JUDGMENT OF THE COURT (First Chamber)
17 January 1985 *

In Case 11/82

A.E. Piraiki-Patraiki, Cotton Industry,
A.E. Volos Cotton Manufacturing Company,
A.E. Makedonika Klostiria,
A.E. Klostiria Prevezis,
A.E. Vomvyx P. V. Svolopoulos and Chr. Koutroubis,
A.E. Klostiria Naoussis,
A.E. Unicot Hellas, Cotton Industry,

having their registered offices in Athens, assisted and represented by D. Evrigenis, of the Thessaloniki Bar, and G. Vandersanden, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Janine Biver, 2 rue Goethe,

applicants,

v

Commission of the European Communities, represented by its Legal Adviser, Michel van Ackere, and by Xenophon Yataganas, a member of its Legal Department, acting as Agents, with an address for service in Luxembourg at the office of Oreste Montalto, Jean Monnet Building, Kirchberg,

defendant,

supported by

The Government of the French Republic, represented by Noël Museux, acting as Agent, and by Alexandre Carnelutti, acting as Deputy Agent,

intervener,

* Language of the Case: French.

APPLICATION for a declaration that Commission Decision No 81/988/EEC of 30 October 1981 (Official Journal L 362, p. 33) authorizing the French Republic to take protective measures with regard to imports of cotton yarn from Greece, as provided for in Article 130 of the Act of Accession of Greece to the European Communities, is void,

THE COURT (First Chamber)

composed of: G. Bosco, President of Chamber, T. Koopmans and R. Joliet, Judges,

Advocate General: P. VerLoren van Themaat
Registrar: P. Heim

gives the following

JUDGMENT

Facts

The facts of the case, the course of the procedure and the conclusions, submissions and arguments of the parties may be summarized as follows:

1. Facts and procedure

Article 130 (1) of the Act concerning the conditions of accession of the Hellenic Republic and the adjustments to the Treaties (Official Journal 1979, L 291, p. 17) provides as follows:

'If, before 31 December 1985, difficulties arise which are serious and liable to persist in any sector of the economy or which could bring about serious deterioration in the economic situation of a given area, the Hellenic Republic may apply for authorization to take protective measures in order to rectify the situation and adjust the sector concerned to the economy of the common market.

In the same circumstances, any present Member State may apply for authorization to take protective measures with regard to the Hellenic Republic.

...'

The third paragraph of that article reads as follows:

'The measures authorized under paragraph (2) may involve derogations from the rules of the EEC Treaty and of this Act to such an extent and for such periods as are strictly necessary in order to attain the objectives referred to in paragraph (1). Priority shall be given to such measures as will least disturb the functioning of the common market.'

By letter of 21 September 1981 from its Permanent Representative to the European Communities, alleging serious difficulties in its domestic combed cotton yarn industry, the Government of the French Republic asked the Commission for authorization under Article 130 to take protective measures with regard to the importation into France of cotton yarn from Greece. The French Government expressed the wish that imports of cotton yarn be limited to 200 tonnes for each of the last three months of 1981 and 600 tonnes for each month of 1982.

By Decision No 81/988/EEC of 30 October 1981 (Official Journal L 362, p. 33), the Commission authorized the French Republic to limit imports into France of cotton yarn (Common Customs Tariff Heading No 55.05) from Greece. Article 2 sets that limitation at 300 tonnes for the period until 30 November 1981, 300 tonnes for the period 1 to 31 December 1981 and 650 tonnes for the period 1 to 31 January 1982. Article 3 provides that the decision does apply to consignments of cotton yarn dispatched from Greece before its notification. Under Article 4, finally, the decision is addressed to the French Republic and the Hellenic Republic.

By application lodged at the Court Registry on 8 January 1982 Piraiki-Patraiki and six other Greek cotton undertakings brought an action pursuant to Article 173 of the EEC Treaty for a declaration that Decision No 81/988 is void.

By a notice of objection dated 12 February 1982 the Commission raised an objection of admissibility against the application, under Article 91 of the Rules of Procedure of the Court. The applicant submitted written observations in reply to the notice of objection on 13 April 1982.

By telex of 7 May 1982 the Government of the French Republic requested, pursuant to Article 37 of the Protocol on the Statute of the Court of Justice and Article 93 of the Rules of Procedure, leave to intervene in the proceedings in support of the Commission's conclusions.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure on the objection of inadmissibility without any preparatory inquiry. By order of 19 May 1982 the Court also decided to permit the Government of the French Republic to intervene and authorized that Government to make submissions on the question of admissibility during the oral procedure.

By order of the same date made pursuant to Article 95 (1) and (2) of the Rules of Procedure the Court assigned the case to the First Chamber.

The hearing on the objection of inadmissibility was held on 21 September 1982.

The applicants, jointly represented by D. Evrigenis, of the Thessaloniki Bar, and G. Vandersanden, of the Brussels Bar, the Commission of the European Communities, represented by M. van Ackere and X. Yataganas, acting as Agents, and the Government of the French Republic, represented by A. Carnelutti, acting as Agent, presented oral argument.

The Advocate General presented his opinion on the objection of inadmissibility at the sitting on 14 October 1982.

By order of 6 December 1982 the Court (First Chamber) decided as follows:

'(1) The decision on the objection raised by the defendant is reserved until final judgment.

(2) Costs are reserved.'

The written procedure was resumed. It followed the normal course.

Having heard the report of the Judge-Rapporteur and the opinion of the Advocate General, the Court (First Chamber) decided to open the oral procedure with regard to the substance of the case without any preparatory inquiry. It asked the Commission, however, to reply to a number of questions. The replies of the Commission were received at the Court Registry on 9 March 1984.

2. Conclusions of the parties

In their application the *applicants* claim that the Court should:

Declare that the application is admissible and well founded;

Declare void the Commission decision of 30 October 1981 authorizing the French Republic to take protective measures with regard to imports of cotton yarn from Greece;

Order the defendant to pay the costs.

Furthermore, in their written observations in reply to the Commission's notice of objection, the applicants claim that the Court should:

Consider the admissibility of the application at the same time as its substance;

In the alternative, dismiss the objection of inadmissibility;

In any event, order that the proceedings continue.

The *Commission* contends that the Court should:

Dismiss the application as inadmissible, or in the alternative as unfounded;

Order the applicants to pay the costs, including those relating to the objection.

The *Government of the French Republic*, intervening, claims that the Court should:

Dismiss the application

(a) as inadmissible, or

(b) in the alternative, as unfounded, and order the applicants to pay the costs, including those of the intervener.

3. Submissions and arguments of the parties

3.1. *The objection of inadmissibility*

In its notice of objection the *Commission* alleges that the application is inadmissible.

Article 173 of the EEC Treaty permits the Council, the Commission and the Member States to challenge the validity of acts of the Council and of the Commission before the Court, but it only allows private persons to challenge decisions addressed to them. A private person may however institute proceedings against a decision which, although in the form of a regulation or a decision addressed to another person, is of direct and individual concern to him. The applicants must therefore prove on the one hand that the decision in question, which is addressed to two Member States, concerns them directly, and on the other hand that it concerns them individually; those two conditions must be considered cumulative, and must both be fulfilled before the application can be considered admissible. Here, on the contrary, the Commission argues that the decision in question is of a general economic nature and does not concern the applicants directly or individually.

Article 130 of the Act of Accession of Greece provides that during the transitional period 'if difficulties arise which are serious and liable to persist in any sector of the

economy or which could bring about serious deterioration in the economic situation of a given area' either Greece or another Member State may apply for authorization to take protective measures 'in order to rectify the situation and adjust the sector concerned to the economy of the common market'. That provision repeats in their entirety Article 226 of the EEC Treaty and Article 135 of the 1972 act concerning the accession of the United Kingdom of Great Britain and Northern Ireland. According to the Commission those protective measures, essentially protectionist tariff and quota measures, are by their nature and their method of adoption general measures, taken in objective and strictly defined circumstances, which are intended to rectify situations endangering general interests of a regional, national or Community nature. They thus go beyond the interests of the undertakings considered individually, since they cover whole sectors of the economy, whatever the nature or the number of natural or legal persons involved in the manufacture and marketing of the products of the sector in question. In these proceedings the decision in question concerns not only Greek cotton manufacturers such as the applicants but also Greek exporters who are not themselves manufacturers, and French importers and retailers. The fact that it is theoretically possible to identify the persons concerned by the decision does not in itself affect the general nature of the measure, especially since the Commission neither had nor needed to obtain information in that regard.

With regard to the question of a direct interest in taking action, the Commission considers that such an interest exists in cases where a private person is concerned by a Community decision and no national measure is interposed between him and that act. In this case, however, the contested decision necessitated national implementing measures from which in turn flowed direct consequences for private persons. All the Commission did was authorize a Member State to take measures limiting imports of certain products in a defined sector of the economy; the decision itself merely establishes a scheme which France is authorized to put into force, remaining free to do so or not, to apply higher import quotas, or to apply quotas for a shorter period. Nor was it a decision taken in order to ratify measures already adopted or provide a legal basis for choices already implemented at the national level, as in the cases provided for in the second paragraph of Article 115 of the EEC Treaty. Finally, the fact that the decision in question was notified to the Greek Government and not to undertakings in the Greek cotton industry is further proof that the matter involves relationships and interests which concern solely the Community and certain Member States.

With regard to the question of individual concern, the Commission takes the view that it is not sufficient that the persons to whom a decision is addressed should be identifiable in the sense that they can actually be individually distinguished. In this case the action would be admissible if the applicants' activities, market situation and position with regard to the applicable regulations made it possible to identify them individually to a sufficient degree in a manner analogous to that of the person to whom the measure is formally addressed.

Those conditions are not met. For that purpose, it is not possible to rely, as the applicants do, on the existence of contracts for exports to France concluded before the date of adoption of the decision for quantities in excess of those permitted by the decision, since the existence of such contracts is not established by the documents in the case. If such contracts existed they would have been subject to a *force majeure* clause, triggered in this case by the adoption of the protective measures; they would in any event be contracts governed by private law of whose existence the Commission could not be aware. In reality, the protective measures authorized by the decision in question are not addressed to the applicants individually, but affect the interests of categories of traders considered abstractly and distinguished from others only by their activity in the market for the products in question.

In their observations on the Commission's pleadings on the procedural issue the *applicants* first point out that the Court has consistently held that both the wording and the grammatical sense of the second paragraph of Article 173 of the EEC Treaty justify the widest possible interpretation, as is confirmed by comparison of that provision with Article 175 of the EEC Treaty concerning the action for failure to act.

With regard to the nature and scope of the decision in question, the applicants, while they accept that protective measures should be general in their scope and concern whole sectors of the economy, challenge the assertion that that is the case here; that issue can only be resolved by consideration in their context of the issue of admissibility and of the substance of the case. They argue that the protective measures in question are not directed towards a true 'sector of the economy'; their main object is only the regulation of the activity of Greek producers and exporters to France of cotton yarn, and their effects are not only limited as to the number of traders concerned but also restricted in terms of the product, in time and in space. In that sense these are not measures with a general and objective economic scope but specific and subjective measures. In those circumstances the Commission can not be heard to assert that it did not know which individual undertakings were affected by its decision and that it should not be obliged to obtain information in that regard, since a measure such as that in question cannot be adopted without consideration of the interests of the Greek traders concerned. Finally, the applicants rely in particular on the judgments of the Court of 1 July 1965 in Joined Cases 106 and 107/63, *Toepfer*, [1965] ECR 405, 23 November 1971 in Case 62/70, *Bock* v *Commission*, [1971] ECR 897, 18 November 1975 in Case 100/74, *CAM* v *Commission*, [1975] ECR 1393, and 6 March 1979 in Case 92/78, *Simmenthal* v *Commission*, [1979] ECR 777, in which the Court held to be admissible actions brought by individuals against measures considered to have a general economic scope.

With regard to the issue of direct concern, the Greek undertakings challenge the assertion that the decision in question granted a discretionary power to the French Government and that its implementation required national measures. In this case the national measure putting into effect the decision of the Commission was nothing more than a measure of formal implementation, whereas the decision in question was adopted in reply to persistent representations on the part of the French Government, following the failure of

proposals made to Greece for voluntary limitations on exports of cotton yarn to France, and the adoption by France itself of a system of licences for such imports. To assert, in those circumstances, that the decision in question left France the discretion to decide whether or not to apply the protective measures betrays excessive formalism. Furthermore, in circumstances where the desire of the national authority to apply the measures authorized is not in doubt, the Court has held that there can be no question of discretionary power.

The applicants consider that in taking such an approach to the notion of 'direct concern', which places the measure in question in its true political, economic and legal context, it cannot be denied that the contested decision directly affected their legal position. That is shown by the fact that the decision was raised against them as a legal justification for the refusal of their French contracting partners to perform the sales contracts concluded before the entry into force of the contested measure.

With regard to the issue of individual interest, the applicants consider that they are individually identifiable as the persons to whom the decision in question is really addressed. Although the decision was notified only to the French Republic and to the Hellenic Republic, its sole objective was to restrict the activities of the Greek undertakings manufacturing the product in question and exporting it to France, since the measure implemented was intended to limit a specific economic activity, that of the applicants. They are the principal Greek producers and exporters to France of cotton yarn, and belong to a group of traders who are individually identifiable on the basis of certain long-standing characteristics, that is, a degree of industrial and commercial organization well known in the business circles concerned. They were moreover identifiable in so far as they had concluded, in the course of their legitimate business and before the adoption of the decision in question, a series of sales contracts in France, deliveries under which could not be made.

According to the applicants, the fact, on which the Commission seeks to rely, that they are not the only persons concerned by the decision in question has no relevance to the admissibility of the action. The Court has held that in authorizing a person to challenge a measure which is not formally addressed to him, the second paragraph of Article 173 of the EEC Treaty does not require that that person or the limited group of which he is a member should be the sole trader affected by the measure; it is sufficient that he should be one of the persons principally and primarily affected by the measure in question, which is precisely the case here.

At the hearing on 21 September 1982 the *French Government*, which had not been able to present argument during the written procedure, stated first that it supported the conclusions of the Commission not only on the substance of the case but also on the issue of admissibility. In that regard in particular it presented detailed argument defending the thesis that the applicants are not individually concerned by the decision in question and that the application is therefore inadmissible. That follows, it argues, from the 'regulatory' nature of the contested measure, the fact that the applicants are affected by the decision in question only as members of an abstractly envisaged category of traders, the fact that

it is not possible to identify them individually to a sufficient degree, and finally the fact that the circumstances in this case are in no way comparable with those which gave rise to the judgments of the Court relied on as precedents by the applicants. In other respects it endorsed the arguments presented by the representatives of the Commission, stating that in French law a 'notice to importers' such as that issued in this case does not merely provide information but also has a normative character. There can therefore be no question of the decision at issue having any direct effect with effect to the applicants, since a national implementing measure was necessary.

3.2. *The substance of the case*

3.2.1. *The facts on which Decision 81/988 was based*

The *applicants* point out that the reasons relied on in support of the French Government's request were the existence of difficulties in the French combed cotton yarn sector which were serious and liable to persist and to bring about serious deterioration of the regional economic situation in the region Nord-Pas-de-Calais.

The applicants challenge the assertion that the main cause of the difficulties referred to by France was the increase in 1981 of imports of cotton yarn from Greece. They argue in that regard that imports to France of cotton yarn represent a very small percentage of French production or consumption. Between 1980 and 1981 imports from Greece thus increased by approximately 1.8% in relation to French production and by 1.42% in relation to French consumption of the product. With regard to combed cotton alone, although it is true that imports of that product from Greece amount to 60% of all imports in France, as is stated in the preamble to the contested decision, those imports represent a much smaller proportion of French consumption (24.6%). In relation to total French consumption, between 1980 and 1981 Greek imports increased by only about 7.1%.

In order better to understand that information, it must be borne in mind, say the applicants, that until 1980 Greek imports were subject to association arrangements, based on voluntary limitation of Greek exports towards the Community. The pure and simple juxtaposition of data from 1980 and from 1981 gives a false picture, since it is based on elements which from the economic and legal points of view cannot be compared. Furthermore, French exports in this sector are constantly increasing, while at the same time stocks in the French cotton spinning industry have been reduced. The applicants also argue that the preference for Greek combed yarns can only be attributed to their quality, since their price is higher than the average price of that product from other Community countries.

In closing, the applicants point out that the effect of the decision at issue was to deny Greek cotton yarn all access to the French market. That had very serious consequences for the Greek textile industry, whose situation had already deteriorated to a substantial extent. During the last 10 months the Greek cotton spinning industry has lost 300 000 spindles on a total of 1 200 000. The partial or total suspension of production in certain plants is also under consideration.

The *Commission* points out that the situation of the cotton spinning industry in France deteriorated in 1981. That is proved by a decrease in forecast production in 1981 (16%), while during the first six months of

1981 imports and exports were maintained at the level of 1980.

According to the information at the Commission's disposal eight of the 16 French producers of combed cotton yarn are situated in the region Nord-Pas-de-Calais. Those undertakings account by themselves for 40% of total production. A plan for the restructuring of those undertakings had been drawn up with a view to concentrating the production of four undertakings in two factories and eliminating obsolete equipment. The carrying out of that plan would result in the loss of 10% of the 1 980 jobs in the industry.

Imports into France of combed cotton yarn from Greece, which amount to about 75% of all imports, have consistently increased. They increased by 47% in 1979, by 21% in 1980 and, if the trend in the first six months of the year was maintained, by 40% in 1981. That increase took place only in France and not in the other Member States.

There was a difference of 10% between the prices of French products and those of Greek products. That difference may be attributed to the fact that labour costs in Greece are half of those in France, even if that advantage is mitigated by the lower productivity of Greek labour.

In the light of those factors the Commission concluded that imports of combed cotton yarn from Greece were a significant cause of the difficulties experienced in the sector and could in the short term have serious effects. It considered however that that conclusion shold be qualified since other reasons (lack of investment, obsolete plant) contributed to those difficulties.

In their reply, the *applicants* state that it is illusory to think that an industrial sector in a state of crisis can be re-established by limiting imports of cotton yarn from Greece for a period of three months, when those imports are minimal in relation to the production and consumption of cotton yarn in France.

According to the applicants, the data contained in the annexes to the Commission's defence show that:

French combed cotton production would decline in 1981 by only 11.2%;

imports into France from all sources would increase in 1980 and 1981 by 28.7%, amounting to 31.6% of French consumption in 1980 and 41% in 1981 that is, an increase of 9.4%;

imports into France from Greece would increase between 1980 and 1981 by 39%, going from 17.5% to 24.5% of French consumption, that is, an increase of 7%;

the proportion of Greek products in total French imports went from 55.3% in 1980 to 59.9% in 1981, an increase of 4.6%;

French exports increased consistently by about 8.3% between 1980 and 1981.

The applicants deduce from those data that although there was certainly an increase between 1980 and 1981 in imports into France of combed cotton yarn from Greece the extent of that increase relative to other market factors was not such as to create economic difficulties which were serious and liable to persist for the French market of the combed cotton industry.

The applicants also emphasize that the Commission relied on much more detailed and significant elements in authorizing the French Republic to adopt protective measures under Article 226 of the EEC Treaty against the importation of Italian refrigerators (see the judgment of the Court of 17 July 1963 in Case 13/63, *Italian Republic* v *Commission*, [1963] ECR 165).

In its rejoinder, the *Commission* argues first that the harm caused to the Greek textile industry by the contested decision was not as serious as the applicants allege. Information provided by the Permanent Representative of Greece to the European Communities shows that 200 000 spindles were withdrawn, and a large number of them have been replaced. The Commission notes that Greek exports went from 49 424 tonnes in 1980 to 51 080 tonnes in 1981.

With regard to the effects of imports into France of combed cotton yarn from Greece, the Commission rejects the criticism put forward by the applicants and challenges the data on which they rely.

With regard to trends in inventories, the Commission points out that the figures quoted by the applicants refer to carded and combed yarn together, and therefore have no probative value.

According to the Commission it cannot be disputed that imports into France of combed cotton from Greece accounted for one quarter of apparent consumption in 1981, as opposed to one sixth in 1980. That increase of 8.5 points (from 17.5% to 26%), instead of 7 points as was estimated in October 1981, corresponds to an increase of 48.6% in imports from Greece, instead of 40% as was first estimated. At the same time the increase in total imports of 2 700 tonnes, of which 2 000 tonnes are attributable to Greece, shows that imports from Greece increased by 39.3%, while imports from other countries increased by only 15%. It follows, says the Commission, that imports from Greece are in fact the most important factor disturbing the French market.

Furthermore, the Commission argues that the comparison made by the applicants between this case and that of the Italian refrigerators is of little value, since the cases concern different sectors subject to different economic conditions.

3.2.2. *The grounds raised in the application in support of the assertion that the decision was illegal*

(a) Infringement of Article 130 of the Act of Accession

The *applicants* argue that the conditions of application of Article 130 were not met in this case since:

the product in question does not constitute a 'sector of the economy' as referred to in Article 130;

the sectoral or regional difficulties envisaged by that article do not exist in this case;

contrary to Article 130 (3), the content of the decision in issue was not limited to such measures as were strictly necessary.

With regard to the first argument, the applicants assert that the production of combed cotton yarn does not constitute a 'sector of the economy' since that product cannot be clearly distinguished from other similar products.

In the *Commission's* view, however, the spinning of combed cotton is indeed a 'sector of the economy' (see the judgment of 17 July 1963 in Case 13/63, *Italian Republic* v *Commission*). That is, combed cotton exhibits characteristics which distinguish it from cotton which is merely carded, in so far as it is finer and results from a longer and more elaborate manufacturing process.

In their reply the *applicants* challenge the assertion that combed and carded cotton yarn can be distinguished, since the two products are largely interchangeable and require the same production structure.

According to the applicants, if the sector of the economy to which the Commission's decision applies is that of combed cotton yarn, its application to carded cotton yarn is illegal. If on the other hand the sector of the economy in question is that of cotton yarn in general, the decision is also illegal, since the Commission has not established the existence of serious difficulties concerning the whole of that sector.

The *Commission* lays particular emphasis on the differences between combed and carded cotton yarn. In the textile industry there are products which may constitute distinct sectors even though they result from the same manufacturing process and even from the same machines.

According to the Commission the application of the contested decision to combed cotton yarn alone would however have posed insuperable technical difficulties. That explains why the decision applies to both combed and carded yarn.

The Commission admits that the customs inspections established by the French authorities in implementation of the contested decision constitute an infringement of Community law, but it asserts that that can in no way be imputed to it, and it has instituted proceedings in that regard under Article 169 of the EEC Treaty.

The *French Government* refers to the difficulty of distinguishing between combed and carded yarn, in view of the necessary analyses. It also points out that the Common Customs Tariff (heading 55.05) distinguishes between cotton yarn not according to whether it is combed or carded but according to its thickness.

With regard to the absence of sectoral or regional difficulties, the *applicants* argue that the contested decision refers to the existence of both 'difficulties which are serious and liable to persist in a sector of the economy' and 'difficulties which could bring about serious deterioration in the economic situation of a given area', without either of these alternative conditions being met individually. The factors relied on with regard to one or the other of those conditions are not sufficient to satisfy one of them taken by itself.

The *Commission* argues first that the submission made by the applicants does not concern an alleged infringement of Article 130 but at most a failure to state sufficient grounds. In that regard it refers to the preamble to the contested decision.

Even if the existence of difficulties 'which could bring about serious deterioration in the economic situation of a given area' constitutes an autonomous condition, not a cumulative one, in the framework of Article 130, it should in the Commission's view be regarded as a matter which may be advanced in support of an argument based primarily on sectoral difficulties.

The data provided in this regard by the Commission show that both conditions are met in this case.

The *applicants* argue that although it is legitimate to rely on one of those conditions to reinforce the other, it is nevertheless necessary that at least one of them should be more or less sufficiently satisfied.

With regard to the infringement of Article 130 (3) the *applicants* state that the content of the decision in issue is not limited to such measures as are strictly necessary. Nor was

it chosen with a view to disturbing as little as possible the functioning of the common market. The decision in issue seriously harms traders affected by the measures ordered.

The *Commission* points out that the very nature of protective measures implies temporary derogations from the rules of Community law, which is inevitably accompanied by a degree of harm to the interests of the business groups concerned. Having regard to the quantity and duration of the quotas authorized and to their restriction in relation to the request made by the French Government, however, the contested decision gave authorization for the minimum measure necessary in order to give the struggling French cotton firms the breathing space which they sought.

The Commission points out in that regard that it has considerable discretion as to the choice of appropriate measures.

The *applicants* insist that in the statement of reasons for the contested measure there is no indication that the Commission took into consideration the extremely harmful effects which its decision would have on the situation of the applicants and on the Greek economy in general.

According to the *French Government* the appropriateness of the Commission decision in relation to the circumstances is clearly shown by the fact that the measures authorized were strictly limited in time and in their restrictive effects, and were chosen in the light of technical constraints which make it impossible for persons who are not specialists to distinguish carded cotton yarn from combed cotton yarn with the naked eye.

(b) Errors and inadequacies in the statement of reasons

According to the *applicants* the decision at issue contains virtually no statement of reasons validly justifying both the necessity of adopting protective measures and the content of those measures.

They point out that the Commission:

does not explain in what way the production and marketing of combed cotton yarn constitutes a 'sector' within the meaning of Article 130;

combines the conditions of application of that article (sectoral difficulties and regional difficulties) without showing in what way each condition is properly met;

does not take into account the situation of the Greek producers of cotton yarn or the harmful effects which the measures adopted would have for those undertakings;

does not mention the figures for imports to France from all sources of combed cotton yarn, the rate of increase of imports from other souces or even data regarding French consumption of that product, the information which would make it possible to assess the real effect on the French market of imports from Greece.

The *Commission* replies that the first two alleged defects raised by the applicants in no way differ from the arguments which have already been discussed with regard to the alleged failure to observe the conditions of application of Article 130.

With regard to the situation of the Greek undertakings, the responsible departments of the Commission entered into contact both with the producers and with the Greek authorities. Furthermore, the Commission must be able to rely, in addition to the data at its disposal, on the information provided by the Member State requesting authorization, since the responsible departments cannot check that information within the limited time available. The Commission also points out that although it is not obliged to contact the Member State which could be harmed by the protective measures, it did in fact do so in this case.

As for the data whose absence is referred to by the applicants, some of them appear in the preamble to the contested decision; the remainder are superfluous. Referring to the

Referring to the opinion of Advocate General Dutheillet de Lamothe in Case 37/70, *Rewe-Zentrale* ([1971] ECR 23), the Commission emphasizes that the applicants have adduced no evidence of a major infringement of a procedural requirement or of a misuse of power. Nor have they established a manifest error on the part of the Commission. They do not indicate what other measures should have been adopted.

In their reply the *applicants* insist that the Commission failed to contact the authorities and undertakings of the State which would be affected by the protective measures. In their view such consultation is neither a polite gesture nor an end in itself, but the only way in which the Commission can assess in an effective and equitable manner the harm which would be suffered by the undertakings affected by the measures envisaged.

(c) Infringement of certain general principles of law

According to the *applicants* the principle of proportionality was breached in so far as the measures authorized by the decision in issue are excessive in relation to the objectives of Article 130 (1), that is, 'to rectify the situation and adjust the sector concerned to the economy of the common market'.

The applicants complain in particular that the Commission adopted measures applying to both combed cotton and carded cotton, when the latter product is entirely irrelevant to the subject matter of the request of the French Government and to the reasons stated for the decision.

The contested decision also constitutes a breach of the principle of non-discrimination since Greek undertakings are treated unfavourably to the benefit of undertakings established in other Member States.

The same is true of the principle of Community preference, in so far as the contested decision did not consider whether it was possible to remedy the economic situation referred to by the French Republic by limiting imports of yarn from non-member countries.

In the applicants' view the principle of free competition is also infringed by the decision at issue, not only because it considerably limits the access of Greek undertakings to the French market but also because it gives favourable treatment to French undertakings and to undertakings in other Member States, which remain free to export to France.

According to the *Commission*, where protective measures are concerned the question whether the general principles relied on by the applicants have been observed must be assessed in the light of the fact that such measures by their very nature involve derogations from general rules and in relation to the exceptional situation which they seek to rectify.

The principle of proportionality requires that the measures adopted should be qualitatively and quantitatively proportional to the difficulties to be resolved and should be the minimum necessary. Those conditions are fulfilled by the decision in issue since the measures authorized are temporary, are limited to the single Member State requesting them and to a single country of origin, Greece, and consist only of quotas which correspond more or less to the current year's exports.

As for the principles of non-discrimination, Community preference and free compe-

tition, the Commission points out that the measures authorized cover all imports from Greece, whatever the place of manufacture. The applicants seem moreover to forget that Article 130 does not allow the Commission to authorize protective measures with regard to other countries of origin. Nor has the Commission the power under Article 130 to authorize measures with regard to other Member States and non-member countries.

In their reply the *applicants* state that their complaint with regard to the alleged breach of the principle of non-discrimination is that the Commission chose measures which have too great an effect on Greek undertakings, which are in no way responsible for the situation which the decision in issue is intended to rectify, instead of measures aiding the French undertakings which are in difficulties without penalizing Greek undertakings.

4. Oral procedure

The applicants, represented jointly by D. Evrigenis, of the Thessaloniki Bar, and G. Vandersanden, of the Brussels Bar, the Commission of the European Communities, represented by M. van Ackere and X. Yataganas, acting as Agents, assisted by M. Hall, principal administrator, in the capacity of expert, and the Government of the French Republic, represented by B. Botte, acting as Agent, presented oral argument at the sitting on 3 July 1984.

The Advocate General delivered his opinion at the sitting on 11 October 1984.

Decision

1 By application lodged at the Court Registry on 8 January 1982, seven Greek cotton undertakings brought an action pursuant to Article 173 of the EEC Treaty for a declaration that Commission Decision No 81/988/EEC of 30 October 1981 (Official Journal L 362, p. 33), is void. That decision, adopted pursuant to Article 130 of the Act concerning the conditions of accession of the Hellenic Republic and the adjustments to the Treaties (hereinafter referred to as 'the Act of Accession'), authorizes the French Republic to impose a quota system on imports into France of cotton yarn from Greece during the months of November and December 1981 and January 1982.

2 By a document dated 12 February 1982 the Commission raised an objection of inadmissibility pursuant to Article 91 of the Rules of Procedure; the Government of the French Republic, intervening, joined in that objection.

3 The Commission and the Government of the French Republic point out that the decision in question is addressed to the French Republic and the Hellenic Republic. They argue that it is an economic decision of a general nature, affecting a whole sector of the economy rather than individuals. Although the applicants are touched by the effects of the protective measures authorized, the decision in question is not of direct or individual concern to them.

4 According to the second paragraph of Article 173 of the EEC Treaty, any natural or legal person may, under the conditions laid down in the first paragraph of that article, institute proceedings against a decision addressed to that person or against a decision which, although in the form of a regulation or a decision addressed to another person, is of direct and individual concern to the former.

5 It is common ground that in this case the contested decision is not addressed to the applicants. It is therefore necessary, without going into the legal nature of the decision, to consider whether the decision is nevertheless of direct and individual concern to the applicants.

6 With regard to the question of direct concern, the Commission and the Government of the French Republic argue that the applicants are not directly affected by the decision at issue since that decision merely authorizes the French Republic to institute a quota sytem on imports of cotton yarn from Greece, and thus leaves the Member State which requested the authorization free to make use of it or not. The decision therefore does not itself establish a system limiting imports but, in order for it to have practical effect, requires implementing measures on the part of the French authorities.

7 It is true that without implementing measures adopted at the national level the Commission decision could not have affected the applicants. In this case, however, that fact does not in itself prevent the decision from being of direct concern to the applicants if other factors justify the conclusion that they have a direct interest in bringing the action.

8 In that respect it should be pointed out that, as the Commission itself admitted during the written procedure, even before being authorized to do so by the Commission the French Republic applied a very restrictive system of licences for imports of cotton yarn of Greek origin. It should moreover be observed that the request for protective measures not only came from the French authorities but sought to obtain the Commission's authorization for a system of import quotas more strict than that which was finally granted.

9 In those circumstance the possibility that the French Republic might decide not to make use of the authorization granted to it by the Commission decision was entirely theoretical, since there could be no doubt as to the intention of the French authorities to apply the decision.

10 It must therefore be accepted that the decision at issue was of direct concern to the applicants.

11 With regard to the question whether the applicants are also individually concerned, it should first be pointed out, as the Court stated in its judgment of 15 July 1963 (Case 25/62, *Plaumann*, [1963] ECR 95), that 'persons other than those to whom a decision is addressed may only claim to be individually concerned if that decision affects them by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons and by virtue of these factors distinguishes them individually just as in the case of the person addressed'.

12 The applicants argue that they fulfil the conditions set out above since they are the main Greek undertakings which produce and export cotton yarn to France. They argue that they therefore belong to a class of traders individually identifiable on the basis of criteria having to do with the product in question, the business activities carried on and the length of time during which they have been carried on. In that regard the applicants emphasize that the production and export to France of cotton yarn of Greek origin requires an industrial and commercial organization which cannot be established from one day to the next, and certainly not during the short period of application of the decision in question.

13 That proposition cannot be accepted. It must first be pointed out that the applicants are affected by the decision at issue only in their capacity as exporters to France of cotton yarn of Greek origin. The decision is not intended to limit the production of those products in any way, nor does it have such a result.

14 As for the exportation of those products to France, that is clearly a commercial activity which can be carried on at any time by any undertaking whatever. It follows that the decision at issue concerns the applicants in the same way as any other trader actually or potentially finding himself in the same position. The mere fact that the applicants export goods to France is not therefore sufficient to establish that they are individually concerned by the contested decision.

15 The applicants argue however that their situation may be distinguished from that of any other exporter to France of cotton yarn of Greek origin inasmuch as they had entered into a series of contracts of sale with French customers, to be performed during the period of application of the decision and covering quantities of cotton yarn in excess of the quotas authorized by the Commission. The applicants state that those contracts could not be carried out because of the quota system applied by the French authorities. They take the view that in those circumstances their individual interests were affected by the decision in question.

16 According to the applicants the Commission was in a position, and even under an obligation, to identify the traders who, like the applicants, were individually concerned by its decision. In failing to obtain information in that regard it did not comply with the conditions of application of Article 130 of the Act of Accession, since in the applicants' view that provision obliges the Commission, before making a decision, to ascertain which traders, in this case Greek traders, would be individually concerned by the protective measures authorized.

17 It should first be observed that if that argument were held to be well founded, it would only avail those applicants who could show that before the date of the contested decision they had entered into contracts with French customers for the delivery of cotton yarn from Greece during the period of application of that decision.

18 Since neither Vomvyx P.V. Svolopoulos and Chr. Koutroubis A.E. nor Unicot Hellas A.E. provided evidence in that respect, the application must be declared inadmissible in so far as they are concerned.

19 With regard to the other applicants, it must be held that the fact that, before the adoption of the decision at issue, they had entered into contracts which were to be carried out during the months to which the decision applied constitues a circumstance which distinguishes them from any other person concerned by the decision, in so far as the execution of their contracts was wholly or partly prevented by the adoption of the decision.

20 The Commission, however, challenges the assertion that that circumstance is sufficient in itself for the applicants to be regarded as individually concerned. It argues that in any event when it adopted the decision it was unaware of the number of contracts already entered into for the period covered by that decision and that, in contrast to the cases considered in previous decisions of the Court, it had no way of obtaining information in that regard, since the contracts in question were governed by private law and there was no obligation to declare them to Community or national authorities.

21 In that respect it must be observed that the reply to be given to the question whether and to what extent the Commission was aware, or could have made itself aware, which Greek exporters had entered into contracts covering the period of application of the contested decision depends on the interpretation given to Article 130 of the Act of Accession, and in particular on the question whether the Commission, before authorizing a protective measure under that provision, is obliged to make appropriate enquiries as to the economic effects of the decision to be taken and the undertakings which would be affected by it. Since arguments related to that problem were raised in support of the assertion that the decision at issue is unlawful, the admissibility of the application from that point of view must be considered in conjunction with the substance of the case.

22 The applicants argue first that in the adoption of the contested decision the conditions laid down in Article 130 of the Act of Accession were not met. In that regard the applicants make three distinct submissions. In the first place they maintain that the product covered by the decision at issue does not constitute a 'sector of the economy' as envisaged by Article 130. In their second submission they argue that the sectoral or regional difficulties referred to in that article did

not exist in this case. In their third submission they assert that the content of the decision in question was not restricted to the measures strictly necessary, contrary to Article 130 (3).

23 Taking into account what has already been said with regard to the admissibility of the action, this last submission should be considered first.

24 It should be borne in mind in this regard that under Article 130 (1) of the Act of Accession a Member State may apply for authorization to take protective measures with regard to the Hellenic Republic 'if . . . difficulties arise which are serious and liable to persist in any sector of the economy or which could bring about serious deterioration in the economic situation of a given area'.

25 Article 130 (3) provides that:

'the measures authorized under paragraph (2) may involve derogations from the rules of the EEC Treaty and of this Act to such an extent and for such periods as are strictly necessary in order to attain the objectives referred to in paragraph (1). Priority shall be given to such measures as will least disturb the functioning of the common market'.

26 That requirement may be explained by the fact that a provision permitting the authorization of protective measures with regard to a Member State which derogate, even temporarily and in respect of certain products only, from the rules relating to the free movement of goods must, like any provision of that nature, be interpreted strictly.

27 The applicants argue that the decision at issue has a serious impact on the Greek traders concerned, even though there is not the slightest indication in the statement of the reasons on which that decision is based that the Commission took into account the very serious effects which its decision would have for those traders.

28 It must be observed that in order to ascertain whether the measure whose authorization is being considered meets the conditions laid down in Article 130 (3) the Commission must also take into account the situation in the Member State with regard to which the protective measure is requested. In particular, in so far as the circumstances of the case permit, the Commission must inquire into the negative effects which its decision might have on the economy of that Member State as well as on the undertakings concerned. In that connection it must also consider, in so far as is possible, the contracts which those undertakings, relying on the continuation of free trade within the Community, have already entered into and whose execution will be wholly or partially prevented by the decision authorizing the protective measure.

29 In that regard the Commission objects that it would be impossible for it, during the brief period within which it must act, to make itself aware of the exact number of contracts meeting that description.

30 That argument cannot be accepted in the light of the circumstances of this case. Before adopting the contested decision the Commission had sufficient time to obtain the necessary information. As the Commission admitted at the hearing, moreover, it had arranged a meeting with representatives of the Greek Government and of the trade interests concerned, which even included certain of the applicants.

31 In those circumstances it must be concluded that the Commission was in a position to obtain sufficiently exact information on the contracts already entered into which were to be performed during the period of application of the decision at issue. It follows that the undertakings which were party to contracts meeting that description must be considered as individually concerned for the purpose of the admissibility of this action, as members of a limited class of traders identified or identifiable by the Commission and by reason of those contracts particularly affected by the decision at issue.

32 The objection of inadmissibility raised by the Commission and supported by the Government of the French Republic must therefore be dismissed, except as regards the two applicants referred to above in paragraph 18.

33 With regard to the substance of the case, it appears from the text of the decision in question that the Commission did to a certain extent comply with the requirements laid down by Article 130 (3). It did authorize quotas less strict than those requested by the French Republic. In Article 3 of the decision, moreover, it included a clause exempting shipments sent from Greece before the notification of the decision.

34 Having regard to the particular circumstances of this case, it does not however appear that the Commission took sufficient account of the interests of other Greek traders also affected by its decision. In a case such as this, where the request for protective measures was made at the time when the Member State requesting them was already applying an unauthorized system of import quotas for the products in question, the Commission should have been more prudent in its attitude and should have shown greater concern for the situation of the Greek undertakings; it should in particular have taken into account, with a view to their possible exemption in whole or in part from the application of the decision, contracts entered into in good faith before the date of that decision and to be performed during the months covered by the protective measures.

35 It follows from the foregoing that in taking into consideration only those contracts under which shipments had already been sent from Greece and not those which met the description set out above, although nothing prevented it from doing so, the Commission did not entirely comply with the provisions of Article 130 (3).

36 The applicants also argue that the product to which the decision at issue applies does not constitute a 'sector of the economy' as referred to in Article 130 of the Act of Accession. In that regard they maintain that combed cotton yarn, to which the request for protective measures made by the Government of the French Republic referred, can only with difficulty be distinguished from carded cotton yarn, since the two products are largely interchangeable and require the same production structure.

37 It appears, however, that although the request of the Government of the French Republic referred to difficulties in the combed cotton yarn sector alone the Commission decision applied to both combed and carded yarns. The Commission thus made no distinction between those two products. The argument set out above is therefore irrelevant and must be rejected.

38 The applicants go on to state that the decision at issue refers to the existence of both 'difficulties . . . which are serious and liable to persist' in a sector of the economy and 'difficulties . . . which could bring about serious deterioration in the economic situation of a given area', as referred to in Article 130, but that neither of those alternative conditions is in itself met.

39 In that regard it must first be pointed out that although Article 130 lays down two distinct conditions under which the Commission may authorize a protective measure, that does not mean that factors relating to one or the other of those conditions may not be taken into account generally in order to arrive at the conclusion that the request for a protective measure made by a Member State is justified.

40 Furthermore, in the application of Article 130 the Commission has a wide discretion in determining whether the conditions justifying the adoption of a protective measure are present. As the Court has held on several occasions (see judgment of 25 January 1979, Case 98/78, *Racke*, [1979] ECR 69), in cases involving such discretion the Court must restrict itself to considering whether the exercise of that discretion contains a manifest error or constitutes a misuse of power or whether the Commission clearly exceeded the bounds of its discretion.

41 There is no basis for holding that the Commission's decision is vitiated by such defects. That submission must therefore be rejected.

42 It follows from the foregoing considerations that Commission Decision No 81/988 of 30 October 1981 authorizing the French Republic to take protective measures with regard to imports of cotton yarn from Greece must be declared void in so far as it applies to contracts entered into before the date of its notification and to be performed during the period of its application.

Costs

43 Under Article 69 (2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs. According to the first subparagraph of Article 69 (3), however, where each party succeeds on some and fails on other heads, or where the circumstances are exceptional, the Court may order that the parties bear their own costs in whole or in part.

44 In this case the contested decision has been declared void in part only. The Commission should therefore be ordered to pay half of the costs incurred by the applicants, as well as its own costs.

45 Since the action has been declared inadmissible in so far as Vomvyx P.V. Svolopoulos and Koutroubis A.E. and Unicot Hellas A.E. are concerned, however, those undertakings must bear all their own costs.

46 The Government of the French Republic, intervening, must pay the costs arising from its intervention.

On those grounds,

The Court (First Chamber)

hereby:

1. **Dismisses the application as inadmissible in so far as Vomvyx P.V. Svolopoulos and Chr. Koutroubis A.E. and Unicot Hellas A.E. are concerned;**

2. **Declares void Commission Decision No 81/988 of 30 October 1981 authorizing the French Republic to take protective measures with regard to imports of cotton yarn from Greece in so far as it applies to contracts entered into before the date of its notification and to be performed during the period of its application;**

3. **For the rest, dismisses the application;**

4. **Orders the Commission to pay its own costs and half of the costs incurred by the applicants with the exception of Vomvyx P.V. Svolopoulos and Chr. Koutroubis A.E. and Unicot Hellas A.E., which are ordered to pay their own costs;**

5. **Orders the Government of the French Republic to pay the costs which it incurred as a result of its intervention.**

Bosco Koopmans Joliet

Delivered in open court in Luxembourg on 17 January 1985.

P. Heim
Registrar

G. Bosco
President of the First Chamber