OPINION OF ADVOCATE GENERAL TESAURO

delivered on 22 September 1992 *

Mr President,
Members of the Court,

1. The questions referred to the Court of Justice for a preliminary ruling by the Supremo Tribunal Administrativo (Supreme Administrative Court) of Portugal are concerned with the interpretation of Article 37(1) of the Treaty, Article 208(1) of the Act of Accession and the Commission recommendation of 8 September 1987. [1]

Those questions are concerned, in particular, with the content and scope of the obligation imposed on the Portuguese Republic to effect the progressive adjustment of the State monopoly over ethyl alcohol of agricultural origin and non-agricultural origin. Consequently, the issues are the same as those raised in Case C-361/90 *Commission* v *Portugal*, on which I delivered an Opinion today.

2. The undertaking Caves Neto Costa SA (hereinafter 'CNC') brought proceedings against the measure of 24 November 1987 by which the Director-General for Foreign Trade refused it authorization to import a quantity of ethyl alcohol from France. Faced with an implied decision of refusal on the part of the Minister for Trade and Tourism and the State Secretary for Foreign Trade, CNC brought an action before the Supremo Tribunal Administrativo.

The Supremo Tribunal Administrativo referred questions to the Court for a preliminary ruling in which it asked whether the Portuguese Republic was under an obligation to establish import quotas as from 1 January 1986 or whether such an obligation only became effective at a later date and whether the quotas specified in the Commission's recommendation of 8 September 1987 were to be regarded as correct.

3. As it appears from my Opinion in the case of *Commission* v *Portugal*, to which I refer in so far as it is appropriate, [2] Article 208(1) of the Act of Accession does not specifically require global import quotas to be established; it merely provides that the Member State in question is to adjust the monopoly progressively so as to eliminate, by the end of the transitional period, all discrimination as between Member State nationals with regard to the conditions under which monopoly goods are procured and marketed. Consequently, the choice of the means and methods of achieving that result is left to the Member States' discretion. As for the provi-

* Original language: Italian.

1 — Commission recommendation of 8 October 1987 to the Portuguese Republic concerning the adjustment of the State monopoly of a commercial character in alcohol vis-à-vis the other Member States, OJ 1987 L 306, p. 32.

2 — See in particular sections 3 and 5.

sions of the Commission's recommendation, it is sufficient to observe — and this is not in dispute between the parties — that the recommendation is a non-binding measure.

4. Having said that, I can only emphasize that the national court's questions are based — quite plainly — on the assumption that Article 37(1) of the Treaty and Article 208(1) of the Act of Accession have direct effect during the transitional period. In this regard, it must be pointed out that, as the Court has consistently held, a Community provision has direct effect only if it is sufficiently precise and unconditional. However, as has already been mentioned, the provisions in question only impose an obligation to achieve a certain result and leave it to the Member States to choose the means and methods of achieving it within the time-limits specified.

Moreover, on the very subject of Article 37(1) of the Treaty, the Court has held that 'the fact that at the end of the transitional period no discrimination regarding the conditions under which goods are procured and marketed must exist between nationals of Member States constitutes an obligation with a very precise objective subject to a clause postponing its operation' [3] and that hence it is only on the expiry of the transitional period that 'the duty in question is no longer subject to any condition' and 'its effects [can no longer] be subject to the adoption of any measure either by the Community or the Member States'. [4]

As is clear from those rulings, whilst it is true that on the expiry of the transitional period the provision in question is such as to confer on individuals rights which the national courts must protect (even where the Member States have not yet fulfilled the obligation to achieve the specific result imposed upon them), it is equally true that until the transitional period expires the provision in question, and the corresponding article of the Act of Accession, is not unconditional and hence is devoid of direct effect.

It follows that, until the end of the transitional period, which expires in this case on 31 December 1992, the provisions in question cannot be relied upon by individuals before the national courts.

3 — Judgment in Case 59/75 *Pubblico Ministero* v *Mangera* [1976] ECR 91, paragraph 15.

4 — Judgment in Case 45/75 *Rewe* v *Hauptzollamt Landau* [1976] ECR 181, paragraph 24.

5. In the light of the foregoing considerations, I therefore suggest that the Court should answer the questions referred by the Supremo Tribunal Administrativo of Portugal as follows:

(1) Article 37(1) of the Treaty and Article 208(1) of the Act of Accession should be interpreted as meaning that the obligation imposed on the Portuguese Republic progressively to adjust the State monopoly in ethyl alcohol does make it necessary to establish import quotas.

(2) Until the expiry of the transitional period, Article 208(1) of the Act of Accession and Article 37(1) of the Treaty do not confer on individuals rights which they may assert before the national courts.