the date of its acceptance by
 the guarantee office.

-
- (1) Sumame forename or corporate name
 - (2) Full address
 - (3) For corporate bodies only
 - (4) Managing director, manager, etc;, as appropriate
 - (5) The articles of association of the corporation, decision of the Board
 of Directors, date of the etc.
 - (6) Sumame forename or corporate name and full address of the most interested

For the purposes of the present undertaking, the undersigned elects his (her) domicile at as well as in each of the other Member States referred to in paragraph 1, address :

Member State	Surname, forename, or corporate name and full address
1.
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2.
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3.
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4.
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5.
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6.
.....
7.
.....
8.
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9.
.....

The undersigned recognizes that all correspondence, notifications and, more generally, all formalities and procedures relating to the present undertaking addressed to, or accomplished in writing at, one of the domiciles elected, shall be validly notified to him/her.

The undersigned recognizes the competence of the jurisdictional courts at the place where he/she has elected domicile.

The undersigned undertakes to maintain the elections of domicile or, if he/she is compelled to change one or more of the elected domiciles, to inform the export office accordingly and in advance.

Drawn up at on

Signature (1)

(1) The handwritten signature must be preceded by the phrase " valid as surety for the sum of (sum: to be written in words)" written in the signatory's own handwriting. If the signatory is signing by proxy, his signature must also be preceded by the mention " by power of attorney of(name of the guarantor)" and accompanied by the guarantor's seal or stamp.

C.E. E.F. E.G. E.C.

SYSTEM OF EUROPEAN CULTURAL TRADE

GUARANTEE BOND

(Surety to be furnished globally for several operations)

I. UNDERTAKING TO FURNISH A GUARANTEE

1. The undersigned (1)
 domiciled at (2)
 represented by (3)
 his/her (4)
 duly authorized to act in this capacity by (5)
 hereby furnishes joint and several surety at the office of
 for a maximum amount of
 to the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic
 of Germany, the French Republic, Ireland, the Italian Republic, the
 Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Kingdom
 of Norway and the United Kingdom of Great Britain and Northern Ireland
 for all of which
 is or shall become liable towards the above-mentioned Member States of the
 European Communities, both as principal and supplementary guarantor, and
 for costs and additional payments due - excluding penalties - as duties,
 taxes, agricultural levies and other taxes, by virtue of breaches or
 infringements committed during the course of European cultural trade
 operations carried out by the most interested party.

2. The undersigned undertakes to pay the sums requested on the first
 written request to do so received from the competent authorities of the
 Member States referred to in paragraph 1, without having the right to
 defer payment, and up to the above-mentioned maximum.

This amount may only be reduced by sums already paid by virtue of the
 present undertaking when the undersigned is called into question following
 a European cultural trade operation having started before the thirtieth
 day following that of the receipt by the undersigned of the preceding
 request (s).

3. The present undertaking is valid as from the date of its acceptance by
 the guarantee office.

The guarantee agreement may be cancelled at any time by the undersigned or
 by the State on whose territory the guarantee office is situated.

The cancellation takes effect on the sixteenth day following that of its
 notification to the other party.

The undersigned remains responsible for the payment of sums becoming due
 at the end of European cultural trade operations covered by the present
 undertaking, having begun before the date of the coming into effect of the
 cancellation, even when payment is demanded subsequently.

- (1) Surname, forename or corporate name
 (2) Full address
 (3) For corporate bodies only (of Directors.
 (4) Managing director, manager, etc., as appropriate
 (5) The articles of association of the corporation, decisions of the Board

For the purposes of the present undertaking, the undersigned elects his (her) domicile at as well as in each of the other Member States referred to in paragraph 1, address : (1)

Member State	Surname, forename; or corporate name and full address
1.
.....
2.
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3.
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4.
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5.
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6.
.....
7.
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8.
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9.
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The undersigned recognizes that all correspondence, notifications and, more generally, all formalities and procedures relating to the present undertaking addressed to, or accomplished in writing at, one of the domiciles elected, shall be validly notified to him/her.

The undersigned recognizes the competence of the jurisdictional courts at the place where he/she has elected domicile.

The undersigned undertakes to maintain the elections of domicile or, if he/she is compelled to change one or more of the elected domiciles, to inform the guarantee office accordingly and in advance.

Drawn up at on

Signature (2)

II. ACCEPTANCE BY THE GUARANTEE OFFICE

Guarantee office

Undertaking to furnish a guarantee accepted on stamp and signature:

- (1) Full address
- (2) The handwritten signature must be preceded by the phrase "valid as surety for the sum of ... (sum to be written in words)", written in the signatory's own handwriting. If the signatory is signing by proxy, his signature must also be preceded by the mention "by power of attorney of (name of the guarantor)" and accompanied by the guarantor's seal or stamp.

ANNEX No. 4

EUROPEAN CULTURAL TRADE

No.

C.E. E.F. E.G. E.C.

CERTIFICATE OF GUARANTEE

The guarantee office (1)

hereby certifies that

(2)

for whom a joint and several guarantee has been furnished by

(3)

for a maximum amount of (in figures and words)

has obtained, on

prior agreement to carry out European cultural trade operations in the following (4) Member States of the European Communities :

At

, on

stamp and signature

N.B. - Should the prior agreement be revoked, the present certificate must be returned immediately to the guarantee office.

-
- (1) Full address of the Member State
 (2) Surname, forename or corporate name, and full address of the most interested party.
 (3) Surname, forename or corporate name and full address.
 (4) Number (in words).

List of persons empowered to sign declarations of trade in cultural goods on behalf of the most interested party

Surname and forename	Specimen signature
.....
.....
.....
.....
.....
.....
.....
.....
.....

IN WITNESS WHEREOF,

AT _____, on _____
signature of the most interested party:

N.B. Any unfilled spaces on the list must be crossed through.

IV.1.2. Comments on the draft regulations

The regulations are composed of 4 essential parts :

- (1°) The setting out of definitions specifying their field of application and that proper to the Member States with respect to cultural matters (interpretation of Art. 36). These provisions may subsequently be utilized for the exercise of a Community cultural policy.
- (2°) The institution of a procedure for European cultural trade, based on the use of a single form (standardized) with respect to cultural goods. The use of this form dovetails with existing customs procedures, whether they are the subject of regulations (Community transit) or directives (as is the case with most other procedures). Indeed, it appeared to be much more practicable to permit access to all existing customs procedures by means of a single form, rather than create a new special procedure. In order to be able to deal with any eventuality, this new procedure would have had to be extremely complex. Moreover, it would have been based on the assumption that complete harmonization had been achieved, which is not yet the case in the field of Community customs procedures; thus, its practical application would have been postponed until some unspecified date in the future.

As such, the system proposed can have a considerable psychological effect through the production of a standardized form reserved to cultural trade and important consequences of a practical nature by permitting the majority of operators to carry out customs operations themselves (1). This practical advantage is increased still further by the establishment of an adapted system of furnishing a guarantee. The system as a whole is based on the experience acquired in the Community transit field, the only European procedure in existence.

- (3°) The creation of a system of furnishing guarantees, taking account of the characteristics of trade in cultural goods. Ideally, the furnishing of a guarantee could have been dispensed with. In the last analysis, this did not appear to be a realistic proposition, however. Having regard to the often high value of cultural goods, the amounts of money involved - especially tax revenue - are frequently enormous. Furthermore, cultural goods are also "merchandise" and it would not be wise to introduce marked distortions

(1) The proposed system does not prohibit the use of an intermediary, a commission agent for customs operations, or other persons, but it allows the operator to proceed with the formalities himself in all cases.

between the various categories of product. Finally, in order to accustom the Member States to the concept of a European heritage and no longer a national one -- that is to say, to the freest possible movement of cultural goods between one Member State and another -- they must be provided with solid guarantees.

Thus, it seemed more opportune to set up a European system of guarantees proper to cultural goods and accessible to all those who, either on occasion or by trade, are interested in trading in such goods at the lowest cost price, which can be taken in charge by trading groups, if they so desire.

Apart from the legalistic language used in the proposed regulations -- necessary in order to make allowances for any possible legal consequences -- the proposed system is largely inspired by -- though going further than -- the Community transit system, which has been functioning since 1970 and has proved its worth. In particular, it is based on the principle that a guarantee approved by one Member State must be accepted by the other Member States. It provides for three possibilities :

(a) A system of providing guarantees according to the individual case, in the form of a surety as such, or a cash deposit. This system -- which would not normally be used very frequently -- will permit a person who obtains extremely favourable terms for furnishing a guarantee from his bank, to take advantage of them for the purpose of carrying out occasional operations. The deposit is intended to provide against unforeseen eventualities. The user has no time to proceed with formalities and he deposits a certain sum of money as security. This the exception, but it must be allowed for.

(b) A system of global guarantees. An art gallery, a dealer or a corporate body regularly undertake European cultural trade operations. It is practical and beneficial for them to furnish a surety which takes account of their average volume of traffic (and not its annual total). The guaranteeing of one month's volume of traffic would seem to be reasonable. Covering all customs operations carried out during the year, it would not be onerous. It does presuppose a special commitment, however, which would be frequently entered into by the applicant's bank and would not always permit the spreading of risks to a degree sufficient to achieve a very low price.

(c) A system of guarantees provided by trading groups. This is the system which should be expanded, both to give the system a broad basis and thus reduce its cost price, and to integrate fully "professionals" and their organizations into the system of European cultural trade.

The system is the following :

Approved trading groups place at the disposal of their members, against remuneration, series of EUR. C forms containing sureties.

These groups together constitute a guarantee "pool" : that is, all risks involved are covered collectively at European level by a global reinsurance contract which these groups conclude with one or more insurers of their choice. Each approved group in a Member State undertakes to honour commitments entered into by another approved group belonging to the same guarantee pool. Thus, the election of multiple domiciles and other systems of representation are avoided. Each State has only to recognize the group installed on its territory which it has approved.

The system offers several advantages :

- the spreading of risks reduces the cost price, in accordance with the long-standing insurance principle;
- subscription to a reinsurance policy allows groups whose moral reputation is often much greater than their financial resources to participate in the system just the same.

It would be better to have a single pool, by means of an agreement reached between the different trading sectors, but if that is not possible, or too complicated, the establishment of several pools, for each sector concerned, could be envisaged - with the sole inconvenience of having a slightly increased cost price.

The proposed system is based on the all-in guarantee system for Community transit and the I.R.T. system (1), both of which have proved their worth, both with respect to their price (generally, 7 francs in Community transit) and with respect to their ease of use by users. Where appropriate, a promotion and information campaign aimed at interested trade circles should be undertaken.

- (4°) The principle of a European heritage and a common policy. This entails, above all, the provision of the opportunity for a Member State to ask another Member State - by means of a special remark included in form EUR. C - to exercise special supervision over a part of its cultural assets that it allows to be exported temporarily or definitively to this other Member State, provided that it is forbidden to cross the frontiers of the Community.

(1) Convention on international road transit - Economic Community for Europe - Geneva 1959.

The regulations thus lay down an important principle : subject to the perpetration of frauds (e.g., false EUR. C documents), the production of a form EUR. C, properly registered and approved by a Member State, constitutes a 'prima facie' evidence of the correctness of the operation.

(5°) In addition, increased means of control

Copies of form EUR. C retained by Member States can constitute - at national level - information suitable for the compilation of a current index of cultural goods (or, more reasonably, of some of them) in circulation throughout the Community.

At a practical level, it might perhaps be considered a good idea to divide this draft into several parts. Indeed, one could conceive of regulations defining the principles of a European cultural policy and other regulations relating to European cultural trade procedures. In any case, one or two Council regulations must be promulgated and there is a risk that regulations dealing only with principles of cultural policy will remain without practical effect. That is why it has been thought advisable to propose a single document whose introduction may have a greater psychological impact than that of a series of regulations.

Naturally, implementing regulations - which will be Commission regulations - must be issued with respect to certain practical rules governing the use of forms, the adaptation of the global procedure to each of the customs procedures concerned, etc.; but the proposed text attempts to define as precisely as possible, the basic principles of trade in cultural goods and the essential working parts required for the smooth functioning of the trade procedures.

IV.2. MISCELLANEOUS PROPOSALS

The draft regulations set out in paragraph IV.1., although they set up a system of European cultural trade - which would be the first sector in which formalities of all kinds were standardized - cannot claim to regulate everything.

If they are adopted, they must be followed by supplementary or implementing regulations. On the basis of Arts. 4 & 5 of this draft, it should be possible, in particular, to prepare regulations establishing standards - and down to the level of practical details - to be followed by the Member States in imposing legitimate restrictions and controls on exports and imports.

Finally, measures of varying importance may be adopted so as to improve the movement of cultural goods.

IV.2.1. Public order and public morality

A/ Procedure

Existing national controls are applied on import and delay the movement of products - especially since there are very frequently two administrations involved (customs and police).

It should be possible to simplify this process within the Community if the States undertake reciprocally to control their exports of cultural goods. The State of destination could then accept consignments without exercising any special control, except as regards anything likely to harm the "security of the State". Form EUR. C could be used as a means of attesting to the 'bona fides' of the consignment.

B/ Scope

(1) The adoption of the most flexible wording possible - acceptable to all Member States - with respect to :

- public morality
- incitement to violence
- incitement to racial hatred
- prohibition on "forgeries".

(2) The confirmation of the principle of total freedom with respect to goods transported by travellers or addressed to private individuals for personal and not commercial use (This definition excludes mail order trade).

IV.2.2. Measures for the protection of national heritage

It is indispensable to standardize methods used in this field.

Taking the definitions proposed in Arts. 4 & 5 of the draft regulations as a basis, a special regulation should establish an identical procedure for each Member State. Here, we shall refer to the conclusion of paragraph III.2. which analyses the measures now in force, adding that the British system in this field should serve as a basis for the adoption of a Community rule (see annex to the study 'in fine').

This system contains three very interesting provisions :

- exemption from authorization for all goods of a value under 4,000 pounds sterling, or imported within the last 50 years;
- the possibility of bringing an appeal before a joint committee should authorization be refused;
- a high degree of confidence shown in "professionals", who are, in a way, supporters of the smooth functioning of the system.

To this must be added the harmonization of conditions governing the exercise of pre-emption rights - legitimate in principle, when they are contained within certain limits and depending on the objects concerned - which is why reference will be made to Arts. 4 & 5 of the draft regulations again and why, in the past, a uniform time-limit of one month was considered quite sufficient.

As regards the procedure, the special regulation should be based on "European cultural trade regulations" and, in particular, Arts. 28 & 29 of the draft regulations. Thus, the deluge of formalities and paperwork would be avoided. No longer a licence, but a form EUR. C alone - which, moreover, would serve as evidence of the 'bona fides' of the consignment for the State of destination.

IV.2.3. Tax measures

- Establishment of a Community law harmonizing the conditions of application of the Florence agreement (UNESCO), from the point of view of VAT, as well as VAT exemptions now granted by virtue of national provisions of certain States.
- Harmonization of lists of cultural goods subject to reduced VAT rates.

- Harmonization of the VAT system applied to authors of works of art and to dealers (exemption on first sale or import).
- Establishment of a uniform rate for certain products, such as books (see Chapter III, § III.2.3.).

IV.2.4. Improvement of temporary import and temporary export procedures

This improvement will be achieved by the establishment of the "system of European cultural trade" which will enable a single document to be used throughout the Community.

It will, however, be necessary to devote very special attention to the practical rules of operation - mainly to the list of operations exempted from the provision of a surety, to the conditions governing the opening of customs offices and to the powers of agents - so as to avoid that this basic improvement be cancelled out in practice. At the same time, a promotional campaign should be carried out in favour of this new system addressed to people in the trade, so that they genuinely adopt it.

CHAPTER V

CONCLUSIONIN FAVOUR OF A EUROPEAN HERITAGE

It is not possible to "conclude" a study designed to foster the improvement of trade in cultural goods throughout the Community - even if it is necessary, from a material point of view, to 'draw the line' under this document, so to speak.

This is because the creation - or the taking to heart - of a European heritage, will never be an accomplished task.

This study is, by definition, a technical one. It is, however, striking to see that - through the analyses, the procedures and the regulations and over and above differences in detail - there is a basic concord. All Member States of the Community have issued special provisions regarding cultural goods; all of them are anxious for them not to be diverted from their objective; that these goods should contribute towards the refinement of society and not towards its depravity; all States have a clear consciousness of a heritage common to a people gathered together. Such a people should now constitute the European Community. It is not that the Europe of the 'Nine' should be the whole of Europe: the European dimension of culture is not confined by the frontiers of the Community. Nevertheless, the Community constitutes a privileged 'bloc' in Europe - both torn and worked by history - bringing together the Latin and the Nordic peoples: the old Mediterranean culture and the more recent Anglo-Saxon culture, now united by a single Treaty.

European heritage exists, but the various peoples do not yet have an adequate consciousness thereof by virtue of political and technical divisions. Despite this, however, even where economics has shown its limitations and politics has ridden roughshod over people, it seems that culture can point the way to progress: since the peoples of Europe will work more willingly towards a European structure that is not merely technocratic.

There is no question of making culture a serf in constructing Europe : culture must be free in order to be fruitful.

Nevertheless, the dimension which permits the European peoples to meet and get to know each other cannot be neglected in favour of simply using each other's manufactures.

European heritage is the Europe of artists, thinkers, creators and those who admire them. It is also the humble support given by the organization of cultural trade which makes this heritage a living entity.

The procedures and regulations are not neuter; they are the structure of daily life and this study has shown - in the sector with which it deals - that there is no trade without a trading technique.

To date, however, the technicians of trade and those involved in cultural affairs seem - within the Community - if not to have ignored each other, at least to have lived in different worlds.

This unnecessarily formal distinction must be discarded. We said at the beginning that the Europe of merchants and the Europe of intellectuals cannot be separated - except arbitrarily.

At the end of this study, this affirmation will be reinforced by a final proposal : that a Community cultural committee be set up, composed of the technicians of trade and those who devote their energies to cultural development and whose 'raison d'être' and terms of reference will be to stimulate an awareness of European heritage.

A N N E X

BRITISH REGULATIONS

NOTICE TO EXPORTERS OF WORKS OF
ART AND ANTIQUES (18.10.1972)

1 - The purpose of this notice is to explain the situation and procedure concerning the export of works of art and antiques.

GENERAL POLICY

2 - The Committee on the export of works of art recommended in 1972 that :

(a) no object should be subject to special control with respect to its interest to the nation, if it is less than 100 years old, or if it has been imported within the last 50 years.

(b) No object, with the exception of manuscripts and archives, should be subject to such control if its value is under 500 pounds sterling.

In its 7th report on the export of works of art, published on 19.10.1960, the Revisions Committee recommended that the upper limit of value should be raised from 500 pounds to 1,000 pounds. This recommendation was accepted.

4 - In May 1966, the Committee recommended that holders of global licences for manuscripts, documents and archives be authorized to export, without the requirement of a specific licence :

(a) Arabic, Persian, Turkish, Urdu and other oriental language illuminated texts, as well as miniatures by Persian, Indian and Chinese painters and other oriental artists, whether included in books or albums or extracts therefrom;

(b) books of hours, missals, Psalters, antiphonals and graduals in manuscript, up to a value per manuscript, miniature, book or album, of 2,000 pounds sterling.

This recommendation was accepted.

6 - In June 1969, the Committee recommended that export controls be applied to all archaeological objects, whatever their value. This recommendation was accepted.

7 - In August 1972, the Government, on the advice of the Committee, decided to make documentary and photographic articles over 70 years old - instead of 100 years old - subject to export controls. At the same time, the value below which works of art and antiques, other than documents and archaeological objects, are exempted from export licences ("covered by a general and standing authorization"), was raised from 2,000 to 4,000 pounds. Two other modifications have been introduced administratively :

(a) the value below which documents may, with certain exceptions, be exported without a specific licence by holders of a global licence, has been raised from 50 to 100 pounds, and,

(b) applicants for export licences for documents do not have to furnish photocopies of these documents, unless they are specially required.

EXTENT OF CONTROL

8 - According to the provisions relating to export controls at present in force, a licence is required for the export, to any destination, of manuscripts, documents, archives, positive and negative photographs, produced more than 70 years before the date of export (except postage stamps of philatelic interest and similar articles, printed books and personal papers of the exporter or his wife),

other objects (including printed books) manufactured or produced more than 100 years before the date of export, including works of art.

In order to abolish the need for an individual licence for every export, a general exemption was granted on 13.10.1972, under the following conditions :

GENERAL EXEMPTION

9 - 'Objets d'art' and antiques. The general exemption permits the export of all antiques (defined below) to any destination (except Rhodesia) if their value is under 4,000 pounds.

10 - For the purposes of this exemption, an antique is considered to be any article manufactured or produced more than 100 years before the date of export (including works of art), but the following articles are formally excluded from this definition :

- manuscripts, documents, archives and positive or negative photographs (except printed books);
- diamonds, or objects mounted or arranged with diamonds;
- objects which have been recuperated at any time whatsoever from the soil of the United Kingdom, except those which have been found after burying or hiding within 100 years prior to the date of export and with the exception of coins.

11 - When a consignment of antiques (within the meaning of § 10 above) has a total value of 4,000 pounds or more, but no single article has a value equal to, or greater than, 4,000 pounds, export will be subject to the presentation of a special declaration to this effect, accompanied by customs export declarations.

HISTORICAL PORTRAITS

12 - The Revisions Committee insists that exporters - before considering the export of any portrait whatsoever of a British personage whose name is included in the National Biographical Dictionary - consult the Director of the National Portrait Gallery, whatever the financial value of the portrait in question.

SPECIAL LICENCES

13 - Applications for licences for the export of antiques (including works of art) not covered by the general exemption or a global licence, must be made at the Export Licensing Branch on a "C" form and supplemented according to instructions. Applications are examined, from the point of view of national interest, in consultation with the appropriate

advisers and according to the procedure laid down in paragraphs 14 to 17 below. If it is claimed that the object in question was imported less than 50 years previously, a declaration to this effect - accompanied by all available evidence - must be submitted with the application. Special rules apply to manuscripts, documents, archives and positive and negative photographs. See paragraphs 19 to 26 on the subject.

OBJECTS OF NATIONAL IMPORTANCE

14 - Applications for the export of objects which (a) have not been imported within the last 50 years, (b) which were manufactured more than 100 years ago and (c) which, except manuscripts, documents, archives and positive and negative photographs, have a value of 4,000 pounds or more, are specially examined to determine whether or not the objects are of national interest to a degree where they should be prohibited from leaving the country. Archaeological objects are subject to this special control, whatever their value.

CASES REFERRED TO THE REVISIONS COMMITTEE

15 - If an adviser makes a recommendation to the Ministry of Commerce and Industry that a licence be refused by virtue of the national interest represented by an object, the case is referred to the Revisions Committee. The applicant is informed accordingly and he is requested - as well as the adviser - to submit his arguments in writing. These written declarations are communicated to the other party by the secretary to the Revisions Committee before the meeting and both are invited to attend or be represented at the said meeting.

DECISIONS TAKEN BY THE COMMITTEE

16 - In dealing with such cases the Committee considers :

- (a) whether the object in question is so closely linked to our history and national life that its departure would constitute a national disaster;
- (b) whether it is of incalculable aesthetic importance;
- (c) whether it is of inestimable significance for the study of a particular branch of the arts, education or history.

The decision on whether to grant or refuse permission to export depends on the object's situation as compared to one or more of these three criteria and on the possibility of making a reasonable offer to purchase it, so that it remains in the country (1).

(1) Underscored by us.

17 - The Committee's decision is notified to the applicant by the secretary, without reasons being given. If a refusal is given, the decision is subject to the making of an offer to purchase within a reasonable period of time, failing which a licence is granted. The price offered is one which the Committee considers reasonable, after having taken advice on the subject, when appropriate. The Committee takes account - within the limits assessed according to the individual case - of all exemptions from real estate duty obtained by virtue of the provisions of Section 40 of the Finance Act of 1930, by selling the object to the National Gallery, the British Museum or any other national institution, university, county council, or municipality in Great Britain; the National Art Collections Funds or the "Friends of National Libraries". Should the Committee decide to authorize the export of the object, subsequent correspondence will be taken up by the Ministry of Commerce and Industry.

ADVANCE DECISIONS

18 - Neither the Ministry of Commerce and Industry, nor experts, are authorized to prejudice the decision to be taken in the national interest. Neither is it the custom of the Revisions Committee to give such advance decisions but, in exceptional circumstances, it may do so at its discretion at the request of the owner or his representatives.

MANUSCRIPTS, DOCUMENTS, ARCHIVES, NEGATIVE AND POSITIVE PHOTOGRAPHS

19 - The Government has decided that originals of manuscripts, documents, archives and positive and negative photographs more than 70 years old can be exported without copies having to be made (photostats or microfilms) or deposited at a specific place, unless such copies are explicitly requested by advisers. Individual export licences are however required for these objects whatever their value, except under the circumstances described below. The personal papers of the exporter and his wife may be exported without a licence.

20 - Habitual exporters may obtain a global licence for the export of a manuscript, document, archives, or a positive or negative photograph, provided that they undertake to request an individual licence from the Ministry of Commerce and Industry for the export of any of the following objects :

(a) Arabic, Persian, Turkish, Urdu and other oriental language illuminated texts, as well as miniatures by Persian, Indian or Chinese painters included in books or albums or extracts therefrom, and

(ii) books of hours, missals, Psalters, antiphonals and graduals in manuscript, up to a value of 2,000 pounds;

(b) a manuscript, document, item from an archive, or positive or negative photograph, or a collection of such articles having a link between them of a value greater than 100 pounds;

(c) an article or a collection of articles having a link between them, for which the holder of a global licence feels that they are of national interest, whatever their value;

(d) papers and memoirs of those who have held public office, when they concern such activities.

21 - When assessing the importance of any document or collection of documents from this point of view, the holders of a global licence are requested always to consider their value from the point of view of an archivist, assessed in relation to other documents or archives together with which they might constitute a whole. If, consequently, they propose to export one or more documents extracted from a larger collection, they must take account of the value of the whole by deciding to apply for a special licence, in accordance with the provisions of § (c) above. In all cases where they request such a licence they must, as required, stress the fact that the documents in question constitute only a part of a larger whole existing within the country. Moreover, the holders of a global licence are obliged to take into account the national importance or local significance of an article before using this global licence.

22 - Applications for individual licences will be dealt with according to the normal procedure laid down in § 13 to 17 above.

23 - Exporters are advised that special provisions apply to the following documents, whatever the date thereof :

(a) public archives (this applies also to Scottish public archives that are not marketable);

(b) Seigniorial documents which are placed under the special care of the Master of the Rolls, by Section 144 (a) of the Property Act of 1922, amended by the Act of 1924;

(c) tithe documents which, by reason of the provisions of Section 6 of the Tithes Act 1936, must be placed at the disposal of the Tithes Commission, if it so desires.

24 - The deposit of copies of manuscripts, documents, archives and positive or negative photographs will not be demanded for articles exported under a global licence.

25 - Applications for special licences must not be accompanied by a photostat copy or a microfilm, unless a special request is received from the Ministry of Commerce and Industry.

In this context, account is taken of the degree of interest of documents from the point of view of British history or literature.

If an applicant wishes to deal with a matter rapidly, he may prefer to furnish a copy at the beginning, in order to avoid a slight additional delay.

Access to copies thus deposited after 1 March 1966 will be restricted for a period of 7 years as from the date of their deposit, unless consent is expressly given by the owner of the originals. If an exporter requests himself that copies be deposited, the case will be referred to the Revisions Committee by the Ministry of Commerce and Industry.

26 - With respect to certain manuscripts, the making of one or several copies may constitute an infringement of the rights of the owner of the copyright. All necessary steps in this connexion must be taken by the exporter. None of the above provisions may be interpreted as covering such infringement.