only imported cars, will choose either from another range of foreign-manufactured cars or from a range of cars which includes both those manufactured domestically and those manufactured abroad

REPORT FOR THE HEARING
delivered in Case C-132/88 *

I — Facts and legislative background

A — *The national legislation*

The Greek legislation on the taxation of private cars comprises two taxes, the special consumption tax and the single supplementary special tax

The detailed arrangements for the special consumption tax in force when the present action was brought derive from an amendment made in 1986 (Article 43 of Law No 1676/1986, Greek Official Journal A 204) to Law No 363/1976 of 22 June 1976 on the taxation of private cars (Greek Official Journal A 152) The tax is payable upon the purchase or importation of a car It has two components

The first component varies according to the cylinder capacity of the car It is calculated as follows: DR 20 per cc for cars with a cylinder capacity of up to 1 200 cc; DR 26 per cc for cars with a cylinder capacity of 1 201 to 1 800 cc; DR 38 per cc for cars with a cylinder capacity of more than 1 800 cc This first component is subject to a ceiling of DR 100 000

The second component of the special consumption tax is obtained by the following calculation:

$$\frac{\text{first component} \times 4 \times V}{100\,000}$$

where V is the pre-tax price of the car less DR 25 000

The sum of the two components gives, for the special consumption tax, amounts

* Language of the case: Greek

corresponding to the following percentages of the pre-tax price:

					(%)
			600	cc:	48
from	601	to	700	cc:	56
from	701	to	800	cc:	64
from	801	to	900	cc:	72
from	901	to	1 000	cc:	80
from	1 001	to	1 100	cc:	88
from	1 101	to	1 200	cc:	96
from	1 201	to	1 300	cc:	135 2
from	1 301	to	1 400	cc:	145 6
from	1 401	to	1 500	cc:	156
from	1 501	to	1 600	cc:	166 4
from	1 601	to	1 700	cc:	176 8
from	1 701	to	1 800	cc:	187 2
from	1 801	to	1 900	cc:	273 7
from	1 901	to	2 000	cc:	288 9
from	2 001	to	2 100	cc:	304 1
from	2 101	to	2 200	cc:	319 3
from	2 201	to	2 300	cc:	334 5
from	2 301	to	2 400	cc:	349 7
from	2 401	to	2 499	cc:	364 9
	2 500	and	above:		400 0

Article 3 of Law No 363/1976 of 22 June 1976 provides, in addition, for a single supplementary special tax payable upon the first registration of the car That tax is DR 100 per cc for cars with a cylinder capacity of up to 1 200 cc For cars with a cylinder capacity of 1 201 to 1 800 cc it is DR 100 per cc for the first 1 200 cc and increases by DR 200 for each additional 100 cc For cars with a cylinder capacity of over 1 800 cc, it is DR 150 per cc for the first 1 200 cc and DR 300 per cc above 1 200 cc

The amount of the single supplementary special tax is thus as follows:

(in DR)

			600	cc:	60 000
from	601	to	700	cc:	70 000
from	701	to	800	cc:	80 000
from	801	to	900	cc:	90 000
from	901	to	1 000	cc:	100 000
from	1 001	to	1 100	cc:	110 000
from	1 101	to	1 200	cc:	120 000
from	1 201	to	1 300	cc:	140 000
from	1 301	to	1 400	cc:	160 000
from	1 401	to	1 500	cc:	180 000
from	1 501	to	1 600	cc:	200 000
from	1 601	to	1 700	cc:	220 000
from	1 701	to	1 800	cc:	240 000
			1 801	cc:	360 300
			1 802	cc:	360 600

B — *The pre-litigation procedure*

By letter of 16 September 1986 the Commission informed the Hellenic Republic that it regarded the Greek system of taxation applicable to private cars as contrary to Article 95 of the Treaty

It first pointed out that in Greece only cars of a cylinder capacity of 1 600 cc or less were produced

It then pointed out that in its judgment of 9 May 1985 in Case 112/84 *Humblot* [1985] ECR 1367, the Court had stated that, in order to be free of any discriminatory or protective effect, a progressive system of taxation of cars had to embody balanced differentials and be based on objective criteria, so as not to have a greater impact on imported cars, in particular those from other Member States, than on domestically produced cars

The Commission considered that neither the special consumption tax nor the single supplementary special tax satisfied those requirements

In the first place, the progression of the tax is not balanced Whilst the special consumption tax increases by an average of 11 6% per band of 100 cc up to 1 800 cc, it suddenly increases by 86 5% beyond that threshold and then increases at an average rate of 15 2% for each 100 cc band As regards the single supplementary special tax, it increases by an average of DR 15 000 per 100 cc band up to 1 800 cc, increases suddenly by DR 120 000 beyond that limit and then increases by DR 30 000 per 100 cc

Moreover, no objective criterion justifies the steeper increase in taxation above 1 800 cc Cars of a cylinder capacity at or lower than that threshold and those with a larger cylinder capacity are 'similar' products, that is to say products which 'have similar characteristics and meet the same needs from the point of view of consumers' (judgment of 27 February 1980 in Case 169/78 *Commission* v *Italy* ('Taxation of spirits') [1980] ECR 385)

Finally, since Greece does not produce cars of a cylinder capacity of more than 1 600 cc, only imported cars, in particular those from other Member States, are caught by the sharper increase in taxation above 1 800 cc

Both the special consumption tax and the single supplementary special tax are, in the Commission's view, contrary to Article 95 of the Treaty

The Commission also criticizes the Hellenic Republic for favouring the purchase of second-hand cars of domestic manufacture, by means of Law No 363/1976 of 22 June 1976 Under that law, the taxable amount for imported second-hand cars is determined by deducting from the price of corresponding new cars 5% for each year of the age of the cars concerned, subject to a maximum permitted deduction of 20% That ceiling does not apply to second-hand cars of Greek manufacture Since the actual depreciation is much greater than that taken into account by the system providing for a ceiling, the taxable amount for imported second-hand cars is too high

The Commission called on the Hellenic Republic to submit its observations on those various complaints within a period of two months

On 15 December 1986, the Hellenic Republic replied that it contested the complaints made by the Commission

It contended that both the special consumption tax and the single supplementary special tax affected domestically produced cars and those manufactured abroad without distinction The criterion of cylinder capacity was objective The contested legislation was designed to discourage the purchase of large-engined cars because of the poor infrastructure of the Greek road network and to limit pollution It was also clear from the fact that imports of foreign cars have recently increased considerably that the Greek system of taxation has no protective effect

With respect to the special consumption tax, the Hellenic Republic stated that the increase in that tax became sharper not only above the 1 800 cc threshold but also above the 1 200 cc threshold Since most of the cars manufactured in Greece had a cylinder capacity of 1 300 cc, it was evident that that tax was not designed to protect domestic production It was also clear from information provided by a car manufacturer that the production of cars of a cylinder capacity exceeding 1 800 cc was planned to start in Greece in 1987

As regards the system for determining the tax basis for imported second-hand cars, the Hellenic Republic contended that it was necessary to place a ceiling on the deductions allowed by comparison with new cars in order to avoid fraud Furthermore, an unlimited decrease of 5% a year of the actual age of the cars concerned would have led to very low levels of tax, which would have encouraged a massive importation of second-hand cars Such cars presented safety risks and it was therefore legitimate to discourage their purchase

On 21 September 1987 the Commission issued a reasoned opinion in which it again set out the complaints mentioned in its earlier letter It claimed that the Hellenic Republic had provided no explanation to justify the sudden increase in the special consumption tax for cars with a cylinder capacity of 1 801 cc or more It was nevertheless incontestable that a car of a cylinder capacity of 1 799 cc and a car of 1 801 cc were similar products The increase in question could not therefore be objectively justified Furthermore, the Hellenic Republic's argument concerning its road network was invalid Finally, the forthcoming production of Greek cars with a cylinder capacity of over 1 800 cc was only a possibility

The Commission gave the Hellenic Republic a period of two months in which to reply to the reasoned opinion

On 30 November 1987 the Hellenic Republic replied that it adhered to the position expressed in its previous letter It also emphasized the following points If the purpose of the contested tax system had been to over-tax foreign cars, the Greek legislature would have chosen a differential threshold not of 1 800 cc but of 1 600 cc, since Greece produced no cars of a cylinder capacity above the latter figure Moreover, cars with a cylinder capacity of 1 800 cc or less and those with a cylinder capacity above that threshold were not similar products In Greece the latter cars were regarded as luxury products The Court had conceded in the judgment of 16 December 1986 in Case 200/85 *Commission* v *Italy* [1986] ECR 3953 (differential rates of value-added tax on diesel-engined cars), that it was neither arbitrary nor unreasonable to tax more heavily vehicles of more than a given cylinder capacity by reason of their being luxury products The Hellenic Republic added that it was reviewing the entire system of taxation of new and used private cars, particularly in view of the single market of 1992

On 10 May 1988, the Commission brought the present action

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry However, it decided to put certain questions to the parties The parties replied within the period notified to them

II — Conclusions of the parties

The Commission claims that the Court should:

(i) declare that by establishing and maintaining, in the form of the special consumption tax and the single supplementary special tax, a system of taxation which discriminates against new and used cars with a cylinder capacity in excess of 1 800 cc imported from other Member States, the Hellenic Republic has failed to fulfil its obligations under the first paragraph of Article 95 of the EEC Treaty;

(ii) order the Hellenic Republic to pay the costs

The Hellenic Republic contends that the Court should:

(i) dismiss the Commission's application in its entirety;

(ii) order the Commission to pay the costs

III — Submissions and arguments of the parties

The Commission claims that the special consumption tax and the single supplementary special tax are contrary to Article 95 of the Treaty because they are not based on objective criteria, they embody differentials which are not balanced and their impact on imported cars, particularly those from other Member States, is greater than on domestically produced cars It refers to the arguments put forward by it in the pre-litigation phase

The Commission also refers to the Opinion of Mr Advocate General Mischo in Case 200/85 *Commission* v *Italy*, cited above (differential rates of value-added tax on diesel-engined cars) The Advocate General considered that discriminatory or protective practices derived from a combination of three elements: the application of a (a) markedly higher rate of tax, which (b) marks a break or discontinuity with regard to the general taxation system to which the category of products concerned is subject and which (c) is charged solely on products imported from other Member States

Those three elements are, in the Commission's view, present in this case

In the first place, as from 1 800 cc, both the special consumption tax and the single supplementary special tax increase suddenly and by a considerable amount

Secondly, the increase applicable above 1 800 cc marks a discontinuity in the progression of the two taxes That increase is much greater than those applied below that threshold And then, above all, the highest rates of tax apply to the entire cylinder capacity of the cars concerned In a

balanced progressive system, by contrast, only the part of the cylinder capacity in excess of 1 800 cc should be subject to the higher rates and the capacity below that threshold should continue to be subject to the lower rates normally applicable to it

In the third place, it is undisputed that only imported cars, in particular those from other Member States, have a cylinder capacity in excess of 1 800 cc and are caught by the particularly high rates of tax It is of little importance that cars produced in Greece have a maximum cylinder capacity of 1 600 cc and not 1 800 cc since in the present case only foreign-produced cars are affected by the particularly high rates of tax The Commission refers in that connection to the Court's judgment of 17 September 1987 in Case 433/85 *Feldain* [1987] ECR 3521, in which it was held that 'a system of road tax in which the power rating for tax purposes is calculated in a manner which places vehicles imported from other Member States at a disadvantage has a discriminatory or protective effect within the meaning of Article 95 of the Treaty'

The Commission then deals with various arguments raised by the Hellenic Republic

As regards the classification as luxury products of cars of a cylinder capacity of more than 1 800 cc, the Commission objects that public opinion does not accept that classification The judgment in Case 200/85 *Commission* v *Italy* (differential rates of value-added tax on diesel-engined cars) referred to by the Hellenic Republic does not support the latter's arguments That judgment allowed the application of VAT at a rate of 36% to certain cars regarded as luxury products, but did not in any way adjudicate on the lawfulness of a special consumption tax which increased by nearly 50% at a given threshold Moreover, the cars regarded as luxury products in that case had a cylinder capacity of 2 500 cc, not 1 800 cc as in the present case Finally, even if cars of more than 1 800 cc could be regarded as luxury products, the tax system would still have to be based on non-discriminatory criteria (judgment of 15 March 1983 in Case 319/81 *Commission* v *Italy* [1983] ECR 601) and the system at issue in this case is not

The Hellenic Republic's argument concerning the need to limit pollution cannot be upheld either Pollution does not depend on cylinder capacity but on other special factors It has been shown that cars with large engines cause less pollution than those with small engines

Finally, it is pointless for the Hellenic Republic to plead the poor condition of its road network as justification for its heavy taxation of cars with large engines The latter in fact provide greater safety than cars with a low cylinder capacity

The Commission did not, in the contentious phase of the procedure, reiterate its complaint set out in the letter before proceedings and in the reasoned opinion concerning determination of the taxable amount for imported second-hand cars

The Hellenic Republic contends that the special consumption tax increases in a regular manner

For the first tax category (cars with a cylinder capacity of 1 200 cc or less), the rate of tax is a minimum of 48% of the pre-tax price of the car and a maximum of 96% of that price, which gives an average of 72% For the second category (1 201 to 1 800 cc), the minimum rate is 125% and the maximum 187%, giving an average of 156% For the third category (above 1 800 cc), the rates are 274, 400 and 337% respectively The ratio between the average rates for the third and second categories is thus 337/156 = 2 16, which is the same as the ratio between the averages of the second and first categories: 156/72 = 2 16

The regularity of the progression of the tax is also proved by the ratio between the weightings applicable to each of the three fiscal categories Those weightings are DR 20, 26 or 38 per cc, depending on whether the car's cylinder capacity is 1 200 cc or less, between 1 201 and 1 800 cc or above 1 800 cc The ratio between the weighting for the second category (26) and that for the first category (20) is 1 30 (26/20) The ratio between the weightings of the third category (38) and the second category (26) is 1 46 (38/26) The rate of the special consumption tax thus does not increase excessively on transition from the second tax category to the third

As regards the single supplementary special tax, it increases in approximately the same way as the special consumption tax

The Hellenic Republic then maintains that the differential thresholds adopted for the two taxes in question, namely 1 200 and 1 800 cc, are objectively justified because they reflect the social circumstances prevailing in Greece and, to a certain extent, in Europe as a whole: cars of less than 1 200 cc are intended for people with low income; those with a cylinder capacity of between 1 201 and 1 800 cc are bought by people whose income is in the middle range; and those of above 1 800 cc are, above all in Greece, only for people with very substantial incomes

In order to prove that the system of taxation at issue is not designed to discourage the purchase of cars of foreign manufacture, the Hellenic Republic gives some examples of foreign cars in the middle tax category: Alfa 75 (1 799 cc), Audi 80 (1 780 cc), BMW 318 (1 795 cc), Renault 21 (1 721 cc), Opel Omega 1 8l (1 796 cc), Peugeot 505 GL (1 796 cc), Golf GTI (1 790 cc) If the Hellenic Republic had wished to set up a protectionist system it would have placed the threshold between the second and third categories at 1 600 cc, which corresponds to the largest-engined cars produced in Greece: the abovementioned cars would thus have been placed in the most heavily taxed category Moreover, it would not have been unreasonable to tax such cars as luxury products

Instead of taking that approach, it fixed the threshold for the highest tax band at 1 800 cc In its view, that proves that it wished to tax most heavily the vehicles in the latter category (Audi 100, BMW 520, Rover 800, Renault 25, and so on) because they are undeniably luxury cars, and not because of their foreign origin

It also points out that a reduced rate of VAT of 6% is applied in Greece to all private cars, whatever their origin and cylinder capacity That uniformity of rate also shows that the Greek taxation system for cars does not pursue any protectionist objective

As regards, finally, the Commission's analysis of the judgment in Case 200/85 *Commission* v *Italy* (differential rates of value-added tax on diesel-engined cars), cited above, the Hellenic Republic states that the differential threshold for petrol-engined cars in that case was 2 000 cc The threshold of 2 500 cc to which the Commission refers related only to diesel-engined cars If Italy was entitled to choose 2 000 cc as the threshold of the highest taxation band, it was proper for Greece to adopt a cylinder capacity of 1 800 cc for that purpose, in view of the fact that its road network is less safe than that of Italy

IV — Answers to the questions put by the Court

The Court asked the Hellenic Republic to provide a graph showing the progression of the special consumption tax in relation to the cylinder capacity of cars and a graph showing the progression of the single supplementary special tax in relation to the cylinder capacity of cars

The Hellenic Republic provided the graphs requested

The Court also asked the Hellenic Republic to produce a list of the private cars produced in Greece, with details of their cylinder capacity

It appears from the list provided and from the details supplied to the Court that the cylinder capacity of cars produced in Greece does not exceed 1 598 cc

The Court asked the Commission to produce a graph showing the progression of the special consumption tax in relation to the cylinder capacity of cars and a graph showing the progression of the single supplementary special tax in relation to the cylinder capacity of cars

The Commission produced the graphs requested

R Joliet
Judge-Rapporteur