REPORT FOR THE HEARING
in Case C-65/91 *

I — Facts

According to the complaint which it lodged with the Commission, the Greek undertaking Evrelko, a company with limited liability, applied for an authorization to import matches from Bulgaria into Greece in accordance with 'Procedure D'.

On 20 February 1987 the application was refused without any statement of reasons.

By letter dated 16 October 1987, the Commission asked the Greek authorities to inform it of the reasons for this refusal and to send it the laws, regulations or other provisions concerning 'Procedure D'.

On 28 January 1988 the Greek authorities responsible stated that the importation in question was illegal. According to them Evrelko was seeking to evade measures to restrict import facilities applied under Article 10 of 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). They supplied no details of any legislation regarding 'Procedure D'.

Meanwhile on 25 November 1987 the Hellenic Government had asked for the initiation of the procedure for providing protective measures against matches from Bulgaria. Moreover, in pursuance of Article 7 of Regulation No 3420/83 it announced its intention of applying immediately its own restrictions on imports of such goods as urgent measures under Article 10 of that regulation. On 24 April 1988 the Commission approved the adoption of restrictive measures in Greece against matches originating in Bulgaria for the period from 27 April to 31 December 1988 (see Communication C(88) 805, OJ 1988 C 116, p. 5).

At the same time the permanent representation of Sweden informed the Commission, by memorandum of 8 September 1987, that since the beginning of 1987 Greece had put an embargo on imports of matches from Sweden. In this connection the memorandum referred to the rejection of an application made by the Swedish Match Company for an authorization to import matches in accordance with 'Procedure D'. The reason given for this rejection was that, according to the Greek authorities, the Swedish authorities had given false certificates of origin for the matches in question, which were actually of Yugoslav origin. The Greek authorities added that that infringement was the reason for a request for Community surveillance

* Language of the case: Greek.

made in pursuance of Council Regulation (EEC) No 288/82 of 5 February 1982 on common rules for imports (OJ 1982 L 35, p. 1).

That request was made by the Hellenic Republic on 21 July 1987. On 3 August 1987 the Commission refused to approve Community surveillance, but indicated that Greece might apply national surveillance of the imports in question. Although the Hellenic Government omitted to inform the Commission under Article 12(3) of Regulation No 288/82, the Commission has reason to believe that national surveillance was applied.

By a letter giving formal notice on 20 December 1988, the Commission requested the Hellenic Government to submit its observations on the restrictions imposed on imports of matches from Sweden and Bulgaria and on 'Procedure D'.

In its reply of 23 March 1989 the defendant stated that the authorities were only following Community procedures and that there was in force no parallel procedure in any measure whose existence would be contrary to the Community regulations.

On 6 September 1989 the Swedish authorities informed the Commission that it was still impossible to import into Greece matches originating in Sweden. Furthermore, the Swedish Embassy in Athens had been informed by an official of the Greek Ministry of Trade that 'Procedure D' affected various products, including matches, and that its purpose was to block imports of such products and thus to protect national production.

On 22 January 1990 the Commission sent the Hellenic Government a reasoned opinion under the first paragraph of Article 169 of the EEC Treaty. As that opinion met with no reply, the Commission brought this action.

Prior to these proceedings 'Procedure D' had already been the subject of two other letters giving formal notice: one, of 11 September 1986, concerned imports of sheet glass originating in various third countries; the other, of 21 April 1987, concerned honey from Bulgaria. Those letters and the subsequent reasoned opinion never received any precise answer from the Greek authorities who, moreover, still failed to produce any national provisions relating to 'Procedure D'.

II — Procedure

The application from the Commission was lodged at the Court Registry on 13 February 1991.

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.

III — Forms of order sought by the parties

The *Commission* claims that the Court should:

— declare that, by including matches (heading 36.06 of the Common Customs

Tariff) in 'list D' and thereby refusing to issue import permits for those products originating in Sweden and, for a certain period, in Bulgaria, the Hellenic Republic has failed to fulfil its obligations under Article 1(2) of Regulation No 288/82, Article 6 of Regulation No 3420/83, both as subsequently amended, and Article 13 of the 1972 Agreement between the European Economic Community and the Kingdom of Sweden, as amended by the 1980 Additional Protocol between the EEC and Sweden, consequent upon the accession of Greece to the European Community;

— declare that, by refusing to produce to the Commission the laws, regulations and other provisions concerning the importation procedure, and in particular those concerning 'List D', and the provisions applicable at the time of the refusal to issue import permits and/or at present, the Hellenic Republic has failed to fulfil its obligations under the first paragraph of Article 5 of the EEC Treaty;

— order the Hellenic Republic to pay the costs.

The *Hellenic Republic* contends that the Court should:

— dismiss the Commission's application;

— order the Commission to pay the costs.

IV — Pleas in law and arguments of the parties

The *Commission* observes first of all that before the accession to the Communities of the Hellenic Republic the marketing of matches was subject to a State monopoly. Under Article 40(1) of the Act of Accession (OJ 1980 L 291, p. 1) State monopolies of a commercial character were to be progressively adjusted so as to ensure that from 1 January 1986 no discrimination regarding the conditions under which goods were procured and marketed existed between nationals of the Member States. Consequently the importation of matches into Greece was, as from that date, subject to the general rules of Community law.

The Commission's view is that the classification of a product on 'List D', in so far as it involves a prohibition of the importation of the product, is contrary to Community law. In that connection it may be seen from two circulars (No 248 of 7 May 1986 and No 498 of 20 August 1987) sent by the Bank of Greece to the commercial banks that the importation of matches from third countries was subject to the prior issue of a permit.

The Commission thinks it is clear that 'Procedure D' is not restricted to statistical monitoring. In the first place the decision of the Minister for Trade E6/8196/2600 of 25 November 1980 clearly refers to an import permit. That decision provides that, following the accession of Greece to the Communities, permits for importation from all countries would be issued by the intermediate banks. In the second place, such a restrictive procedure is not necessary for

statistical monitoring. Finally, as is shown by the two cases giving rise to the complaints made to the Commission, 'Procedure D' makes it completely impossible to import matches from Bulgaria or Sweden.

The Commission thinks, moreover, that the Greek authorities' reply to the letter of formal notice indicates that there are measures restricting imports, even though they are described by the Greek authorities as not being contrary to Community rules.

The restrictions on importation of matches originating in third countries

First of all the Commission points out that under Article 6 of Regulation No 3420/83, previously cited, the importation into a Member State of matches from Bulgaria is not subject to any quantitative restriction unless restrictive measures have been adopted in accordance with Articles 7 to 10 of that regulation. However, it was only on 25 November 1987, that is, nine months after Evrelko's application to import was refused, that the Hellenic Government approached the Commission to request the application of the protective measures provided for in Article 7 of Regulation No 3420/83 and to announce its intention of applying national quotas as from that date as urgent measures under Article 10. As the Greek Government had not supplied the required information, the consultation provided for by Regulation No 3420/83 was suspended. Subsequently the Commission approved restrictive measures only for the period 27 April to 31 December 1988. It follows that any restriction on importation of matches from Bulgaria between 1 February 1987 (the date on which Evrelko's application was refused) and 27 April 1988 was contrary to the Hellenic Republic's obligations under Article 6 of Regulation No 3420/83.

The Commission next points out that no evidence is provided in support of the Greek authorities' statement that the matches which were the subject of the import application from the Swedish Match Company did not in fact originate in Sweden but in Yugoslavia.

It may be seen from Article 1(2) of Regulation No 288/82, previously cited, that the importation into Greece of matches originating in Sweden is not subject to any quantitative restriction. Moreover, Article 13(1) of the Agreement between the Community and the Kingdom of Sweden (OJ 1972 L 300, p. 97, hereinafter 'the Agreement') prohibits the introduction of any quantitative restriction on imports or measure having equivalent effect in trade between the Community and Sweden. Since its accession to the Community, the Hellenic Republic has been bound by that Agreement. In addition, under Article 9 of the Additional Protocol of 6 November 1980 to the Agreement (OJ 1980 L 357, p. 105) the Hellenic Republic was entitled to continue to subject certain products to quantitative restrictions until 31 December 1985. As matches are not included amongst the products referred to in that provision, it is clear that any restriction concerning them ought to have been abolished as from 1 January 1981, the date of the accession of Greece to the Communities.

Articles 24 to 27 of the Agreement lay down the conditions for the adoption of protective

measures by the Community. The Greek authorities did not have recourse to those procedures; on 21 July 1987, however, they submitted a request for Community surveillance under Regulation No 288/82. By a communication of 3 August 1987 the Commission refused that request, but authorized Greece to apply national surveillance. The Commission therefore considers that for the period from February 1987 (the date on which the Swedish Match Company's application to import matches was refused) until 3 August 1987, the Hellenic Republic failed to fulfil its obligations under Article 2(1) of Regulation No 288/82 and Article 13 of the Agreement.

As regards the period starting on 3 August 1987, the Commission points out first that the Hellenic Republic omitted, in contravention of Articles 12 and 14 of Regulation No 288/82, to inform it of the national surveillance measures which it had taken. Next it adds that although Article 13 of Regulation No 288/82 allows Member States to make the free circulation of products under national surveillance subject to the production of an import document, that document must be issued free of charge within five days following an application. Article 13 does not therefore authorize the Member States to refuse to grant an import licence. However, it seems that it was impossible to export Swedish matches into Greece until at least 29 November 1989. The Commission therefore takes the view that, by obstructing imports of matches from Sweden for the period between 3 August 1987 and 29 November 1989, the Hellenic Republic has also infringed the provisions of Article 1(2) of Regulation No 288/82 and of Article 13 of the Agreement.

The *Hellenic Republic* takes the view that the Commission's purpose in bringing this action is to try to establish the existence of a restrictive procedure which no longer exists. In any event, the Commission's allegations are inexact and inconclusive.

There was an import procedure known as 'Procedure D' before Greece acceded to the Community, but it was revoked by Decision E6/8196/2600 of the Minister for Trade. The procedure to which the Commission refers is in fact merely a form of statistical monitoring which was also abolished when the State data-processing centre became operational at the end of 1990. Following the decision in 1980, import permits were issued by the intermediàte banks and were validated by the deposit of financial advances. The Commission was duly informed of the whole position.

It is true that that importation of matches from third countries was made subject, by Decision E-3851 of 12 August 1987, to the obtaining of a permit issued by the Committee for the Issue of Table A and B Licences, which implied that the Greek commercial banks could no longer issue permits for the importation of matches without seeing the permit in question (see Circular 498 of 20 August 1987 from the Minister for Trade). However, that procedure was applied to products which, under the Community rules, had been subjected to surveillance or were subject to quotas, for the purpose of ensuring statistical monitoring of the products concerned,

As regards matches originating in Sweden, the requirement of a permit was revoked by Decision E3/961 of 30 January 1990 of the Minister for Trade.

The Hellenic Republic admits that there is an isolated problem concerning the importation of matches from third countries. It states, however, that the importation of matches from Bulgaria represented a value of US$ 268 000 in 1990 and US$ 165 000 in 1991. As regards matches from Sweden, imports represented a value of DR 11 757 in 1988 and DR 70 485 in 1989.

The *Commission* makes the following observations with regard to those figures: first, they do not concern the period at issue; secondly, they do not show that greater quantities could not have been imported if the 'List-D' procedure had not been applied; and finally the amounts mentioned for Sweden are in any event very small.

The first paragraph of Article 5 of the EEC Treaty

The *Commission* is of the opinion that the Greek authorities' refusal to give detailed replies and within the prescribed time-limits to its letters and to supply the national laws or regulations relating to 'Procedure D' represents a failure to fulfil Greece's obligations under the first paragraph of Article 5 of the Treaty. It regards such conduct as especially serious since the failure to co-operate lasted more than three years from the date of the first letter of formal notice relating to 'Procedure D' (sheet glass).

The *Hellenic Republic* claims that, since it denies the existence of 'Procedure D' it would be difficult for it to supply the details and documents required by the Commission. Moreover it is for the Commission, according to the case-law of the Court, to establish a failure to fulfil obligations. It follows that the Commission is not entitled to require the production of the documents establishing the alleged breach of Community law.

Furthermore, in the Hellenic Republic's opinion, the Commission has not mentioned the facts which make its replies to the requests for information insufficient or even incorrect. In this respect the statements of the complainants and the authorities of the third countries relate only to two specific cases and do not amount to incontestable evidence justifying rejection of the contrary position maintained by the Greek authorities. The Commission's allegations regarding 'Procedure D' are in fact merely conjectures and requests for information.

V — Question to the Commission

Following a question put by the Court regarding imports of matches from Bulgaria, the Commission withdrew its complaint against the Hellenic Republic as regards the period from 25 November 1987 to 27 April 1988.

The Commission feels obliged to withdraw that complaint by reason of a strictly literal interpretation of Article 9(4) and (5) of Regulation No 3420/83. However, according to the Commission, the Hellenic Republic, although on 25 November 1987 it relied on Article 10 of Regulation No 3420/83, has failed to communicate the facts and other information requested by the Commission, which were essential to prove that the implementation of the measures taken in application of Regulation No 3420/83 had been correctly effected and within the prescribed periods. That information was provided by the defendant only shortly before 27 April 1988. That is why the Commission wishes to stress that the defendant showed no sign of collaboration during the above-mentioned period, that is, between 25 November 1987 and 27 April 1988, which is entirely contrary to the spirit of Article 10 of the regulation in question. The Commission asks the Court to take this lack of collaboration on the defendant's part into account when it considers the whole question of the infringement of Article 5 of the EEC Treaty.

D. A. O. Edward
Judge-Rapporteur