OPINION OF MR ADVOCATE GENERAL MANCINI
delivered on 2 October 1986 *

Mr President,
Members of the Court,

1. The subject of this Opinion is an action brought under Article 169 of the EEC Treaty by the Commission of the European Communities against the Hellenic Republic. The charge made against that State is that by limiting the importation of fresh beef and veal to certain cuts it infringes Article 22 (1) of Regulation (EEC) No 805/68 of the Council of 27 June 1968 on the common organization of the market in beef and veal (Official Journal, English Special Edition 1968 (I), p. 187), which reaffirms as regards the common organization of the market in beef and veal the principle of the free movement of goods referred to in Article 30 *et seq.* of the Treaty.

The facts go back to 16 March 1983 when the Commission informed the Greek Government of the concern of a number of traders about the measures that it was contemplating taking with regard to imports of beef and veal. In reply, the Greek authorities assured the Commission on 29 March 1983 that no measures likely to restrict intra-Community trade in the sector in question existed or were in preparation. However, Article 1 (4) of Order No 56/83 of the Commercial Police of 9 December 1983 amended Article 391 (9) of Order No 72/77 so as to provide that 'imported fresh beef and veal, home-produced fresh beef and veal bought and sold as between a producer and a third party (wholesaler, retailer, etc.) and imported or home-produced fresh beef and veal bought and sold as between a wholesaler and a third party (retailer, hotelier, restaurant owner, etc.) shall consist exclusively of unboned large cuts in one of the following forms, as provided for in Presidential Decree No 186/81: (a) carcasses, half-carcasses or "compensated" quarters; (b) ordinary fore-quarters with 10 ribs; (c) ordinary hind-quarters with three ribs'.

The Commission reacted to that amendment first by sending a telex message (20 December 1983), to which the Greek Government replied on 2 February 1984, and, subsequently, having been virtually swamped with complaints from traders, by initiating as a matter of urgency the procedure provided for in Article 169 (7 March 1984). The letter of 17 April 1984 giving the Greek Government formal notice stated that the provision cited above was incompatible with the common organization of the market in beef and veal and with Article 30 of the EEC Treaty.

However, in the same period the Greek authorities adopted new measures. By Decree No E6/1264 of 8 March 1984 the Greek Minister for Trade provided that: (a) fresh beef and veal could be imported only in the form of carcasses or half-carcasses and no longer in the form of quarters; (b) the pro forma invoices relating thereto must describe in detail the quality of the carcasses imported and indicate the name and code numbers of the slaughterhouse from which the meat was

* Translated from the Italian.

purchased. A week later the Minister for Trade retraced its steps to a certain extent: Decree No E6/1478 allowed beef and veal to be imported once again in the form of quarters provided that the quarters were part of one and the same carcass.

On the same day on which the second decree was issued the Commission asked the Greek authorities for explanations. The Greek authorities answered on 11 May 1984, stating once again that the Greek legislation did not impede Community trade in beef and veal. At that point, the Commission decided to initiate a new procedure, covering also the two 1984 decrees, on account of the infringement of Regulation No 805/68 and Article 30 of the EEC Treaty. The letter giving the Greek Government formal notice was sent on 6 July 1984. The reasoned opinion was delivered on 30 October 1984, the Greek Government replied on 4 January 1985 and the application in the present case was lodged on 30 April 1985.

2. As I have already said, the Commission considers that the provisions in question (Article 1 (4) of Order No 56/83 of the Commercial Police and Ministerial Decrees Nos E6/1264 and E6/1478) are likely to restrict intra-Community trade in beef and veal directly or indirectly, now or in the future, and hence constitute measures having an effect equivalent to quantitative restrictions, which are prohibited by Article 22 (1) of Regulation (EEC) No 805/68; that provision reaffirms the principle laid down by Article 30 of the Treaty, on the basis of which traders are free to choose the form of cuts of meat which they import or export within the Community.

More specifically, the Commission contends that (a) as a result of Decree No E6/1264 (8 to 16 March 1984) there was a total freeze on imports of fresh beef and veal; whilst the average length of whole carcasses and half-carcasses is 2.40 to 2.50 metres, the usable height of the trailers used to transport the meat does not exceed 2.10 metres; and (b) Decree No E6/1478, adopted subsequently, did not substantially rectify matters.

3. The Greek Government's arguments, both in the pre-litigation stage (reply to the reasoned opinion) and in the proceedings before the Court, with respect to the charges summarized above, are as follows: (a) the contested provisions do not impede trade in beef and veal; (b) they do not affect imports; (c) they are justified in any event by the difficulties experienced by the Greek authorities in monitoring price trends on foreign markets for the various cuts of meat; and (d) they are justified by the need to combat currency fraud in connection with the relevant transactions.

In support of its first argument, the Greek Government points out that half Greece's requirements for fresh beef and veal is met by imports, of which 90% are of Community origin. Consequently, since beef and veal are a basic foodstuff, to impede their importation would be completely inconceivable. It adds that the measures in question have not impeded the importation of meat directly or indirectly. On the contrary, since they have been in force the volume of imports of meat of Community origin has increased and there is nothing to suggest that the increase would have been even greater had the measures not been taken.

As regards its second argument, the Greek Government points out that the measures in question apply to *all* fresh beef and veal

marketed in Greece, home-produced meat as well as imported meat. Consequently, it cannot be charged with seeking to discriminate against imports.

With its third and fourth arguments the Greek Government steps outside Article 30 to base its defence on the exceptions to the principle of free movement which are provided for in Article 36 of the Treaty or which the Court has identified in interpreting that provision. In particular, it states that as from the second half of 1982 the authorities found that there was a difference — at first slight and later significant — between actual prices on representative foreign markets in fresh beef and veal and the prices shown on the pro forma invoices annexed to applications for authorization to effect the foreign-exchange operations necessary to effect the purchases. Thereupon, the Greek Government decided to tackle this by monitoring prices on the international market in beef and veal. The importers had wind of that plan and changed their method — they ceased to buy beef and veal in consignments corresponding to a single customs heading and purchased it in the form of individual items covered by differing customs headings, mixing prime cuts with cheaper cuts and invoicing the whole as high-quality meat. Obviously, however, that practice of invoicing goods at too high a level systematically evaded the exchange-control regulations and, at the same time, adversely affected the price of meat to the consumer.

It was in order to put a stop to those practices that the Greek authorities considered it indispensable to take the measures contested by the Commission, which they adopted with success. By aiming to ensure that foreign-exchange operations are not used for objects other than those for which they were authorized, the provisions in question are therefore justified on the ground of the control of exports of capital and are consonant with the principles stated by the Court in its judgment of 31 January 1984 in Joined Cases 286/82 and 26/83 *Luisi and Carbone* v *Ministero del Tesoro* [1984] ECR 377.

4. I shall say straight out that none of those arguments convinces me. I shall start first of all with the argument under (a). Backed by statistics, the Greek Government contends that the provisions at issue have even brought about an increase in imports; but that is not sufficient to cause them not to be measures having an effect equivalent to quantitative restrictions. In order for a measure to be described as such it is sufficient, in fact, that it may *potentially* impede trade between Member States; and it is obvious that that is so in this case. Anyone can appreciate that if cuts other than those authorized could be imported, trade would be simpler and the volume of imports would be likely to increase.

Consequently, the provisions in question impede trade and conflict both with Article 22 (1) of Regulation No 805/68 and with Articles 30 and 34 of the Treaty, which, according to the Court, constitute 'an integral part of the common organization of the [agricultural] market'. It is well known that each common organization of the market is based 'on the concept of an open market to which every producer has free access and the functioning of which is regulated solely by the instruments provided for by that organization. Hence any provisions or national practices which might alter the pattern of imports or exports or influence the formation of market prices by preventing producers from buying and selling freely within the State in which they

are established, or in any other Member State, in conditions laid down by Community rules . . . are incompatible with the principles of such organization of the market'. It follows that 'any intervention by a Member State . . . apart from such intervention as may be specifically laid down by the Community regulation runs the risk of obstructing the functioning of the common organization . . . and of creating unjustified advantages for certain groups of producers or consumers to the prejudice of the economy of other Member States or of other economic groups within the Community' (judgment of 29 November 1978 in Case 83/78 *Pigs Marketing Board* v *Raymond Redmond* [1978] ECR 2347, paragraphs 55, 57, 58 and 60).

If the first argument is fallacious, the second, which claims that the provisions in question are not discriminatory, flies in the face of the evidence. Admittedly Order No 56/83 seems to concern domestic trade as well; that cannot be said of the measures introduced by Decrees Nos 1264 and 1478, which, according to their very wording, are concerned with imported beef and veal and hence give rise to discrimination based on the origin of the goods.

5. Let us now turn to the last two arguments, which the Greek Government regards as its strongest cards. It contends essentially that the provisions at issue have a dual aim: that of monitoring prices and avoiding currency fraud. Consequently, it maintains that they are justified on the basis of Article 36 of the Treaty.

The first aspect is supported by an admission of inability: it is contended that the structure of the Greek customs system is such that the authorities are unable to collect data relating to price formation and to check the various consignments of meat. However, that admission is valueless in the light of an established line of cases of the Court according to which no administrative difficulty can justify the infringement of basic rules of the Community's legal order. It is pointed out that Article 65 of the Act of Accession required the Hellenic Republic to abolish all restrictions on imports from the time of its accession; accordingly, those rules have applied to it since 1 January 1981.

As for the second requirement — combating capital flight and defending the national currency — it must be stated to begin with that the reference to the judgment in the *Luisi and Carbone* case is of no avail. In the judgment in that case the Court stated that Article 106 of the Treaty must be interpreted as meaning that (a) transfers of foreign currency in connection with tourism or travel for the purposes of business, education or medical treatment constitute payments and not movements of capital even where they are effected by means of the physical transfer of banknotes; (b) any restrictions on such payments are abolished as from the end of the transitional period; and (c) Member States retain the power to verify that transfers of foreign currency purportedly intended for the payments referred to under (a) are not in reality used for unauthorized movements of capital. However, it seems to me that those principles have nothing to do with the present case. Here we are dealing with payments in foreign currencies which, like the trade to which they relate, have been liberalized since Greece's accession to the Community.

Having said that, it cannot be seen what prevents the Greek Government from combating currency fraud by carrying out

spot checks on the nature of the consignments of meat, on the accuracy of the particulars shown on the relevant invoices and on the foreign-exchange documentation. Since such controls, backed up by appropriate administrative or criminal sanctions or both, have proved themselves in other Member States, I consider that the measures in question conflict in any event with the principle of proportionality; in other words, they are excessive in relation to their aim.

6. In the light of all of the foregoing I propose that the Court should uphold the action brought by the Commission of the European Communities on 30 April 1985 against the Hellenic Republic and declare that, in allowing only certain cuts of beef and veal to be imported, the Hellenic Republic has failed to fulfil its obligations under Article 22 (1) of Regulation (EEC) No 805/68 of the Council of 27 June 1968 on the common organization of the market in beef and veal and under Article 30 *et seq.* of the EEC Treaty.

In view of the fact that it has failed in its submissions, the Hellenic Republic should be ordered to pay the costs pursuant to Article 69 (2) of the Rules of Procedure.