OPINION OF ADVOCATE GENERAL COSMAS
delivered on 9 July 1998 *

I — Introduction

1. The question referred to the Court in the present case by the Uudenmaan Lääninoikeus (Uusimaa Provincial Administrative Court) relates to the interpretation of Article 99 of the Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the adjustments to the Treaties on which the European Union is founded [1] (hereinafter 'the Act of Accession'), as amended by the Decision of the Council of 1 January 1995 adjusting the instruments concerning the accession of new Member States to the European Union. [2]

II — Legal background

A — *The relevant Community provisions*

2. In accordance with Article 3 of the Treaty establishing the European Community (hereinafter 'the Treaty'), the activities of the Community include, *inter alia*:

' (a) the elimination, as between Member States, of customs duties and quantitative restrictions on the import and export of goods, and of all other measures having equivalent effect;

(b) ...

(c) an internal market characterised by the abolition, as between Member States, of obstacles to the free movement of goods, persons, services and capital;

...'

3. Part Three of the Treaty, 'Community Policies', contains in Title I (Articles 9 to 37) a set of provisions to ensure the free movement of

* Original language: Greek.
1 — OJ 1994 C 241, p. 21.
2 — OJ 1995 L 1, p. 1.

goods within the Community customs territory, in other words the first of the four fundamental freedoms enshrined in the Treaty.

4. Article 9 of the Treaty states that:

'1. The Community shall be based upon a customs union which shall cover all trade in goods and which shall involve the prohibition between Member States of customs duties on imports and exports and of all charges having equivalent effect, and the adoption of a Common Customs Tariff in their relations with third countries.

2. The provisions of Chapter 1, Section 1, and of Chapter 2 of this Title shall apply to products originating in Member States and to products coming from third countries which are in free circulation in Member States.'

5. Article 10(1) of the Treaty sets out the conditions under which products coming from a third country are considered to be in free circulation in a Member State. Specifically, that article states that:

'1. Products coming from a third country shall be considered to be in free circulation in a Member State if the import formalities have been complied with and any customs duties or charges having equivalent effect which are payable have been levied in that Member State, and if they have not benefited from a total or partial drawback of such duties or charges.'

6. In addition, Article 12 of the Treaty provides that:

'Member States shall refrain from introducing between themselves any new customs duties on imports or exports or any charges having equivalent effect, and from increasing those which they already apply in their trade with each other.'

7. Article 13 of the Treaty provides that Member States are progressively to abolish during the transitional period both customs duties on imports and any charges having an equivalent effect to customs duties on imports, in force between Member States. [3]

3 — Lastly, Article 16 of the Treaty provides that Member States are to abolish between themselves customs duties on exports and charges having equivalent effect by the end of the first stage at the latest.

8. Article 2 of the Act of Accession states that:

'From the date of accession, the provisions of the original Treaties and the acts adopted by the institutions before accession shall be binding on the new Member States and shall apply in those States under the conditions laid down in those Treaties and in this Act.'

9. It therefore follows from this article that pre-existing Community law is an '*acquis communautaire*' for the new Member States and that, consequently, the entire body of rules of Community law has full effect in the new Member States of the Union and binds those States under the conditions laid down in the Treaties and by the Act of Accession.

10. Article 98 of the Act of Accession states that:

'The basic duty used for the moves towards alignment on the Common Customs Tariff provided for in Article 99 shall, for each product, be the duty actually applied by the Republic of Finland on 1 January 1994.'

11. Finally, Article 99 of the Act of Accession is worded as follows:

'The Republic of Finland may maintain, for a period of three years after accession, its customs tariff applicable to third countries for the products referred to in Annex XI.

During this period, the Republic of Finland shall reduce the difference between its basic duty and the duty in the Common Customs Tariff in accordance with the following timetable:

— on 1 January 1996, each difference between the basic duty and the CCT duty shall be reduced to 75%;

— on 1 January 1997, each difference between the basic duty and the CCT duty shall be reduced to 40%.

The Republic of Finland shall apply in full the Common Customs Tariff from 1 January 1998.'

B — *The national legislation*

12. As regards the importation from another Member State of the European Community of goods on which customs duties have already

been levied under Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Commons Customs Tariff, [4] Paragraph 1 of the Finnish Law 1255/94 (Laki eräistä väliaikaisista tulleista) of 16 December 1994 on certain temporary customs duties provides that:

'On the importation of goods mentioned in the schedule to this law other than Community goods, customs duty shall be charged in accordance with that schedule.

On the importation of goods from elsewhere in the European Community in respect of which customs duty has already been charged under Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Commons Customs Tariff and on their importation from a non-member country into the customs territory of the European Community, duty shall be charged at the rate of the difference between the duty specified in the schedule to this law and the duty levied on import into the Community.

...'

13. Paragraph 2 of that law states, *inter alia*, that the import of goods referred to in Paragraph 1(2) must be declared to the customs authorities under the procedures laid down in detail by decree.

14. Lastly, Paragraph 3 thereof states that:

'This law shall enter into force on a date to be laid down by decree and shall remain in force until the end of 1997. It shall not apply to goods which are in free circulation or ought to have been declared for customs clearance prior to its entry into force.'

15. Law 1255/94 came into force on 1 January 1995 and was intended to remain in force until the end of 1997.

16. Finally, Paragraph 1(2) of that law was repealed by Law 413/96 of 14 June 1996, [5] which entered into force on 1 July 1996.

4 — OJ 1987 L 256, p. 1.

5 — Law amending Paragraph 1 of and the schedule annexed to the Law on certain temporary customs duties (Laki eräistä väliaikaisista tulleista annetun lain 1 §: n ja liitteenä olevan luettelon muuttamisesta).

III — Facts

17. KappAhl Oy, a company incorporated under Finnish law, imported into Finland from Sweden, from 29 March 1995 to 26 June 1996, textile and clothing products originating in countries outside the European Community. The appropriate customs duties payable under Regulation No 2658/87 were levied on the products on import into Sweden and they were in free circulation in Sweden.

18. On the import of those products into Finland, the Lahden Tullikamari (Lahti Customs Office) determined that KappAhl Oy was to pay the difference between the duty referred to in the schedule to Law 1255/94 and the duty charged at the time of import into the Community, in this case in Sweden. KappAhl Oy had declared the products to the customs authority.

19. KappAhl Oy appealed against the customs decisions of the Lahden Tullikamari. It asked for a total of 1 056 decisions by the Lahti Customs Office, charging duty for the period 29 May 1995 to 9 July 1996, to be set aside. It also asked for duties totalling FIM 6 911 586 to be refunded with interest at the prescribed rate.

20. Before the national court, KappAhl Oy submitted that Paragraph 1(2) of Law 1255/94 manifestly conflicted with Articles 9, 12 and 13 of the EC Treaty and that the provision at issue was not based on any derogation for the transitional period.

21. In precise terms, KappAhl Oy contended that, as a provision introducing a derogation from the fundamental principle of the free movement of goods, Article 99 of the Act of Accession was to be interpreted narrowly. Neither the wording nor the purpose of that article allowed Finland to impose customs duties on goods in free circulation in the Community after being imported into another Member State. KappAhl Oy further contended that, because Articles 9, 12 and 13 of the Treaty have direct effect, the Finnish authorities are obliged to apply those primary rules of law and, correlatively, not to apply lower-ranking provisions conflicting with them, such as those contained in Paragraph 1(2) of Law 1255/94.

22. The Finnish authorities, however, contended in the national court that the wording of Article 99 of the Act of Accession was unclear, if not to say unfortunate. They argued that customs duties do not apply to countries but to goods and that the article could be regarded as referring equally well to goods imported from non-member countries as to goods originating in them.

23. In the view of the Ministry of Finance, the interpretation adopted by Finland is supported by the history of negotiations prior to accession. It also submits that if regard is had to the internal market which came into force from the beginning of 1993, it may be regarded as clear that the derogation obtained by Finland would not protect sensitive Finnish industries if duty could not be levied also on goods imported via another Member State. If by importing goods via another Member State it were possible to avoid the charging of Finland's so-called additional duty, clearly goods would not be imported into Finland directly from third countries.

24. The order for reference also revealed that, in a letter dated 19 December 1995, the Commission had challenged the legislative measure adopted by Finland. The letter stated that Article 99 of the Act of Accession did not permit a derogation from the general principle of the free movement of goods as introduced by the contested provision of Paragraph 1(2) of Law 1255/1994.

25. The Finnish authorities replied that they did not accept the Commission's point of view but at the same time, however, for practical reasons, they had decided to repeal the contested provision with effect from 1 July 1996.

IV — The question submitted by the national court

26. Having doubts about the interpretation of Article 99 of the Act of Accession, the Uudenmaan Lääninoikeus decided to stay proceedings and request a preliminary ruling by the Court under Article 177 on the following question:

'Is Article 99 of the Act of Accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden to be interpreted as referring also to goods originating in non-member countries which have been in free circulation in another Member State of the European Community and are imported from there into Finland?'

V — Substance

27. KappAhl Oy asserts that, as a provision introducing a derogation to the fundamental principle of the free movement of goods, Article 99 of the Act of Accession is to be interpreted narrowly. Neither the wording nor the purpose of that article allowed Finland to impose customs duties on goods in free circulation in the Community when imported into another Member State. KappAhl Oy concludes that the contested provi-

sion of Paragraph 1(2) of Law 1255/94 is contrary to Articles 9, 12 and 13 of the Treaty and Article 99 of the Act of Accession.

28. The Finnish Government and the Commission consider that the wording of Article 99 of the Act of Accession is unclear and so it is not possible to ascertain for certain whether the derogation introduced relates equally to goods imported into Finland directly from non-member countries as to goods simply originating from non-member countries which are in free circulation in the Community.

29. In the opinion of the Finnish Government, it is evident from the wording of that article, taken together with Article 98 which relates to the basic duty imposed on each product, that, since customs duties do not apply to countries but to products, goods originating in non-member countries in free circulation in the Community are subject when imported into Finland to the additional duty laid down by Law 1255/94.

30. The Commission, despite the ambiguity of the wording of Article 99, which it notes, disputes the Finnish Government's viewpoint, on the basis of the derogating nature of the provision at issue, which is therefore to be interpreted narrowly, and of its intention and an analysis of the drafting history of the Act of Accession. It concludes that Article 99 of the Act of Accession does not concern goods from non-member countries that are already in free circulation in the Community and are then imported into Finland.

31. The first point to note is that the Act of Accession (Article 2) is based on the principle that the provisions of Community law (primary and secondary) apply *ab initio* and *in toto* to Finland, subject of course to the transitional provisions provided for elsewhere in that same Act of Accession. [6]

32. I further consider that, under Articles 9, 12, 13 and 16 of the Treaty, the customs union on which the Community is based has two basic elements: the first is the prohibition, of a 'general and absolute' nature, [7] as between Member States, of import and export duties and all charges having equivalent effect. This element is supplemented by the provisions on the elimination of all forms of quantitative restrictions as between Member States (Articles 12 to 17 and 30 to 37 of the Treaty). These provisions enshrine the first of the four fundamental freedoms of the Community, the free movement of goods. The second basic element of the customs union lies in the adoption of a Common Customs Tariff applicable to trade between Member States and non-member countries (Articles 18 to 29). A clear distinction must thus be drawn between

6 — See, for example, Case 258/81 *Metallurgiki Halyps* v *Commission* [1982] ECR 4261, paragraph 8.

7 — See, for example, Joined Cases C-485/93 and C-486/93 *Maria Simitzi* [1995] ECR I-2655, paragraph 14.

these two elements in the light of which the customs union is examined, as KappAhl Oy rightly states.

33. The prohibition as between Member States of import and export duties and all charges having equivalent effect applies equally to products originating from Member States and to products originating from non-member countries that are in free circulation in Member States: in accordance with a consistent line of decisions of the Court, [8] the latter products are 'definitively and wholly' assimilated to products originating in Member States.

34. I believe that it is in the light of this fundamental principle that Article 99 of the Act of Accession should be interpreted.

35. In the first place, it is clear from the literal interpretation of that article that it contains only a temporary derogation to application of the Common Customs Tariff in trade between a Member State and non-member countries. The derogation only concerns certain products originating in third countries, referred to in Annex XI, and also cannot extend beyond a period of three years after the accession of Finland to the Communities.

36. However, Article 99 provides for no derogation from the principle of the prohibition on maintaining or introducing new customs duties as between the Member States. In other words, it does not concern the free movement of goods within the internal market, that is, inside the customs territory of the Community. So essential a derogation from the principle — fundamental to the common market — of the prohibition as between the Member States of customs duties and charges of equivalent effect, a principle applicable to all products and goods, would have to be expressly and unambiguously laid down in the actual text of Article 99 of the Act of Accession and would have to be strictly interpreted. [9]

37. Moreover, that is the conclusion reached if we apply the rules of interpretation already laid down by the Court with regard to derogations provided for in the Acts of Accession. The case-law of the Court states that the derogations (a) must be expressly laid down, [10]

8 — See, for example, Case 41/76 *Criel née Donckerwolcke and Schou* v *Procureur de la République and Director-General of Customs* [1976] ECR 1921, paragraphs 14 and 15; Case 288/83 *Commission* v *Ireland* [1985] ECR 1761, paragraph 24. See also Case C-83/89 *Openbaar Ministerie and Minister van Financiën* v *Houben* [1990] ECR I-1161, paragraphs 9 and 10.

9 — See, for example, Case C-272/95 *Bundesanstalt für Landwirtschaft und Ernährung* v *Deutsches Milch-Kontor* [1997] ECR I-1905, paragraph 35, and the earlier judgments in Joined Cases 90/63 and 91/63 *Commission* v *Luxembourg and Belgium* [1964] ECR 625 and Joined Cases 80/77 and 81/77 *Commissionnaires Réunis and Another* v *Receveur des Douanes* [1978] ECR 927, paragraph 24.

10 — See, for example, *Metallurgiki Halyps* v *Commission*, cited above in footnote 6 (paragraph 8).

(b) must be strictly interpreted, [11] and (c) must be interpreted in such a way as to facilitate the achievement of the objectives of the Treaty and the application of all its rules. [12]

38. I consider that the derogation contained in Article 99 concerns products from non-member countries imported directly into Finland, and hence not products originating in Member States, to which are assimilated products originating in non-member countries that are in free circulation in one or other of the Member States.

39. Since the provisions of the Act of Accession must be interpreted having regard to the foundations and the system of the Community, as established by the Treaty, [13] I believe that the wording of the provision is clear and that it should be strictly interpreted. Consequently, its scope should not be extended to products originating in non-member countries that are already in free circulation in the Community.

40. This conclusion is also confirmed by the fact that products originating in Member States and products coming from third countries that are in free circulation in Member States are completely assimilated to each other under Article 9(2), with regard to the application *inter alia* of Article 12, as moreover is the settled case-law of the Court. [14]

41. In my opinion, only the adoption of a strict interpretation of Article 99 of the Act of Accession is consistent with the objective of achieving the common market and ensuring the free movement of goods. In other words, that interpretation is consistent with the achievement of the objectives of the Treaty, the application of all its rules and the ratio of the transitional arrangements introduced by that article, [15] as will be examined below.

42. A systematic interpretation of Article 99 further confirms this conclusion. Thus I note that that provision is part of Chapter 4 of the Act of Accession, entitled 'External relations including customs union' (Articles 97 to 105). That chapter contains, *inter alia*, specific

11 — See, for example, Case 231/78 *Commission* v *United Kingdom* [1979] ECR 1447, paragraph 16; Case 77/82 *Peskeloglou* v *Bundesanstalt für Arbeit* [1983] ECR 1085, paragraph 12; Case 58/83 *Commission* v *Greece* [1984] ECR 2027, paragraph 9; and Case 11/82 *Piraiki-Patraiki* v *Commission* [1985] ECR 207, paragraph 26.

12 — Joined Cases 194/85 and 241/85 *Commission* v *Greece* [1988] ECR 1037, paragraphs 19 and 20, which concerned the principle of the free movement of agricultural products.

13 — See, for example, *Commission* v *United Kingdom*, cited above in footnote 11 (paragraph 12).

14 — See, *inter alia*, *Criel née Donckerwolcke* v *Procureur de la République*, cited above in footnote 8 (paragraphs 14 and 15).

15 — The Court has repeatedly interpreted provisions of an Act of Accession introducing derogations from one or other principle, by seeking to make that interpretation consistent with the ratio of the transitional arrangements introduced; see, for instance, the judgments in Case 9/88 *Lopes da Veiga* v *Staatssecretaris van Justitie* [1989] ECR 2989, paragraph 10, on the freedom of workers; Case C-113/89 *Rush Portuguesa* v *Office National d'Immigration* [1990] ECR I-1417, paragraph 13, on the freedom to provide services. See also the judgment in Case 305/87 *Commission* v *Greece* [1989] ECR 1461, paragraphs 15 to 27, on the freedom of workers.

arrangements concerning the application by Finland of international agreements concluded by the Community with third countries. [16]

43. The only provision of Chapter 4 that does not concern external relations is Article 101, under which Finland may open a yearly duty free tariff quota for styrene [17] until 31 December 1999. However, as stated previously, in this instance this is a specific provision which, in contrast to Article 99, expressly lays down certain restrictions on application of the derogation in order not to violate the principle of the free movement of goods. [18] There was also in this case a specific provision relating to the export of certain products from Finland to the other Member States. [19]

44. The Finnish Government then puts forward a series of arguments based on a teleological interpretation of Article 99 of the Act of Accession. First of all it contends that the derogation laid down in Article 99 obtained by Finland was intended to facilitate the adaptation of sensitive industries during accession and to give Finland the opportunity to dismantle its previous customs protection in stages. [20] That derogation would not protect those sensitive industries if customs duty could not be levied also on goods originating from third countries imported via another Member State. If by importing goods via another Member State it were possible to avoid the imposition by the Finnish authorities of the additional duty, clearly goods would never be imported into Finland directly from third countries.

45. The Finnish Government also contends that it is possible for goods coming from third countries and destined for Finland to be customs-cleared in another Member State and then imported into Finland. It states that this practice would lead to applicable disruptions of trade and distortions of competition and would be contrary to the aim of the single

16 — Articles 100 and 102 to 105 of the Act of Accession.

17 — Type of hydrocarbon used in the composition of many plastic materials.

18 — Article 101(1) states that the Republic of Finland may open a yearly duty free tariff quota for styrene of 21 000 tonnes until 31 December 1999, provided that the goods in question (a) are released for free circulation in the territory of Finland and are consumed there or undergo processing conferring Community origin there, and (b) remain under customs supervision pursuant to the relevant Community provisions on end-use.

19 — Article 101(2) and (3) states that the provisions of paragraph 1 are to be applicable only if a licence issued by the relevant Finnish authorities stating that the goods in question fall within the scope of the provisions contained in paragraph 1 is submitted in support of the declaration of entry for release for free circulation. Furthermore, the Commission and the competent Finnish authorities are to take whatever measures are needed to ensure that the final consumption of the product in question, or the processing by which it acquires Community origin, takes place in the territory of Finland.

20 — As the Finnish Government also states (point 11 of its written observations), the duty levied on some products originating in third countries was in fact 20% higher than under the Common Customs Tariff.

market, namely to ensure that all traders have the same conditions of competition. [21]

46. With regard to that question, on the assumption that Article 99 of the Act of Accession does not concern goods originating in third countries that are in free circulation in the Community and which are then imported into Finland, the Commission acknowledges that its proposed interpretation fits in with the logic of bringing the customs tariff imposed by Finland into line with that of the Community. It states that Article 99 laid down, for a transitional period, the maximum difference between the two tariffs that Finland was expected to apply from a cost-benefit viewpoint. Slight differences between the two tariffs are likely to prevent deflection of traffic, while protecting sensitive industries and encouraging them to adapt quickly to the new legislative framework.

47. In my view, the appreciable increase in the risk of 'deflection of traffic' that arises because, after its accession to the Communities, Finland can no longer carry out checks at the internal borders of the Community, is not sufficient to warrant the imposition of the additional duty at issue, levied as a national duty, because the imposition of that duty is in direct conflict with a fundamental principle of the Treaty.

21 — The Finnish Government explains (in point 13 of its written observations) that, without a uniform external tariff applying to third countries, it is not possible to introduce a prohibition of duty on the internal market, which is the second aspect of the customs union, without disrupting trade.

48. I also consider that, in this case, there is no infringement of the principle of the equality of treatment of traders by reason of the difference in treatment, with regard to customs duties, as between products from third countries imported directly into Finland and products already in free circulation in another Member State and then imported into Finland. What we have in the present case is different treatment of different situations, which is not forbidden under Community law.

49. The Finnish Government further attempts to support its viewpoint by means of an historical interpretation of Article 99. Thus, it contends that the interpretation that it advocates is supported by the negotiating history of its accession to the Communities. When negotiations with the Commission were started, Finland's aim was to have border controls maintained for a certain period. However, it did not succeed, and so the new Member States agreed to abolish border controls with respect to the other Member States.

50. Finally, the Finnish Government relies on a joint declaration made by the then Member States, which included a condition stipulating that application of those transitional customs duties did not entitle control measures to be introduced at internal/intra-Community borders. This condition would have been redundant had Finland's right to impose duty at a

higher rate than under the Common Customs Tariff only covered products imported directly into Finland from third countries.

51. KappAhl Oy contends that the information on the history of the accession negotiations, the stances taken by the parties involved during those negotiations and the personal views of Commission officials on the matter, as relied on by the Finnish Government, are sources that are available only to the Finnish Government. Therefore, as those elements are not publicly available, they could not be admissible for the purposes of interpreting Article 99 of the Act of Accession as that would infringe the principle of 'equality of arms' in court proceedings, as enshrined in Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

52. The arguments of the Finnish Government cannot be accepted.

53. I believe that the elements that relate to information on the history of negotiations between Finland and the Community are inadmissible for the purposes of interpreting any provisions of the Act of Accession where no reference at all is made to them in the text of the provision requiring interpretation. In that respect, it is sufficient to recall that the Court has repeatedly held that declarations recorded in Council minutes in the course of preparatory work leading to the adoption of a measure 'cannot be used for the purpose of interpreting that [measure] where no reference is made to the content of the declaration in the wording of the provision in question. The declaration therefore has no legal significance.' [22]

54. The Commission informed the Court that during the negotiations the permanent representation of Finland asked for the introduction of a Community procedure to deal with the risk of deflection of traffic, but that no such procedure had been introduced. Subsequently, as Finland's request had not been accepted, the Permanent Representation expressly asked to be allowed to levy a tax on products originating in third countries imported into Finland via the territory of another Member State equal to the difference between the national tariff and the Community tariff. However, as the Commission rightly states, the existence of a different customs tariff would be inextricably linked to control systems and would necessarily be accompanied by the introduction of a safeguard mechanism. Yet the Community did not grant Finland such a wide-ranging derogation.

55. Moreover, the right to maintain a different tariff treatment for certain products

22 — See, in particular, Joined Cases C-197/94 and C-252/94 *Société Bautiaa and Société Française Maritime* [1996] ECR I-505, paragraph 51; Case C-292/89 *R* v *Immigration Appeal Tribunal* ex parte *Antonissen* [1991] ECR 745, paragraph 18; and the earlier judgment in Case 143/83 *Commission* v *Denmark* [1985] ECR 427, paragraph 13.

imported into Finland after having been released into free circulation in another Member State is not expressly and unambiguously set out either in the Commission's initial reply to the Permanent Representation's request or in the text of the Act of Accession.

56. On the other hand, in October 1993, the Community adopted the following common position: [23] 'The Community can agree to Finland maintaining for three years after accession its customs duties for the products referred to in the Annex, for which the rates are higher than those resulting under the CCT, provided that this does not involve any checks at internal frontiers. The Community also asks Finland to consider the possibility of using the transitional period to carry out a gradual alignment of the above rates on the CCT'. [24]

57. That common position is now reflected in Article 153 of the Act of Accession, which states:

'In order not to hamper the proper functioning of the internal market, the enforcement of the new Member States' national rules during the transitional periods referred to in this Act shall not lead to border control between Member States.'

58. Moreover, in so far as the Community has expressly rejected the introduction of the Community control system proposed by Finland during the accession negotiations, the Commission concludes that the only real alternative seems to be either to introduce controls at internal borders, a solution expressly rejected by the Community, or to risk deflections of traffic.

59. I believe, however, that the risk of deflection of traffic is ultimately to be considered as less serious than the risk of opening the bag of Aeolus and blowing uncheckedly off course the observance of a fundamental freedom — the free movement of goods — by broadly interpreting Article 99 of the Act of Accession, a provision which, because of its derogating nature, is to be interpreted narrowly. A wide interpretation could act as a Trojan horse, circumventing the fundamental principle of

23 — The successive letters from the Permanent Representation of Finland, dated 10 May 1993 and 1 June 1993, appear in Annexes III and IV to the Commission's written observations. The common position of the Community, as cited above, was adopted by the Permanent Representatives Committee at its meeting of 27 October 1993. That document appears in Annex IV to the Commission's written observations.

24 — This is, moreover, also what emerges from letter No 14923 of 15 December 1995 sent by the relevant department of the Commission to the Permanent Representation of Finland to the Communities, in which the Commission informed the Finnish Government that Article 99 of the Act of Accession did not permit such a derogation from the fundamental principle of the free movement of goods and asked it to take the necessary steps to cease breaching, by maintaining in force Law 1255/94, its obligations under Article 9 of the Treaty. In a letter dated 25 March 1996, the Finnish Government stated that it did not share the Commission's viewpoint regarding the interpretation of Article 99; however, for practical reasons, it had decided to repeal the contested provision of Law 1255/94.

Community law of the free movement of goods, as enshrined in the Treaty.

60. Therefore, interpreted in the light of Articles 9, 10, 12 and 13 of the Treaty, Article 99 of the Act of Accession cannot justify levying or maintaining a customs duty such as that provided for under Finnish Law 1255/94 on goods originating from third countries that have been in free circulation in another Member State of the European Community and are then imported into Finland.

VI — Conclusion

61. On the basis of the above analysis, it is suggested that the Court give the following answer to the question put by the Uudenmaan Lääninoikeus:

Article 99 of the Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the adjustments to the Treaties on which the European Union is founded, as amended by the Decision of the Council of 1 January 1995 adjusting the instruments concerning the accession of new Member States to the European Union, must be interpreted as not referring to goods originating in third countries which have been in free circulation in another Member State of the European Community and are imported from there into Finland.