OPINION OF MR ADVOCATE GENERAL TESAURO
delivered on 23 May 1990 *

Mr President,
Members of the Court,

1. In these proceedings the Commission challenges the compatibility with Community law of various provisions of the Greek legislation on the importation, exportation, and distribution of crude oil and its by-products. That system, as originally established by Law No 1571/85 of 21 October 1985 and as subsequently amended and implemented, is described in detail in the Report for the Hearing, to which reference is made also as regards the various questions of admissibility and substance raised by this application.

Admissibility

2. Greece has raised objections of inadmissibility against some of the complaints made by the Commission with regard to the legislation in question. Some of those complaints are relatively easy to answer at first sight and I shall consider those first. Other complaints, on the other hand, concerning the rules on the control of prices for the products in question call for a more careful scrutiny.

3. In the first place, Greece contends that the Commission unequivocally stated in its reasoned opinion that it intended to waive the infringement procedure in relation to some of the complaints set out in the letter of formal notice, including, in particular, the complaint relating to the government's power, provided for by Article 4(3) of Law No 1571/85, to revoke in exceptional cases the liberalization achieved in the sector by restoring the exclusive marketing rights which had been abolished. Instead — according to the Greek Government — the Commission seems in its application to treat that possibility of revocation as an independent infringement of Community law.

In that regard, it is sufficient to state that, taking formal note of the assurances provided by the Greek Government, the Commission points out in its reasoned opinion that 'it is unnecessary in those circumstances to pursue the infringement procedure on that point'. There is no doubt, therefore, that this matter must be regarded as falling outside the scope of the application and that the objection is well founded.

4. Greece further objected that the complaints relating to the requirements laid down by the legislation in question, and in particular by Article 15 of Law No 1571/85, for the exercise of the right to trade in petroleum products (marketing quotas, submission of procurement programmes and

* Original language: Italian.

a given transport capability) were inadmissible, inasmuch as they had not been duly raised in the pre-litigation procedure.

It must be pointed out, however, that contrary to the defendant's assertion those complaints are set out in detail both in the letter of formal notice — fourth indent, under (c) — and in the reasoned opinion — paragraph 9 — and are promptly contested in the defence put forward by the Greek Government in the pre-litigation procedure. In my view, therefore, the objection is unfounded.

5. On the other hand, the other issues of admissibility raised in these proceedings which relate to the Commission's complaints concerning the Greek system of regulating the prices of petroleum products would appear to be more complex, as I said earlier.

In that regard, in order to make it easier to follow the observations set out below, I consider it essential to quote the relevant passages of the reasoned opinion and the application. In its reasoned opinion (paragraph 10), the Commission maintains that the system of maximum prices is incompatible with Article 30 on the ground that 'it does not take sufficient account of the specific costs borne by imported products (forwarding costs), prices are fixed at exceptionally long intervals (every three months only) and the conversion rate between the United States dollar and the Greek drachma likewise remains unchanged for exceptionally long periods (again three months)'. Furthermore, having stated that in those circumstances it is not always possible for imported products to be marketed profitably, the Commission comes to the conclusion that the system in question can be regarded as being in conformity with Community law only once it has been reorganized 'in such a way that the costs borne by imported products are taken into account in the calculation of the maximum prices laid down'. For the rest, the reasoned opinion is silent.

In the application the Commission sets out the wording of Article 11(1) of Law No 1571/85, as subsequently amended by Law No 1769/88, confirms that together with the administrative measures for its implementation that provision is contrary to Article 30 and formulates the following three complaints:

'(a) they [the prices laid down] do not take sufficient account of the specific costs associated with imported products (for instance, transport costs);

(b) excessive weight is attached to purely national (Greek) criteria in fixing prices;

(c) it is for the Greek authorities (Article 11(1) of Law No 1571/85, as amended) to determine the factors involved in fixing the basic price, in addition to the detailed rules for taking those factors into account and for establishing their relative weight.'

No other argument or mere statement of the factual or legal circumstances is set out in the application in support of the complaint that the system of maximum prices is not in conformity with Community law.

6. Greece points out, first of all, that the complaint formulated in the application under (c) concerning the authorities' discretion in determining the factors involved in fixing prices is inadmissible inasmuch as it is not mentioned in the reasoned opinion. That observation strikes me as well founded if a comparison is made between the passages set out above.

On the other hand, it should be said that in the course of the procedure the Commission reworded its complaint specifically on that point, stating that it did not intend to challenge the fact that the Member States may empower the authorities to lay down rules for the application of a system of prices in general but rather the detailed rules according to which that system was established and organized. In other words the point at issue is not so much the power to regulate prices as the content of the rules adopted in the exercise of that power. If that is true, it follows that the complaint under (c) is no longer to be regarded as a distinct and independent charge; instead, it should be regarded as subsumed in the other two complaints which are set out in the application under (a) and (b) and which relate, albeit in extremely vague terms, to the content of the rules in question. I am therefore inclined to conclude that the Court does not have to adjudicate specifically on that point.

7. Secondly, Greece maintains that the complaints set out in the reasoned opinion but not in the application should no longer be regarded as forming part of the subject-matter of the dispute. In practice, the problem arises in relation to two complaints formulated in the reasoned opinion, as in the letter of formal notice which preceded it, concerning the system of prices, namely that prices are fixed at exceptionally long intervals (every three months only) and that the conversion rate between the dollar and drachma likewise remains unchanged for a period of three months, which is considered excessively long.

The Commission's reply is that in the application it referred to the wording of the letter of formal notice and the reasoned opinion, whose content should therefore be considered an integral part of the act instituting the proceedings.

8. In my view, however, it is apparent from Article 19 of the Protocol on the Statute of the Court of Justice and from Article 38(1) of the Court's Rules of Procedure that an application to the Court must contain certain information, including in particular the subject-matter of the dispute, the grounds on which the application is based and the form of order sought by the applicant. It follows that under the Article 169 procedure the Commission in any event bears the onus of specifying in the act instituting the proceedings (as in the pre-litigation procedure) both the substantive content of the complaints against the defendant State and, at least in summary form, the legal and factual grounds on which those complaints are based. Such requirements — which, moreover, are not particularly burdensome to draft — appear to be essential not only for the proper delimitation of the subject-matter of the dispute before the court hearing the proceedings, but also inasmuch as they make it possible to ascertain, without doubt or ambiguity, that the Commission has not waived any of the complaints referred to in the pre-litigation procedure.

In my view, therefore, as a matter of principle and in accordance with a criterion which strikes me as being far from alien to the procedural traditions of the Member States, it is not permissible in the act instituting the proceedings to deduce the complaints and grounds by reference to other measures. It is possible, on the other hand, although this is a different matter and is clearly in line with the requirements set out above, to refer in proceedings under Article 169 to the arguments and circumstances set out in the letter of formal notice and in the reasoned opinion, if the intention is simply to clarify the scope of the complaints and the grounds which are in any event set forth in the application.

9. That is the position in principle, but that is not all. Even on the assumption that complaints and grounds may be raised in proceedings under Article 169 by referring purely and simply to the acts of the pre-litigation procedure, nevertheless in this case the reference made by the Commission in its application cannot in any event refer to the complaints set out in the reasoned opinion concerning the three-month time-limit laid down for the fixing of prices and the drachma/dollar conversion rate. It is clear that after the reasoned opinion was issued and before the proceedings were instituted, the Greek system was amended by Law No 1769/88 which established substantially shorter time-limits for the determination of those items. Hence the view must now be taken that by not specifically challenging or commenting on that point in its application, the Commission considered that the aforesaid amendment brought the Greek legislation back into line with the requirements of Community law and that the infringement concerning those specific matters has consequently been brought to an end. That is also borne out, moreover, by the fact that in the written procedure and at the hearing the Commission raised no further objection to the fact that the prices and conversion rates relating thereto were fixed by the government at excessively long intervals. In my view, therefore, the complaints set out in the reasoned opinion in relation to those two points must be regarded as being unconnected with the subject-matter of these proceedings.

10. Greece also considers inadmissible the Commission's complaints concerning the manner in which the Greek authorities are said to have assessed the 'storage cost' and 'market trend' factors for the purpose of fixing the maximum prices of petroleum products. Those complaints, the Greek Government emphasizes, are set out and amplified only in the reply. Furthermore, they concern provisions (Article 2(5) of Presidential Decree No 27 of 17 January 1989) that were adopted long after the proceedings were instituted.

In that regard it must be said at the outset that Article 11 of Law No 1571/85 (also as amended by Law No 1769/88) provided that in fixing prices account would be taken, amongst other things, of the 'market trend' and 'storage cost' factors. However, until the Commission submitted its reply, that provision did not attract the slightest hint of criticism or arouse any misgivings on its part. It is also true that Presidential Decree No 27/89, adopted after the pre-litigation procedure and even after the commencement of the proceedings, which lays down detailed rules for calculating the items

involved in fixing the basic price of petroleum products together with a series of other factors (international prices of products, transport costs from ports situated in Italy to Greek ports, losses incurred during such transportation, transport insurance premiums), also provided for and regulated the determination of the 'market trend' and 'storage cost' variables.

In its reply, as I have pointed out, the Commission relied on the provisions of that decree to challenge the introduction of or in any event the detailed rules for calculating those two variables notwithstanding the fact that in the preceding stages no reference had been made thereto and that consequently Greece did not have an opportunity, before submitting its rejoinder, of expressing its views on those matters.

11. However, the Commission objects that its intention in the pre-litigation procedure and in the application was to challenge the system of maximum prices in general on the ground that it may adversely affect imports. The allegations put forward in the reply should therefore be viewed merely as a more detailed statement of that broader complaint and do not constitute new and independent allegations.

In that regard, however, it must be pointed out that although the Court acknowledges the possibility of extending the proceedings to events which took place after the reasoned opinion was delivered provided they are 'of the same kind as those to which the opinion referred and which constitute the same conduct' (see the Court's judgments in Case 42/82 *Commission* v *France* [1983] ECR 1013 and in Case 113/86 *Commission* v *Italy* [1988] ECR 607), it is equally true that the Court has frequently reaffirmed that in order to prevent the essential purpose of the pre-litigation procedure from being frustrated, the subject-matter of the dispute must be clearly defined in the letter giving formal notice (see, amongst the many judgments on this point, that in Case 211/81 *Commission* v *Denmark* [1982] ECR 4547). It follows, therefore, that the scope of the complaints set out in the letter of formal notice cannot be amplified in the reasoned opinion (see the judgment in Case 51/83 *Commission* v *Italy* [1984] ECR 2793), in particular, the subject-matter of the judicial proceedings must be firmly established in the pre-litigation procedure and, consequently, 'the Commission's reasoned opinion and its application must be founded on the same grounds and submissions' (see the judgment in Case 166/82 *Commission* v *Italy* [1984] ECR 459), and finally, in conformity with those principles, the acts in the pre-litigation procedure must satisfy, albeit in varying degrees, the essential requirements of precision. Those requirements are less strict in the case of the letter giving formal notice which contains only 'an initial brief summary of the complaints' which may be set out in detail (but, as we have seen, may not be amplified) in the reasoned opinion, and much stricter in the case of the reasoned opinion which must, as the Court has frequently reaffirmed, 'contain a coherent and detailed statement of the reasons' (see the judgment in Case 274/83 *Commission* v *Italy* [1985] ECR 1077).

12. Having said that, and turning to this case, I do not consider that in its reply the Commission confined itself to setting out in detail the complaints and grounds that had already been specified to a sufficient extent at the time when the subject-matter of the dispute was determined, but sought instead to bring within the framework of the

proceedings already instituted before the Court fresh complaints resulting from the enactment of new national provisions.

Nor do I consider that those new complaints are concerned with facts of the same kind as those which are already challenged in the reasoned opinion and which constitute the same conduct. As is clear from the Court's aforesaid judgments in Cases 42/82 and 113/86, similarity in kind and conduct can be established where a practice which is already challenged in the reasoned opinion (for instance repeated delays in the fulfilment of administrative obligations) also continues to be applied subsequently. Only in those circumstances is it possible to take the view that the subject-matter of the dispute has remained substantially unchanged and that, in particular, the rights of the defence have not been infringed. In these proceedings, on the other hand, what is in fact being contested in the reply is the establishment of new practices which constitute independent and distinct infringements and on which, it is worth repeating, the Greek State did not have an opportunity to express its views within the time-limits and in the manner prescribed. Furthermore, in keeping with the aforesaid procedural principles, the Court has been reasonably prudent in allowing the subject-matter of a dispute to be extended to events which took place after the reasoned opinion was delivered. Thus, for instance, in a situation involving repeated delays in the payment of certain agricultural premiums over successive wine-growing years, the Court held that the Member State's failure to fulfil its obligations did not relate 'to a single act whose effects extend over a long period of time but to delays in the payment of the premiums due in each wine-growing year: those delays involve a separate breach of its obligations in each year' (see the Court's judgment in Case 309/84 *Commission* v *Italy* [1986] ECR 599). Such caution is all the more apposite in cases involving not the recurrence of similar conduct but the adoption by the defendant State of measures substantively different from those for which it was reproached in the reasoned opinion and even in the application (see the judgment in Case 7/69 *Commission* v *Italy* [1970] ECR 111).

13. The objection that the complaints formulated in the reply are incorporated in the allegations concerning the system of prices in general set out in the reasoned opinion and in the application must, in my view, be rejected. Following that line of reasoning, it would be easy to avoid compliance with procedural principles, inasmuch as it would be sufficient for the Commission to formulate complaints in the pre-litigation procedure in extremely vague and general terms without specifying the real subject-matter of its complaints until later. In that case, the rule according to which the subject-matter of the dispute must be delimited at the proper time and cannot be amplified subsequently would be emptied of its content — which would frustrate the conciliatory function of the pre-litigation procedure — and the defendant State would be deprived of any effective possibility of defending itself.

Finally, the conclusion must be drawn, it seems to me, that the complaints in the reply concerning the 'storage cost' and the 'market trend' were introduced in the proceedings out of time and must therefore be declared inadmissible.

14. Secondly, that brings me to another consideration, namely whether or not the complaints set out in the application concerning the system of prices and set forth under (a) and (b) are themselves inad-

missible inasmuch as they are formulated in excessively vague and general terms. In that regard, it should be pointed out that the Commission has merely stated the *quid demonstrandum* (in other words that the maximum prices do not take sufficient account of the costs associated with imported products and attach excessive weight to domestic cost factors), whilst the application does not give either the reasons on which that conclusion is based or the factors and circumstances that were taken into consideration in reaching it.

Let me also point out that the requirement of a detailed statement in that regard seemed all the more necessary since the legislation in question, which cannot in itself be regarded as incompatible with Community law, is well constructed and complex in scope inasmuch as on analysis it provides for a wide variety of factors, some of which have a domestic character whilst others have an international character, in connection with the determination of the prices in question.

15. In those circumstances I am inclined to take the view that the Commission has not properly defined the subject-matter of those complaints, nor has it given 'a coherent and detailed' statement of reasons. If that is true, the issue before the Court is not one of substance but of procedure, inasmuch as an uncertain and vague definition of the subject-matter of the dispute, apart from calling in question the observance of the aforesaid procedural principles, precludes the Court from exercising its power of judicial review. In that regard, a recent judgment of the Court (in Case C-132/88 *Commission* v *Greece* [1990] ECR I-1567) strikes me as particularly significant: there the Court considered that a complaint which was simply set forth in the application by the Commission unsupported by any arguments (which, moreover, unlike the case here, were amplified at least in the reasoned opinion) did not fall within the subject-matter of the dispute. In those circumstances the Court held that it was unnecessary to give a decision on the complaint, a solution which it seems to me is all the more appropriate in this case.

In my view, the Court should also refrain from giving a decision on the complaints relating to the system of maximum prices set out under (a) and (b) in the application.

Substance

16. Now that consideration of the questions of admissibility has been completed, an examination which could perhaps have been avoided at least in part if only the Commission had been more rigorous in its conduct and organization of the procedure, it is possible to turn to the substantive aspects of the case in the order in which they are set out in the Report for the Hearing.

(a) *The exclusive import rights*

17. The Commission claims that by Law No 1571/85 the Greek State reserved exclusive import rights with regard to crude oil and petroleum products. In its view, those exclusive rights must be regarded as contrary to both Article 30 and Article 37 of

the Treaty, inasmuch as they may constitute a barrier to trade and unlawful discrimination between Community traders.

For the assessment of this complaint it is necessary to distinguish between import rights for finished and semi-finished products, on the one hand, and import rights for crude oil, on the other.

(i) Import rights for finished and semi-finished products

18. In the first place Article 40 of the Act concerning the conditions of accession of the Hellenic Republic and the adjustment to the Treaties provides that 'the Hellenic Republic shall, from 1 January 1981, progressively adjust State monopolies of a commercial character within the meaning of the Article 37(1) of the EEC Treaty so as to ensure that by 31 December 1985 no discrimination regarding the conditions under which goods are procured and marketed exists between nationals of the Member States'. Article 40 lays down stricter provisions as regards exclusive export and import rights for certain products other than oil and its by-products, which were to be abolished as from 1 January 1981.

Next, it must be pointed out that Law No 1571/85 provides for a State monopoly over the refining of crude oil, which the Commission does not regard as contrary to Community law. Law No 1571/85 also provided for a State monopoly over the importation of finished and semi-finished petroleum products (Article 7). However, by means of a reference to another provision (Article 4), it was also laid down that the monopoly was to be adjusted as from 1 January 1986.

It is undisputed that when these proceedings were instituted, Greece had only partially adjusted the exclusive import rights for petroleum products, inasmuch as 40% of imports were still subject to the State monopoly.

In those circumstances, and on the basis of Article 40 of the Act of Accession, the Commission considered that the maintenance of an exclusive right, albeit a partial one, constituted an infringement of Articles 30 and 37 of the Treaty.

19. Let me say at once that the situation under consideration is similar to that which formed the subject of the Court's judgment in Case 59/75 *Manghera* [1976] ECR 91, which was also concerned with a State monopoly over the production and importation of certain products. In that situation, as the Commission has emphasized, it is legitimate to assume that a monopoly holder tends rationally to give precedence to the marketing of its own products as opposed to imported products which are therefore objectively discriminated against. It is against that background that the Court ruled in *Manghera* that the aim of Article 37 would not be attained 'if, in a Member State where a commercial monopoly exists, the free movement of goods from other Member States similar to those with which the national monopoly is concerned were not ensured'. That ruling is wholly applicable in this case since, as a result of its monopoly over refining, the State produces the same

goods as those for which it reserves in part an exclusive import right.

As for the fact that at the time when these proceedings were instituted the exclusive right was reduced to 40%, it does not strike me as decisive since such a percentage is in any event sufficient to enable the public body appreciably to influence, within the meaning of Article 37(1) of the Treaty, the imports in question.

In my view, therefore, the complaint that the rights in question constitute an infringement of Article 37 is well founded, and there is no need to consider whether those rights also constitute an infringement of Article 30.

(ii) Exclusive import right for crude oil

20. The position is different in the case of crude oil. In that regard, it must be pointed out that Article 1(2) of Law No 1571/85 conferred on the State the exclusive right 'to refine and consequently to import crude oil'. That provision was amended by Law No 1769/88 which, whilst maintaining the State's exclusive right to refine crude oil, abolished that right with regard to imports. Notwithstanding that amendment, the Commission points out that pursuant to the unamended version of Article 7(1) and (2) of Law No 1571/85, imports of crude oil remain subject to the State's exclusive right, in the same way as imports of processed products. Greece points out, however, that in the light of Article 7(2) those imports must be effected 'in accordance with Article 1' of the same law. Since, as has been emphasized, Article 1 was amended so as to abolish the monopoly over the importation of crude oil, it should follow that Article 7, in referring to the State's exclusive import rights, applies only to processed products and no longer to crude oil.

21. The question which the Court has to consider on the basis of the parties' opposing arguments is whether, following the amendments made by Law No 1769/88, the State still holds an exclusive import right for crude oil. I feel obliged to point out that, in my view, there should be no procedural obstacles to an assessment of that question by the Court. Although it is necessary to take into consideration legislative amendments made after the expiry of the time-limit set in the reasoned opinion, that is incapable of altering either the nature or the subject-matter of the Court's appraisal. The Court still has to ascertain whether the State has in fact complied with the reasoned opinion by bringing to an end the infringement for which it was duly reproached and not whether legislative amendments have brought about fresh infringements which would necessarily call for an independent preliminary examination under the pre-litigation procedure. If, therefore, and to the extent to which the Court is asked not to rule on complaints and grounds other than those which formed the subject-matter of the pre-litigation procedure, the view must be taken that there has not been either an extension in the subject-matter of the dispute or, consequently, a constriction of the rights of the defence. It seems to me, moreover, that a different solution might give rise to consequences difficult to justify: whereas, in a case in which the State under investigation adopted measures within the time-limit set by the reasoned opinion, it is undisputed that the Commission could ask the Court to declare that those measures are not such as to terminate the infringement, in a more

serious case involving belated action on the part of the State, the Commission would no longer be able to obtain from the Court a declaration that the measures adopted out of time are incapable of regularizing the situation completely and that the infringement therefore subsists notwithstanding those measures. Furthermore, it seems to me that in its judgment in Case 7/69 the Court considered itself entitled to ascertain whether *at the time when proceedings are instituted* an infringement still exists by taking into account to that end also the measures adopted by the State beyond the time-limit set by the reasoned opinion.

22. Having said that, and coming to the crux of the matter, I must point out first of all that Law No 1769/88 undoubtedly repealed the fundamental provision (Article 1 of Law No 1571/85) establishing a State monopoly over imports of crude oil. As for Article 7 of that law, paragraph 1 thereof lays down in general terms that imports of both crude oil and processed products 'are in the general interest of the national economy and are aimed in particular at ensuring regular and stable supplies for the Greek market'. It is true, therefore, that Article 7(1) also refers to crude oil, albeit in the context of a provision whose significance lies in stating that, in general, oil transactions with foreign countries constitute an activity which is in the public interest. Article 7(2), on the other hand, is more specific in scope. It provides that the imports referred to in paragraph 1 are to be effected exclusively by the State, but 'in conformity with Article 1' of the same law. If the legislature amended Article 1 by abolishing the monopoly over imports of crude oil which that article had provided for initially, it seems to me that the usual rules of interpretation do not permit an argument to be deduced from the wording of Article 7(2) to the effect that that provision, unlike Article 1 to which it is expressly subordinated, still confers on the State an exclusive right to import crude oil. It is also noteworthy, moreover, that the Commission has not produced any evidence that Article 7(2) has been applied in such a way as to confer on the State a monopolistic right of that kind.

In my view, therefore, the Commission's argument that, notwithstanding the amendment of Article 1 of Law No 1571/85, Greece has maintained the State monopoly over imports of crude oil is not well founded.

23. However, even on the assumption that an exclusive import right for crude oil can be established, I do not believe in any event that such a right can of itself, in the absence of other factors, be regarded as contrary to Community law. Greece has emphasized, once again without being contradicted on this point by the Commission, that domestic production of crude oil is negligible and will in any event cease by 1990. It follows that Greece is totally dependent on imports for its supply of oil. Those facts are essentially different from those which — as stated earlier — constituted the background to the judgment in *Manghera* since in this case there is in fact no domestic production of crude oil which the holder of exclusive import rights would have an interest in promoting inevitably to the detriment of the imported product. In those circumstances I

do not believe it is reasonable to assume that the exclusive right asserted is capable of constituting a barrier to imports, which are in any event essential if refining is to be carried on. Still less does it constitute unlawful discrimination, which must in any event be specifically established.

24. That is not all. In this case, whether or not there is a statutory monopoly over imports of crude oil would appear to have no effect whatever on the flow of intra-Community trade since, in any event, the State has a legitimate monopoly over refining and therefore exercises full control over demand for imported crude oil. As was shown at the hearing, whether or not third parties enjoy in abstract terms the right to import crude oil is, in the specific circumstances of the case before the Court and in the absence of factual evidence to the contrary, a matter devoid of any real economic consequences. In any event, public refineries (and private refineries operating under a licence granted by the State) will take steps themselves to secure their own supplies of raw materials, and consequently any other Greek importers seem destined not to find any genuine outlets amongst refiners on the domestic market. That *de facto* control over imports of crude oil, which exists independently of the legislative provision complained of inasmuch as it arises from the State monopoly over refining, has not even been touched upon by the Commission, nor would it appear to be open to question given that it constitutes in fact a direct consequence, almost a corollary, of the monopoly over refining whose legality has frequently been reaffirmed by the Commission. Therefore, even on the assumption that the State enjoys an exclusive right to import crude oil, it seems to me that in assessing the legality of that right the Commission overlooked the fact that such a monopoly had no effect, in the absence of proof to the contrary, other than that of formalizing a pre-existing situation on factual grounds and, what is more, a situation which, since it constitutes an inherent feature of the monopoly over refining, would not appear to be open to criticism except in connection with the refining monopoly itself.

In the light of those considerations, I consider that the complaint concerning the exclusive import rights for crude oil must be rejected.

(b) *The exclusive marketing rights for petroleum products*

25. Pursuant to Article 4 of Law No 1571/88, Greece adjusted the monopoly over the marketing of petroleum products to the extent that, at the time when the proceedings were instituted, private distribution companies were under an obligation to obtain 40% of their supplies from public refineries, whilst they were free to choose their own supplier as regards the remaining 60%.

In that regard Greece contends that it had to delay complete liberalization of trade in petroleum products (which was only achieved as from 1 January 1990) so as to ensure that public refineries had a minimum

volume of guaranteed outlets. In that way, public refineries were temporarily protected against competition from private refineries and from imports.

It can therefore be safely assumed that the rights in question had an adverse effect on trade since, in the absence of such rights, distribution companies would have obtained their supplies at least in part from suppliers other than public refineries, and in particular from suppliers established in other Member States. It follows that, in this case, discrimination has occurred to the detriment of imported products, which undoubtedly falls within the scope of both Article 30 and Article 37.

26. In its defence, however, Greece contended that the barrier to trade was justified by the same requirements of public security as those recognized by the Court in its noted judgment in Case 72/83 *Campus Oil* [1984] ECR 2727, a case which also involved an assessment of the compatibility with the Treaty of legislation requiring companies engaged in the distribution of petroleum products to obtain a given percentage of their supplies from a public refinery. In particular, according to the Greek Government, the special right enjoyed by public refineries was necessary even in this case in order to ensure their survival and therefore to guarantee that, in the event of an energy crisis, the country's national refining capacity would be sufficient to meet its essential oil requirements.

27. Notwithstanding the awkward nature, made abundantly clear by the Court in *Campus Oil*, of the issues inherent in secure supplies of energy, it does not seem to me that in the case under consideration it is possible automatically to apply the solution adopted by the Court in that judgment. In this case, even on the assumption that without the special rights in question public refineries would have had to close down (which would seem to be contradicted by the fact that those rights had already been definitively abolished as from 1 January 1990), the fact remains that private refineries in Greece were in any event in a position to guarantee production in excess of the country's essential energy requirements (even including as part of those requirements the need to supply such armed forces as may be involved in an international crisis).

In the light of those considerations and in view of the need for a restrictive interpretation of the exceptions referred to in Article 36 — a need promptly reaffirmed in the *Campus Oil* judgment as well — I do not consider that in this case there were any requirements of public security such as to justify, at the time when the proceedings were instituted, the obligation imposed on distribution companies to obtain 40% of their supplies from public refineries. This complaint is therefore well founded and it is unnecessary to consider, in general terms, whether the exceptions referred to in Article 36 also apply to the national measures and practices covered by Article 37.

(c) *The import and export procedures*

28. The Commission has contested the compatibility with Articles 30, 34 and 37 of the Treaty of certain procedures introduced

by the legislation in question, according to which imports and exports of petroleum products are subject to a system of official authorization.

Greece has contended that the nature of those formalities was misunderstood by the Commission, inasmuch as it is not authorization but mere notification which is required in order to ensure that oil transactions with foreign countries are monitored for statistical purposes.

The wording of the relevant provisions supports the Greek Government's argument which, moreover, has not been contradicted by any other information furnished by the Commission.

29. That being so, however, it must be pointed out that in the light of the Court's case-law (see the judgment in Case 68/76 *Commission* v *France* [1977] ECR 515), even a mere formality not involving the grant of authorization at the discretion of the competent authority constitutes a measure having equivalent effect on account of the delay it involves and the dissuasive effect it has upon trade.

30. Moreover, and even though in principle it cannot be denied that specifically in the case of oil transactions certain kinds of control more thorough than those required for other products may be essential and that it may therefore be necessary to seek from traders, without either Article 30 or Article 34 coming into play, more detailed information than that resulting from normal customs declarations, it must be pointed out that in this case Greece has failed to establish the existence of such requirements. It follows that this complaint must also be considered well founded, albeit with reference only to Articles 30 and 34, since the procedures in question do not in themselves fall within the scope of Article 37 once the exclusive marketing rights considered above have been declared unlawful.

(d) *The marketing requirements*

31. The Commission claims that the following requirements for marketing petroleum products, imposed by the legislation in question on distribution companies, are incompatible with Article 30: the submission of annual procurement programmes for petroleum products, the establishment of a system of annual marketing quotas and the requirement of a minimum transport capability for the products in question.

32. Whilst denying that the measures in question constitute an infringement of Article 30, Greece does not rely on Article 36.

33. With regard to the marketing quotas and the procurement programmes, it is undisputed that these were measures designed to share out amongst distribution companies the percentage of supplies corresponding to the unadjusted part of the State marketing monopoly. Once the illegality of that monopoly is established — it was abolished, moreover, as from 1 January 1990 — those requirements imposed on distribution companies for the exercise of the right to trade within the State would seem to be largely divested of their

economic and legal functions. However, that is not in itself decisive, since it still leaves unanswered the question whether the measures concerned may, independently of their functional link with the State marketing monopoly, be regarded as distinct infringements.

34. In that regard it seems to me that notwithstanding the fact that the undertakings concerned may on certain conditions depart from the quantities fixed by the State in respect of sales and supplies, the system concerned in any event introduces a degree of rigidity in so far as it prevents traders from being entirely at liberty to determine their volume of business. It is therefore reasonable to assume that those measures have a restrictive effect on import patterns and pursue, moreover, an aim which is unjustified in the light of Community law since, as Greece has acknowledged, they were introduced for the sole purpose of ensuring compliance with the State's exclusive marketing rights. In those circumstances, I consider that the marketing quotas and procurement programmes in question are incompatible with Article 30.

35. Conversely, the requirement of a given transport capability does not in my view constitute an infringement of that article. That requirement applies to the distribution of domestic and imported products alike. Furthermore, no evidence has been adduced suggesting the existence of a foreseeable and plausible connection between that measure and the trend with regard to intra-Community trade. Finally, it constitutes a provision adopted as part of a set of rules governing commercial distribution which meets a genuine need that is by no means incompatible with the general objectives laid down by Community law, namely to ensure continuity of supplies throughout the national territory.

36. In conclusion, therefore, I consider that the measure in question is in conformity with Article 30 inasmuch as it does not give rise to any foreseeable restrictive effect on trade (in the light of what was laid down by the Court in its recent judgment in Case C-69/88 *Krantz* [1990] ECR I-583) or in any event inasmuch as, even if it does have such an effect — an assumption which must, in my view, be firmly rejected — the restrictions to which it gives rise do not (as the Court ruled most recently in its judgment in Case C-145/88 *Torfaen Borough Council* [1989] ECR 3851) 'exceed the effects intrinsic to commercial rules'.

(e) *The system of prices*

37. As I pointed out in connection with the question of admissibility, the complaints which the Commission raised only in its reply must, in my view, be regarded as wholly unconnected with the subject-matter of this application. I need not therefore examine them in substance. With regard to the complaint formulated in the application under (c) concerning the system of prices, it should not in any event be treated as a distinct allegation. Finally, as for the complaints under (a) and (b) in the application, the only ones whose admissibility may to some extent be open to doubt, they must be regarded as manifestly unproven precisely on account of their utterly vague and general character.

38. In the light of those considerations I suggest that the Court:

(1) declare inadmissible:

(i) the complaint relating to the possibility retained by the Greek Government of revoking the abolition of the exclusive marketing rights for petroleum products;

(ii) the complaints relating to the system of fixing maximum prices for petroleum products, formulated in the application under (a), (b) and (c);

(2) declare well founded:

(i) the complaints relating to the exclusive import and marketing rights for finished and semi-finished petroleum products;

(ii) the complaints relating to the procedures for importing and exporting those products;

(iii) the complaint relating to the obligation for distribution companies to abide by the system of annual marketing quotas and to submit annual procurement programmes;

(3) dismiss the remaining complaints in the application;

(4) order the parties, each of whom has been partially unsuccessful in its submissions, to bear their own costs.