OPINION OF ADVOCATE GENERAL SIR GORDON SLYNN DELIVERED ON 8 MAY 1984

My Lords,

This is an application by the Commission under Article 169 of the EEC Treaty against the Republic of Italy for a declaration that Italy has failed to comply with its obligations under the Treaty.

Council Directive 79/32, which was addressed to all Member States, defined the different kinds of manufactured tobacco, which are in use for the purposes of taxes, other than turnover taxes, which affect the consumption of such manufactured tobacco. Article 9 of the directive required Member States to bring into force the laws, regulations or administrative provisions necessary to comply with the directive not later than 1 January 1980, and to inform the Commission thereof. It also required that Member States should supply the texts of the main provisions of national law which were adopted in the field of the directive.

The Commission, by letter of 1 October 1981, since it had not received any communication from the Italian Government, called upon that government to submit its observations. On 20 November 1981 the Commission was informed that a draft law had in fact been presented to Parliament. Since the law was not adopted by 13 July 1982 the Commission issued a reasoned opinion under Article 169. That reasoned opinion produced only an acknowledgment on 28 July 1982 so that this application was made to the Court.

In the written pleadings the government has explained that the draft law was presented to Parliament in 1980 with the object of restructuring the tax system relating to tobacco products. That law was not enacted during the life of the Parliament, as then composed, and a new Bill has been prepared for presentation to Parliament. The Court has been told that although the draft is ready it is not possible to say when it is likely to be enacted.

In these circumstances there is plainly no defence to this application. In my opinion the Commission is entitled to the declaration which it seeks, that the Republic of Italy has failed to bring into force the laws necessary to comply with the directive, and the Italian Government should pay the Commission's costs of these proceedings.