JUDGMENT OF THE COURT
14 October 1992 *

In Case C-65/91,

Commission of the European Communities, represented by Theofanis Christoforou and Maria-Anna Paraskeva, of the Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Roberto Hayder, a representative of the Legal Service, Wagner Centre, Kirchberg,

applicant,

v

Hellenic Republic, represented by Eleni Marinou, advocate, of the Special Legal Department for the European Communities at the Ministry of Foreign Affairs, acting as Agent, with an address for service in Luxembourg at the Greek Embassy, 117 Val Sainte-Croix,

defendant,

APPLICATION on the one hand for a declaration that, by placing on 'List D', which is not published, matches falling under heading 36.06 of the Common Customs Tariff, and by thereby refusing to issue import permits for those products from Sweden and, for a certain period, from Bulgaria, the Hellenic Republic has failed to fulfil its obligations under Council Regulation (EEC) No 288/82 of 5 February 1983 on common rules for imports (OJ 1982 L 35, p. 1), under Council Regulation (EEC) No 3420/83 of 14 November 1983 on import arrangements for products originating in State-trading countries, not liberalized at Community level (OJ 1983 L 346, p. 6), both as amended, and under Article 13 of the Agreement

* Language of the case: Greek.

between the European Economic Community and the Kingdom of Sweden (OJ, English Special Edition 1972 (31 December, L 300), p. 99), as amended by the Additional Protocol (Council Regulation (EEC) No 3397/80 of 8 December 1980, OJ 1980 L 357, p. 104); and on the other hand for a declaration that, by refusing to send the Commission the documents relating to the importation procedure, in particular those concerning 'List D', the Hellenic Republic has failed to fulfil its obligations under the first paragraph of Article 5 of the EEC Treaty,

THE COURT,

composed of: G. C. Rodríguez Iglesias (President of Chamber), acting for the President, M. Zuleeg (President of Chamber), R. Joliet, J. C. Moitinho de Almeida, F. Grévisse, M. Diez de Velasco and D. A. O. Edward, Judges,

Advocate General: C. Gulmann,
Registrar: D. Triantafyllou, Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 7 April 1992, at which the Hellenic Republic was represented by N. Mavrikas, of the State Legal Service, acting as Agent,

after hearing the Opinion of the Advocate General at the sitting on 16 June 1992,

gives the following

Judgment

1 By application lodged at the Court Registry on 13 February 1991, the Commission of the European Communities brought an action under Article 169 of the EEC Treaty for a declaration that, by placing on 'List D', which is not published, matches falling under heading 36.06 of the Common Customs Tariff, and by thereby refusing to issue import permits for those products from Sweden and, for a certain period, from Bulgaria, the Hellenic Republic has failed to fulfil its obligations under Council Regulation (EEC) No 288/82 of 5 February 1982 on common rules for imports (OJ 1982 L 35, p. 1), under Council Regulation (EEC) No 3420/83 of 14 November 1983 on import arrangements for products originating in State-trading countries, not liberalized at Community level (OJ 1983 L 346, p. 6), both as subsequently amended, and under Article 13 of the Agreement between the European Economic Community and the Kingdom of Sweden (OJ, English Special Edition 1972 (31 December, L 300), p. 99). The applicant also seeks a declaration that, by refusing to send the Commission the documents relating to the importation procedure, in particular those concerning 'List D', the Hellenic Republic has failed to fulfil its obligations under the first paragraph of Article 5 of the EEC Treaty.

2 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the course of the procedure and the submissions and arguments of the parties, which are hereinafter mentioned or discussed only in so far as is necessary for the reasoning of the Court.

Restrictions on imports of matches from Sweden and Bulgaria

3 According to the Commission, 'Procedure D' implied the classification of a product on a 'List D', held by the Bank of Greece and not published, and thus a refusal

of any application for authorization to import the product in question. On the basis of information supplied by the importers concerned, the Commission alleges that 'Procedure D' was applied to matches from Sweden between February 1987 and 29 November 1989 at least, and to matches from Bulgaria between 1 February 1987 and 27 April 1988.

4 The Commission claims first that Article 13(1) of the Agreement between the Community and the Kingdom of Sweden prohibits the introduction of any quantitative restriction on imports in trade between the Community and Sweden. That agreement has been binding on the Hellenic Republic since its accession to the Community. Furthermore, the Commission is of the opinion that it is clear from Article 1(2) of Regulation No 288/82 that the importation into the Community of matches from Sweden is not subject to any quantitative restriction. The Commission states that on 21 July 1987 the Greek authorities made a request for Community surveillance in pursuance of Article 10 of Regulation No 288/82 and that by a communication of 3 August 1987 it refused that request, whilst authorizing the Hellenic Republic to apply national surveillance. However, it follows from Article 13 of Regulation No 288/82 that the application of national surveillance does not justify the refusal of an import licence by the Member State concerned.

5 The Commission next points out that under Article 6 of Regulation No 3420/83 the importation of matches from Bulgaria is not subject to any quantitative restriction unless the import system is modified in accordance with Articles 7 to 10 of that regulation. On 25 November 1987 the Greek Government made an application to the Commission for such a modification of the system and announced its intention of applying national quotas as from that date, as urgent measures in pursuance of Article 10 of Regulation No 3420/83. Although the Commission approved restrictive measures only from 27 April 1988, it admitted, following a question from the Court, that the Hellenic Republic was entitled to apply quantitative restrictions to matches from Bulgaria as from 25 November 1987. It therefore withdrew its complaint with regard to matches from Bulgaria for the period between 25 November 1987 and 27 April 1988.

6 The Hellenic Republic admits that the provisions of Community law referred to by the Commission prohibit the introduction by Member States of quantitative restrictions with regard to matches from Bulgaria and Sweden. It claims, however, that 'List D' was abolished in 1980 by Decision E6/8196/2600 in order to adapt Greek rules with a view to the accession of Greece to the Communities. The procedure to which this action refers was nothing more than a form of statistical monitoring which was itself abolished at the end of 1990.

7 It is therefore common ground that the Hellenic Republic, before accession, applied a system of import authorization referred to as 'List D' or 'Procedure D', the purpose and effect of which was to restrict imports of certain products. The Hellenic Republic has not produced any instrument providing for the abolition of that system. Contrary to the Hellenic Republic's claim, Decision E6/8196/2600 does not expressly abolish 'Procedure D'; paragraph 2 of that decision merely rescinds the distinction between Procedures 'Delta' and 'Epsilon' for the granting of an authorization to import.

8 Next it should be pointed out that the terms of Circular No 248, sent on 7 May 1986 to the Greek commercial banks by the Bank of Greece, specified that authorizations for the importation of matches from non-member countries would thenceforth be issued exclusively by the Bank of Greece and that the commercial banks were not to make advance payments linked to such imports without receiving that authorization. Such a procedure is not of the nature of a procedure intended for the collection of statistical data but rather of a procedure intended to control, indeed to restrict, imports.

9 In that connection the Commission has produced to the Court photocopies of the two import application forms addressed to the Bank by importers of matches from Bulgaria and Sweden. On each form the refusal of the application is hand-written, accompanied by the Greek letter 'D', also hand-written. The refusal of an import application bears no relation to a purely statistical procedure. On the contrary, the fact that the refusal of the application was accompanied by the letter 'D' proves the

continued existence of a so-called 'List D' or 'Procedure D' system designed to restrict imports, which did in fact have the precise effect of preventing the imports concerned.

10 In the absence of any other convincing explanation from the Government of the Hellenic Republic it must therefore be concluded that there was in existence in that State a 'Procedure D', the effect of which was to prevent the importation of the products appearing on a 'List D', and in particular matches from non-member countries.

11 It follows that, by placing on 'List D', which is not published, matches falling under heading 36.06 of the Common Customs Tariff, and by thereby refusing to issue import permits for such products from Sweden for the period between February 1987 and 29 November 1989, and from Bulgaria for the period between 1 February and 25 November 1987, the Hellenic Republic has failed to fulfil its obligations under Council Regulation (EEC) No 288/82 of 5 February 1982 on common rules for imports, under Council Regulation (EEC) No 3420/83 of 14 November 1983 on import arrangements for products originating in State-trading countries, not liberalized at Community level, both as amended, and under Article 13 of the Agreement between the European Economic Community and the Kingdom of Sweden.

Infringement of Article 5 of the Treaty

12 The Commission takes the view that the refusal by the Greek authorities to give a detailed reply to its letters within the period laid down or to provide copies of the national laws or regulations relating to 'List D' constitutes a failure to comply with the duty of cooperation imposed on the Member States by the first paragraph of Article 5 of the EEC Treaty.

13 The Hellenic Republic comments that the refusal to supply the text of the provisions at issue was not the result of a lack of good faith on its part, but rather of the fact that 'List D' did not exist.

14 It should be recalled that the purpose of the first paragraph of Article 5 of the EEC Treaty is, as the Court has already held, to facilitate the achievement of the Commission's tasks, which consist in particular, pursuant to Article 155 of the EEC Treaty, in ensuring that the provisions of the Treaty and the measures taken by the institutions pursuant thereto are applied (Case 272/86 *Commission* v *Greece* [1988] ECR 4875).

15 In that connection it must be stated that, in spite of the facts recorded above, the Greek Government, during the pre-litigation procedure, denied the existence of 'List D' and consequently the existence of instruments relating to it, whilst claiming that the contested measures were a mere form of statistical monitoring. It has not, moreover, produced any documents relating to the alleged statistical monitoring procedure.

16 The attitude adopted by the Greek Government and its refusal to collaborate with the Commission prevented the Commission from discovering precisely the conditions in which import applications for matches were dealt with and from checking whether such conditions complied with Community rules. It should be noted that that attitude was maintained before the Court.

17 It follows that, by refusing to send the Commission the documents relating to the importation procedure, in particular those concerning 'List D', the Hellenic Republic has failed to fulfil its obligations under the first paragraph of Article 5 of the EEC Treaty.

Costs

18 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the Hellenic Republic has substantially failed in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

1. **Declares that, by placing on 'List D', which is not published, matches falling under heading 36.06 of the Common Customs Tariff, and by thereby refusing to issue import permits for such products from Sweden for the period between February 1987 and 29 November 1989 and from Bulgaria for the period between 1 February 1987 and 29 November 1987, the Hellenic Republic has failed to fulfil its obligations under Council Regulation (EEC) No 288/82 of 5 February 1982 on common rules for imports, under Council Regulation (EEC) No 3420/83 of 14 November 1983 on import arrangements for products originating in State-trading countries, not liberalized at Community level, both as subsequently amended, and under Article 13 of the Agreement between the European Economic Community and the Kingdom of Sweden;**

2. **Declares that, by refusing to send the Commission the documents relating to the importation procedure, in particular those concerning 'List D', the Hellenic Republic has failed to fulfil its obligations under the first paragraph of Article 5 of the EEC Treaty;**

3. **Dismisses the remainder of the application;**

4. **Orders the Hellenic Republic to pay the costs.**

Rodríguez Iglesias Zuleeg Joliet

Moitinho de Almeida Grévisse Diez de Velasco Edward

Delivered in open court in Luxembourg on 14 October 1992.

J.-G. Giraud
Registrar

G. C. Rodríguez Iglesias
President of Chamber For the President