OPINION OF MR ADVOCATE GENERAL MANCINI DELIVERED ON 4 APRIL 1984 [1]

Mr President,
Members of the Court,

1. The Court is asked to give judgment in proceedings brought by the Commission against the Hellenic Republic for the infringement of various rules of primary Community law: Article 30 et seq. of the EEC Treaty and Articles 35 and 38 of the Act of Accession. The infringement concerns the detailed arrangements for the progressive elimination of the amounts to be paid in cash on imported goods.

Article 35 of the Act of Accession provides that "Quantitative restrictions on imports ... and any measures having equivalent effect shall, from the date of accession, be abolished between the Community ... and Greece." However, according to Article 38, "import deposits and cash payments in force in Greece on 31 December 1980 with regard to imports from the present Member States shall be progressively eliminated over a period of three years from 1 January 1981 ... in accordance with the following timetable: 1 January 1981: 25%; 1 January 1982: 25%; 1 January 1983: 25%; and 1 January 1984: 25%.

By Decision No E6/640/175 of 23 January 1981 of the Greek Minister for Commerce various products which on 31 December 1980 had to be paid for in cash upon importation were transferred to the list of products which might be imported on a credit basis and were thus liberalized. According to the Greek administration the transactions involving the products thus exempted from the requirement of payment in cash upon importation represented 25% of all imports into Greece: the provisions of Article 38 could therefore be said to be satisfied. Similar decisions were taken for 1982 and 1983.

The Bureau de Liaison des Industries du Caoutchouc of the Community complained to the Commission, which discussed the provisions in question with the Greek Government at a meeting in Athens on 4 and 5 June 1981. The Commission stated at the meeting that the reduction of 25% per annum had to relate not to imports as a whole but to each import transaction. The parties moreover agreed (a) that the validity of the Greek argument would be checked by reference to the records of the negotiations preceding the Act of Accession and (b) that Greece must give details of the "technical difficulties" on which it relied to justify its approach to the application of Article 38.

By letter dated 1 October 1981 the Commission informed the Permanent Representation of Greece to the European Communities that there was nothing in the records of the negotiations preceding the Act of Accession to support the policy pursued by its government, which had therefore to be regarded as improper. The Representation replied in a note dated 9 October, stating that Greece's application of Article 38 was based:

(a) On a literal reading of the provision — it did not say that the reduction of 25% was to refer to each specific transaction.

1 — Translated from the Italian.

(b) On the purpose of the transitional period provided for in the article. It was to protect the Greek economy from the impact of trade with its more industrialized Community partners and thus it was necessary to interpret the article in the manner most favourable to the weaker party.

(c) On the practical difficulties arising from the complexity of the Greek rules on the importation of goods. They lay down various periods for payment for imports, depending on whether cash is paid or credit is granted, and for customs clearance.

At that point the Commission, by letter dated 24 March 1982, initiated the procedure provided for in Article 169 of the EEC Treaty and on 25 October issued a reasoned opinion, giving Greece two months to comply therewith. However, by letter dated 22 February 1983 Greece confirmed its previous position. The Commission thereupon brought the matter before the Court by an application lodged on 11 April 1983 pursuant to the second paragraph of Article 169.

2. In its defence Greece repeats the three arguments already put forward during the stage prior to the institution of the proceedings. I shall consider them one by one, beginning with the wording of Article 38.

According to the Greek Government the French and Greek versions refer to "amounts to be paid in cash" and thus do not specify whether the reduction must be made in respect of each transaction or on imports as a whole; it cannot be said that the English wording is any clearer ("the rate of import deposits and cash payments shall be reduced"). In view of that uncertainty Greece considered it proper to transfer to the list of goods which might be imported on a credit basis certain products which at the time of accession were required to be paid for in cash. Thus a total reduction of 25% in cash payments was achieved.

In support of that argument the defendant refers to the records of the negotiations preceding the Act of Accession. In particular it points out that according to the view of the Sixth Ministerial Conference concerned with the negotiations (3 April 1978) "l'élimination progressive de ces deux systèmes interviendra sur une période de trois ans après l'adhésion, sous réserve d'un accord sur les modalités techniques selon lesquelles cette élimination devra intervenir" (Greece-EEC Conference, Document 21/8). The choice of the detailed arrangements was left open; it follows that Greece is free to adopt those which best suit its interests.

I am not convinced by that argument. It is true that the wording of Article 38 is not felicitous and *prima facie* it does not seem possible to determine to what the reduction of 25% refers. If, however, it is interpreted by reference to its purpose its obscurities disappear. Article 38 has two paragraphs. The first provides that import deposits and cash payments are to be progressively eliminated over a period of three years (1 January 1981 to 1 January 1984). The second gives the timetable and the amount (25%) of the reductions. The provision thus derogates from Article 35 in order to avoid adverse effects on the national industry and hence provides for gradual liberalization of trade between Greece and the other nine Member States.

It is in the light of that gradual progression, which is a feature of every transitional period, that it is necessary to consider the problem. If it is assumed that the Greek argument is correct, namely that at the four specified one-year intervals it is possible to reduce by 25% the amount to be paid in cash on the total value of imports by transferring goods from the "protected" lists to the "liberalized" list, then at the end of the three years certain products (the most sensitive) will still be subject to that requirement which — and this is the important point — will have to be completely removed on 1 January 1984 as a result of the combined provisions of Articles 35 and 38. In other words, at one stroke the Greek economy will be exposed to the *acquis communautaire* in relation to the free movement of goods and, I repeat, this will affect the most sensitive goods.

By contrast, the specific objective of the transitional period and of the progressive removal of obstacles to importation is to prepare the Greek economy for a shock of that kind. The only way of progressively eliminating such obstacles is annually to reduce the cash payments required in respect of *all* products, and that result is obtained only by making a reduction in respect of each individual transaction.

As for the records of the negotiations preceding accession, I do not see that they prove anything significant. The passage from the minutes of the Ministerial Conference to which Greece attaches so much importance is taken into account in the first paragraph of Article 38. It is true that at that stage of the negotiations only the principle of progressive abolition and the length of the transitional period had been defined and there was as yet no agreement on the detailed arrangements. But to infer from that that there was never any agreement is to go too far. Some time later an agreement was reached, giving rise to the second paragraph of Article 38 which determines the percentage of the reductions and the dates on which they are to take effect each year. In any event even if it were assumed that those provisions regarding percentages and dates did not lay down all the arrangements for implementing Article 38 and that in consequence Greece had a certain discretion in implementing that article, it seems clear to me that it would have had to comply with the principle that the restrictions were to be progressively eliminated by stages.

3. The second argument is based on the objectives of the transitional period which, in the defendant's view, imply that the provision in question should be interpreted in a manner favourable to Greece. If that period is for the benefit of Greece, then, in Greece's opinion, it ought to have some discretion in fulfilling the obligations associated with it.

But even in those terms the defence is unfounded. I certainly do not deny that the transitional period was intended to benefit Greece. I think, however, that I have shown that the way in which Greece has fulfilled its obligations in relation thereto has produced results contrary to what was intended when that period was provided for.

4. The third argument is based on the technical difficulties which would prevent the application of the annual reduction to each transaction. The cause

thereof is said to be the complexity of the system (periods for payment and customs clearance, banking transactions, the issue of import licences and so forth).

The Commission does not deny that those difficulties are real, but that does not mean that they are sufficient to justify Greece's failure to fulfil an obligation under Community law. I share that opinion, *inter alia* because it is confirmed by the established case-law of the Court. "Practical difficulties ... cannot permit a Member State unilaterally to opt out of fulfilling its obligations" (judgment of 7 February 1979 in Case 128/78, *Commission* v *United Kingdom*, [1979] ECR 419, paragraph 10 at p. 429). "A Member State may not plead provisions, practices or circumstances existing in its internal legal system in order to justify a failure to comply with obligations" (judgment of 2 December 1980 in Cases 42/80 and 43/80, *Commission* v *Italy*, [1980] ECR 3635 and 3643, paragraph 4 at p. 3640 and p. 3648; judgment of 1 March 1983 in Case 301/80 *Commission* v *Belgium*, [1983] ECR 467 paragraph 6 at p. 477).

5. In the oral proceedings the representative of the Greek Government pointed out that on 3 January 1984 the Minister for Commerce had stated that the system in question had been abolished as from 1 January 1984. As a result there was no purpose in establishing a failure to fulfil obligations.

Once again I do not agree. Even if it is accepted that the contested rules have in fact been withdrawn (although the Commission doubts it), it remains incontrovertible that, for three years, by protecting certain industrial sectors by means of a selective restriction on imports, the Greek Government has failed to fulfil its obligations under Article 38. Moreover, the Commission stressed its own interest in securing a formal finding to that effect.

6. In the light of the foregoing observations I consider that, by maintaining the requirement that certain goods should be paid for wholly in cash upon importation, the Greek Government has not progressively reduced the quantitative restrictions on the importation of those products as required by Article 38 of the Act of Accession. The effect of the measures adopted by the Greek Government has been a selective restriction of imports which is prohibited by Article 35 of the Act of Accession and Article 30 of the EEC Treaty.

I therefore propose that the Court should declare that the Hellenic Republic has failed to fulfil its obligations under the Act of Accession and the EEC Treaty.

Since the defendant Government has been unsuccessful it must be ordered to pay the costs.