OPINION OF MR ADVOCATE GENERAL DARMON
delivered on 2 July 1987 *

Mr President,
Members of the Court,

1. Article 130 of the Act of Accession of Greece enabled the Greek Government to apply, until 31 December 1985, for authorization to take protective measures allowing derogation from the rules of the Treaty. Pursuant to that provision the Greek authorities, having requested and obtained authorization for certain restrictions on imports during 1983, made a further request on 31 December 1983. In Decision 84/38/EEC [1] the Commission authorized the imposition of import limits on certain products including cigarettes. Decision 84/64/EEC [2] lays down the system applicable to cigarettes and in particular fixes the total quota to be allocated before 31 March 1984 at 1 100 tonnes. Furthermore, Article 7 provides that the shares to be reserved for new importers are not to exceed 10% of the total limits.

2. The Greek Government made two orders concerning the way in which import permits were to be granted for cigarettes laying down in particular the rule that the share of a new importer could not exceed that of the smallest existing importer. The Import Permit Committee then issued the allocation list for cigarettes in which Damianos Soph. Symeonidis AEE Sigaretton kai Ikodomikon Epichirisseon AE appeared as the only new importer and its import entitlement was set at 34 tonnes.

3. The Symeonidis company is requesting the Greek Council of State to annul that list on the ground that the import permit allocated to it does not exhaust the total quota of 10% which, in its view, was reserved exclusively for new importers. The Greek Council of State construed the aforementioned provisions as fixing a maximum limit but considered that there remain serious doubts on the question whether that is indeed the case or whether new importers must be allocated the whole of the above quota. That, in substance, is the first question submitted to the Court.

4. It should be noted, first of all, that Article 7 of Decision 84/64 of 27 January 1984 provides *inter alia* that:

'The shares to be reserved for new importers shall not exceed 10% of the total limits.'

That wording suggests that a maximum limit is indeed intended. There is no doubt that a rule that a certain amount may not be *exceeded* cannot be interpreted as meaning that that entire amount *must be allocated.*

* Translator's note: The English versions of the two provisions differ in certain non-material respects.

1 — Official Journal 1984, L 23, p. 37.

2 — Official Journal 1984, L 36, p. 29.

5. A literal interpretation is also in keeping with the general rules contained in Article 6 of Decisions 84/38/EEC and 84/64/EEC: *

'For the purpose of administering the import limits provided for by this decision, the Greek authorities shall respect existing trade patterns, as regards both the country of origin or consignment of the products concerned and the operators involved.'

The recitals in the preambles to the decisions specify, moreover, that the requirement of respecting existing trade patterns is laid down to ensure a fair distribution of the authorized quantities.

6. The underlying objective of that provision would appear to be the following: the system of quotas brings with it a risk that existing patterns of trade will be disturbed. That risk would be aggravated by the activities of new operators which would be likely to have a significant effect on the structures and trade in existence prior to the protective measures. Therefore by limiting the shares of new operators to 10% of the total volume it is intended precisely to avoid too great a change. An interpretation according to which an amount of 10% was automatically allocated to new importers would be contrary to that objective. In fact existing importers whose entitlements are necessarily reduced proportionately as a result of the very existence of protective measures would not be able to rely on obtaining an equivalent share. That inequitable result would be contrary to the express purpose of Article 6 of the decision.

7. The reference to the underlying objective thus bears out a literal interpretation. Provided that the whole of the quota of 1 100 tonnes is allocated, the limit of 10% must be interpreted as the maximum quantity of permits to be issued to new importers, but the latter are not given a right under the provision to obtain that entire percentage.

8. The Greek Council of State then asks, in the light of the answer to the first question and taking into account the appraisal of the nature of the protective measures, whether an individual importer may rely directly on the provisions at issue in proceedings before a national court for the annulment of an individual administrative measure. In view of the interpretation which should clearly be given to the provision, I consider that the second question has become devoid of purpose.

9. I therefore propose that the Court should rule that:

'Provided that the whole of the quota of 1 100 tonnes is allocated, the amount of 10% which Decision 84/64/EEC sets as the limit of the share reserved for new importers constitutes a maximum imposed in order to ensure that existing patterns of trade are observed, which allows the authorities to proceed to allocate a share which is in fact below that amount.'

* Translator's note: The English versions of the two provisions differ in certain non-material respects.