during its period of application, may be regarded as individually concerned, as members of a limited group of traders identified or identifiable by the Commission, having regard to the requirements in relation to preliminary enquiries of Article 130 (3), and particularly affected by the decision at issue.

2. A provision such as Article 130 of the Act of Accession of the Hellenic Republic which permits 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.

   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, and must in particular, in so far as the circumstances of the case permit, inquire into the negative effects which its decision might have on the economy of that Member State as well as on the undertakings concerned.

3. In the application of Article 130 of the Act of Accession of the Hellenic Republic the Commission has a wide discretion in determining whether the conditions justifying the adoption of a protective measure are present. Although that article lays down two distinct conditions under which the Commission may authorize a protective measure requested by a Member State, it is quite entitled to take into account in a general manner factors relating to one or the other of those conditions in order to arrive at the conclusion that the request is justified.

OPINION OF MR ADVOCATE GENERAL VERLOREN VAN THEMAAT delivered on 14 October 1982 *

Mr President,
Members of the Court,

1. Observations concerning the legal basis of the contested authorization to take protective measures

Article 130 (1) 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') provides, in so far as is relevant here, that within the framework of the relationship between Greece and the other Member States any Member State may, until 31 December 1985, 'if... difficulties arise which are serious and liable to persist in any sector of the economy

* Translated from the Dutch.

or which could bring about serious deterioration in the economic situation of a given area ... 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'. Article 130 (2) and (3) lays down the procedural and substantive requirements which the Commission must take into account when it grants authorization to take such measures.

In so far as is relevant to the action brought in this case by a number of limited liability companies, including Piraiki-Patraiki, the above-mentioned provisions are identical to Article 226 of the EEC Treaty. As is well known, that article also made it possible to take protective measures of that kind during the transitional period within the framework of the relationship between the original Member States. A similar provision which was included in the Act of Accession of Denmark, Ireland and the United Kingdom was also applicable only during the transitional period, which has since expired. Protective measures such as those at issue in the present case may now be taken within the Community only in bilateral trade between Greece and any other Member State. That of course means that it is necessary *inter alia* to prevent difficulties which arise in the other Member States as a result of other bilateral relations from being shifted on to Greece. However, neither that aspect of the case nor the other submissions put forward on substantive issues can be explored in any greater detail at the present stage of the proceedings.

To some extent, comparable protective measures may be taken pursuant to Article 115 of the EEC Treaty in relation to products from non-member countries. It is clear from the decisions of the Court, moreover, that similar problems may arise with regard to the admissibility of actions, such as the present, brought by undertakings affected to have protective measures declared void. In the course of my opinion, I shall consider in greater detail the Court's decisions concerning protective measures in general. For now, I shall confine myself to the general observation that during the current recession the practical importance of full legal protection against the unlawful adoption of protectionist measures, as in the present case, is of course much greater. In particular, serious doubts have been expressed in industrial, parliamentary and academic circles regarding the lawfulness of the policy adopted to apply Article 115. [1] There is a great deal of published material [2] on the problem of legal protection in general in relation to protective measures and in the course of my opinion I shall have occasion to return to the subject briefly. I shall conclude my general observations at this stage by stating that the inference to be drawn from the first and the beginning of the second sentence of Article 173 is that the latter provision must be interpreted as providing, in any specific case of unlawful conduct, the possibility of effective legal protection for the interests affected thereby. The words 'for this purpose', which are to be found at the beginning of the second sentence of that Article, permit a direct link to be established with the general task of the Court, specified in the first sentence, of

1 — See in this connection C.W.A. Timmermans, Troebel water ofwel de beschikkingenpraktijk ex artikel 115 EEG, SEW 1979, pp.636 to 653.

2 — See for example: P. Gori, Les clauses de sauvegarde des traités CECA et CEE, Brussels, 1966; T. Müller-Heidelberg, Schutzklauseln im europäischen Gemeinschaftsrecht, Hamburg 1970; M.A. Lejeune, Un droit de temps de crise: Les clauses de sauvegarde de la CEE, Brussels, 1975; P.J. Slot, Vrijwaringsclausules en vrijwaringsmaatregelen in het recht van de Europese Gemeenschap, SEW 1976, pp. 473 to 502; P. van Dijk, Judicial Review of Governmental action and the requirement of an interest to sue, Alphen a/d Rijn/ Maryland USA/The Hague 1980, especially pp. 284 to 305, as well as the other works mentioned in those publications and the numerous references to relevant cases decided by the Court.

reviewing the legality of measures of the Council and the Commission other than recommendations or opinions. In Case 25/62 *Plaumann* [1963] ECR 95, which I shall have ample opportunity to refer to again in another connection, the Court has already formulated the principle that 'provisions of the Treaty regarding the right of interested parties to bring an action must not be interpreted restrictively'. In my opinion, the decisions of the Court which remain to be considered may be interpreted in such a manner that the general task assigned to the Court by the first sentence of Article 173 has been fully performed. Where protective measures adopted by the Commission are tainted by serious illegalities, to which, in view of their nature, the Member States or the Council cannot be expected to draw attention, natural or legal persons who are particularly affected by those illegalities must be able to rely upon them, at least in so far as national legal proceedings cannot provide a satisfactory solution to their problems.

2. Observations concerning the contested authorization to take protective measures

The Commission Decision of 30 October 1981 (Official Journal 1981, L 362, p.33), referred to by the applicants, authorizes the French Republic to take protective measures with regard to imports of cotton yarn from Greece. It is clear from the detailed preamble to the decision *inter alia* that in the first six months of 1981 imports of cotton yarn increased considerably in France and Ireland alone but fell in the case of other Member States. That reason and other reasons for granting authorizations may for the time being be disregarded for the purposes of the examination to determine whether the application submitted is admissible. I do consider it important that, as is apparent from the preamble to the Commission decision, as well as from Article 3 thereof, the Commission has to a certain extent taken into account contracts already concluded. The authorization granted is inapplicable to consignments of cotton yarn dispatched from Greece before France and Greece were notified of such authorization. The fact that the decision respects some but not all contracts which have become legally binding, together with other circumstances in which the applicants found themselves at the time when the authorization was granted, may in my opinion be significant in the light of the Court's case-law for the purpose of determining the admissibility of the applications. In that connection, I would refer *inter alia* to Case 62/70 *Bock* [1971] ECR 897. It must be established, according to paragraph 10 of the decision in that case, that 'the factual situation thus created [by the authorization] differentiates the latter [that is to say the applicants] from all other persons and distinguishes them individually just as in the case of the person addressed'.

Moreover, the contested decision also leads me to make the following observations in connection with the question of legal protection under discussion:

In the first place, there is no doubt, on the basis of the wording of Article 173, that an action by Greece directed against the decision on the grounds of its alleged unlawfulness would in any event have been declared admissible. In my opinion, however, there are two reasons which prevent the inference from being drawn therefrom that in relation to such decisions no right of action exists for undertakings affected thereby. To begin with, the problem of the admissibility of individual actions of that kind arises, as appears from the Court's case-law, virtually in the same form as in the case of decisions granting authorization taken under Article 115 of the EEC Treaty. Where authorization under Article 115 is granted unlawfully, the non-member countries affected thereby are not, however, entitled to challenge the measures concerned, whilst the Member States themselves as a rule have no interest in

doing so. Thus, any review of the legality of such measures in accordance with the first sentence of Article 173 would disappear if the traders who were particularly affected by those measures were unable to challenge them. Thus, in order to avoid a serious lacuna in the system of legal protection established by Article 173, sufficient scope should be allowed for individual actions directed against decisions authorizing protective measures of the kind at issue in this case. In addition, the authorization of measures restricting imports, such as those in the present case, may adversely affect undertakings whose interests, because of their nature, can scarcely be defended by the Member States concerned. I am referring in particular to interference with commercial contracts which have already become legally binding, a matter which plays an important part in these proceedings.

My second observation concerns the legal nature of the contested decision. At the hearing, the parties agreed that the decision was not in the nature of a regulation. The requirements laid down by Article 189 of the EEC Treaty which a measure must satisfy in order to be regarded as a regulation are indeed not fulfilled in the present case. The view that the measure involved is not a regulation but a decision is also supported by Article 4 of the decision, which states that it is addressed to the French Republic and to the Hellenic Republic, as well as by the fact that the decision was not published in the Official Journal until 17 December 1981 and, what is more, was included in the section for measures whose publication is not obligatory. The fact that the measure is in the nature of a decision does not in itself preclude it from having, in the same way as a regulation, a general effect on an indeterminate group of undertakings defined only in abstract terms, although that consequence follows exclusively where the national implementing measures are in the nature of a regulation. A Member State to which authorization has been granted may opt for the direct application of the decision granting authorization and that seems to have been the course of action taken in this case. I shall return to that point in the next paragraph of my opinion. It is only in the case of Article 130 (2) of the Act of Accession that doubts may arise whether the decision taken by the Commission may not in fact be in the nature of a regulation. In that paragraph, concerning *inter alia* emergency procedures (which are not at issue in the present case), there is no question of the granting of *authorization* to a Member State to take protective measures; it merely provides that the Commission is *to determine* such measures itself and in addition that 'the measures thus decided on shall be applicable forthwith'. In such a case, the Commission measure is certainly of *direct* concern to the individuals affected, whereas the question whether it is also of *individual* concern to them depends on the specific circumstances of the case.

3. Observations concerning the French implementing measures

The measures adopted by France to give effect to the decision granting authorization were published in the *Journal Officiel de la République Française* of 4 November 1981 (N.C. 9671) and an amendment which has no bearing on the legal nature of the decision was published in the *Journal Officiel* of 27 December 1981.

The text of 4 November 1981, which was not produced in the course of the proceedings, reads as follows:

'Notice to importers of cotton yarn from Greece

Importers are hereby informed that in application of a decision of the Commission of the European Communities imports of cotton yarn from Greece classified under heading 55.05 of the Common Customs Tariff

are to be effected from 1 November 1981 to 31 December 1981 under the system governing imports which have not been liberalized (a procedure provided for by Title I, Chapter II, of the Decree of 30 January 1967 issued by the Director General for Customs and Indirect Taxation).

Therefore the provisions of this notice shall temporarily replace, for the period from 1 November to 31 December 1981, the earlier provisions as regards the products in question.

Applications for a licence on Form AC, accompanied by a pro forma invoice in duplicate drawn up in, or translated into, French, may be lodged at the Directorate General for Customs (Commercial Licences Department, 42 rue de Clichy, 75009 Paris).

Applications must be marked with the relevant code or codes of the NIMEXE nomenclature corresponding to the products to be imported.

Applications corresponding to NIMEXE codes 55.05-13, 19, 21, 25, 27, 29, 41, 45, 46, 48, 52, 53, 67, 69, 72, 78, 92 and 98, which will be considered in turn, shall be deducted from the maximum quantities specified by the above-mentioned Commission decision. Other applications for licences will be granted without any limitation as to quantity after the competent ministry has given its approval.

Applicants are in all cases requested to contact the DICTD, 97 rue de Grenelle, 75700 Paris, for information concerning their import rights.'

The French text reads as follows:

'Avis aux importateurs de fils et filés de coton originaires de Grèce

Les importateurs sont informés qu'en application d'une décision de la Commission des Communautés Européennes, les importations de fils et filés de coton repris sous la position tarifaire n° 55.05 originaires de Grèce s'effectueront à compter du 1er novembre 1981 et jusqu'au 31 décembre 1981 selon le régime des produits non libérés à l'importation (procédure prévue au titre Ier, chapitre II, de l'arrêté du directeur général des douanes et droits indirects du 30 janvier 1967).

En conséquence, les dispositions du présent avis se substituent temporairement durant la période allant du 1er novembre au 31 décembre 1981 aux dispositions antérieures en ce qui concerne les produits de l'espèce.

Les demandes de licence, rédigées sur des formules du modèle AC et accompagnées d'une facture pro forma en double exemplaire établie ou traduite en français, pourront être déposées à la direction générale des douanes (service des autorisations commerciales, 42 rue de Clichy, 75009 Paris).

Ces demandes devront comporter l'indication du ou des numéros de la nomenclature statistique NIMEXE correspondant aux produits dont l'importation est sollicitée.

Les demandes correspondant aux numéros NIMEXE 55.05-13, 19, 21, 25, 27, 29, 41, 45, 46, 48, 52, 53, 67, 69, 72, 78, 92 et 98, qui feront l'objet d'un examen au fur et à mesure, seront imputées sur les limites quantitatives définies par la décision de la Commission susvisée; les autres demandes seront délivrées sans limitation de quantité après visa du ministère technique.

Les demandeurs sont en toute hypothèse invités à se rapprocher de la DICTD (97 rue de Grenelle, 75700 Paris) pour connaître leurs possibilités d'importation.'

That text is striking inasmuch as the first line thereof refers to the *application* of the

Commission decision and inasmuch as there is no evidence to suggest that it was preceded by a fresh regulation of general application. Moreover, the content of that notice seems purely and simply to be based on the decision granting authorization. The exception in Article 3 of the decision for a proportion of the contracts which were already concluded and in the course of performance on 30 October 1981 was taken into account only by the amendment of 27 December 1981. Those features of the French implementing measures seem to be of some importance for the purpose of resolving the question whether the contested Commission decision is of *direct* and individual concern to the applicants, as required by Article 173 for the application to be admissible. That holds true even if it is recognized that the notice in question is a legally binding measure, as the representative of the French Government emphasized at the hearing.

4. Relevant case-law

4.1. As the Court pointed out in paragraph 4 of its decision in Case 69/69 *Alcan* [1970] ECR 385, at p.393, the aim of the second paragraph of Article 173 'is to ensure the legal protection of individuals in all cases in which they are directly and individually concerned by a Community measure — in whatever form it appears — which is not addressed to them'.

As I have already stated, the present case is an instance of the situation envisaged by Article 173 of the Treaty in which a Commission decision is addressed to 'another person', in this case France and Greece. In my analysis of the case-law, I can therefore disregard the other situation expressly contemplated by the second paragraph of Article 173, namely that of decisions in the guise of regulations.

4.2. *Principle of broad interpretation*

As I stated earlier, the Court held in its judgment of 15 July 1963 in Case 25/62 *Plaumann* [1963] ECR 95, at pp. 106 and 107, that 'the words and the natural meaning of this provision justify the broadest interpretation' and that 'moreover provisions of the Treaty regarding the right of interested parties to bring an action must not be interpreted restrictively'. I stated that the basis for that principle was to be found in the exceedingly general task which the first sentence of Article 173 entrusts to the Court, namely to review the legality of measures adopted by the Council and the Commission other than recommendations or opinions. Having regard to the relationship between the second sentence (and by reference thereto, also the second paragraph) of Article 173 and the general task entrusted to the Court, I was able to clarify the paragraphs which I have cited of the Court's decision in the *Plaumann* case with the statement that Article 173 was to be interpreted as providing, in any specific case of unlawful conduct, the possibility of effective legal protection for the interests affected thereby. Whether an action thereunder may be brought only by a Member State, the Council or the Commission or also by 'any natural or legal person' to whom such unlawful conduct is 'of direct and individual concern' and who cannot, on account thereof, reasonably have recourse to a national court, will depend on the type of interests affected and on other circumstances.

4.3. *Special requirements governing individual actions*

In the *Plaumann* case, it was considered that an individual right of action might in principle be allowed, in the light of the principle of broad interpretation referred to in that case, in relation to decisions granting authorization addressed to a Member State, such as the one at issue in the present case.

That seems to follow logically from the rejection of the Commission's defence in that case, which was that in such circumstances the Member State to whom the decision granting authorization was addressed may not be regarded as 'another person' within the meaning of the second paragraph of Article 173. Such a decision granting authorization must, in addition, be of 'direct and individual' concern to the applicants. From the fact that an action against such decisions is in principle allowed, the immediate inference may none the less be drawn that those additional requirements must be construed as being material rather than formal. From a formal point of view, an undertaking is directly and individually concerned only by the application of the decision granting authorization by the Member State in question.

4.4. *Requirement of 'individual concern'*

That requirement was, as is well known, defined in the following terms in the *Plaumann* case: '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'. In the other decisions of the Court which remain to be considered, the positive meaning of that formulation is further clarified. From the sentence following that which I have just quoted only the negative conclusion may be drawn that there can be *no* question of individual concern where the applicant belongs to a general group of traders similarly affected by, and defined in abstract terms in, the decision who carry on 'a commercial activity which may at any time be practised by any person and is not therefore such as to distinguish the applicant in relation to the contested decision as in the case of the addressee'.

4.5. *Survey of the case-law concerning the requirement of 'individual concern'*

It was the definition of the requirement of 'individual concern' in the *Plaumann* case — which is still the leading pronouncement on this matter — which led to the dismissal of actions brought against decisions addressed to other persons not only in that case but also in Case 1/64 *Glucoseries Rèunies* [1964] ECR 413, Case 38/64 *Getreide-Import Gesellschaft* [1965] ECR 203 and Joined Cases 10 and 18/68 *Eridania* [1969] ECR 459.

The Court found for the applicants with regard to the requirement of 'individual concern' in four other cases, namely in Joined Cases 106 and 107/63 *Toepfer* [1965] ECR 405, Case 62/70 *Bock* [1971] ECR 897, Case 92/78 *Simmenthal* [1979] ECR 777, Case 730/79 *Philip Morris* [1980] ECR 2671 and, by implication, in Case 29/75 *Kaufhof* [1976] ECR 431.

In support of its objection of inadmissibility the Commission in the present case relies in particular on Case 1/64. That case, as is well known, involved a Commission decision authorizing France to levy countervailing charges on the importation of glucose (dextrose) originating in other Member States, where those States did not themselves impose such charges on exportation. The plaintiff claimed to be the sole Belgian undertaking with an economic interest in the matter and both willing and able to export glucose from Belgium to France in significant quantities during the period of validity of the contested decision. The application was declared inadmissible,

in the light of the definition in the *Plaumann* case, on the grounds that the effects of the contested decision were not limited to exports from Belgium to France, that any attempt to restrict consideration of the decision to its effect on one exporter in one of the Member States would artificially isolate the market of that State from the rest of the Common Market, which was equally affected by the decision in question, and that the decision was 'intended to affect imports of glucose into France from the whole Community with the exception of Italy because that country does not export any glucose to France'. The 'general economic scope' of the decision was therefore recognized with the result that it could not be regarded as being of individual concern to the applicant.

The applicants in this case dispute the relevance of that judgment on the ground that the countervailing charges at issue there were imposed on imports from all Member States exporting to France whilst in this case only Greek producers are affected. In my opinion, the conclusion must also be drawn from all the paragraphs of the decision in Case 1/64 which I have summarized that the judgment in that case cannot be regarded as decisive in this instance. It leaves, in my view, entirely open the question whether the action might have been declared admissible if the contested decision had been confined to exports from one Member State and if the action had been brought by all the undertakings affected. The main emphasis in the Court's declaration of inadmissibility was clearly placed on the fact that the decision was not concerned exclusively with exports from one Member State and that, accordingly, it was impossible, for reasons relating to the proper administration of justice, to consider only the case of Belgium. Thus, in that judgment, unlike the *Plaumann* judgment, the Court did not even reach the stage of considering whether the group of undertakings which were affected by the decision and had instituted the proceedings was individually distinguishable to a sufficient extent or whether the group was of indeterminate size.

The applicants rely in support of the view that their application is admissible in particular on Joined Cases 106 and 107/63 *Toepfer* and Case 62/70 *Bock*, referred to earlier.

In the *Toepfer* case, the Court took the view that, for the purpose of determining whether the application was admissible, the following considerations were decisive:

'The only persons concerned by the said measures were importers who had applied for an import licence during the course of the day of 1 October 1963. The number and identity of these importers had already become fixed and ascertainable before 4 October, when the contested decision was made. The Commission was in a position to know that its decision affected the interests and the position of the said importers alone.

The factual situation thus created differentiates the said importers, including the applicants, from all other persons and distinguishes them individually just as in the case of the person addressed.'

Similarly, in paragraph 10 of its decision in the *Bock* case the Court declared that the following considerations were decisive for the purpose of determining whether the application was admissible:

'The applicant has challenged the decision only to the extent to which it also covers imports for which applications for import licences were already pending at the date of its entry into force. The number and identity of importers concerned in this way was already fixed and ascertainable before that date.

The defendant was in a position to know that the contested provision in its decision

would affect the interests and situation of those importers alone. The factual situation thus created differentiates the latter from all other persons and distinguishes them individually just as in the case of the person addressed.'

The inference may be drawn from those judgments that an action against a decision authorizing the adoption of protective measures fulfils the requirement of individual concern whenever the Commission was in a position to know that the interests and situation of certain persons belonging to a group defined generally and in abstract terms were particularly affected by a specific provision of its decision affecting exclusively those persons. The *Bock* case involved a provision extending the authorization — defined in general terms — to take protective measures to 'products in respect of which applications for licences were currently and duly pending before the German authorities'. Evidently, the Court considered decisive the circumstances in which the persons concerned found themselves at the time when the decision came into force and the fact that the Commission had an *opportunity* to discover (rather than actually knew) which persons were concerned.

Since the judgments concerned were based on the specific circumstances of each case, it would of course be wrong without further qualification to draw therefrom *a contrario* or by way of analogy conclusions relating to different circumstances which did not arise in those cases. Accordingly, despite their significance, those judgments cannot in themselves be regarded as decisive for the purpose of determining whether this application is admissible. The situation of the applicants in this case must primarily be examined directly in the light of the definition formulated in more general terms in the *Plaumann* case, to which the Court seems always to have adhered so far.

4.6. *Requirement of direct concern*

As regards the requirement of direct concern, I have not been able to find in the Court's case-law any general definition which is comparable to that contained in the *Plaumann* case relating to individual concern and in the light of which every specific case that arises must be considered. However, I share the view expressed by P.J.G. Kapteyn and P. van Dijk that the case-law in this area permits the inference to be drawn that, in its decisions, the Court adopted a more formalistic approach at the outset but gradually, yet increasingly unequivocally, came to agree with Daig's definition contained in the 'Festschrift für Otto Riese', at pp. 204 to 205. Moreover, that definition is wide enough to encompass not only the direct formal effects but also the direct material effects on a person of a decision granting authorization [3]. A measure taken by the Community is defined as being of direct material concern to an interested party if, even though it requires the adoption of a further national implementing measure, it is possible to foresee with certainty or with a high degree of probability that the implementing measure will affect the applicant and the manner in which it will do so. Kapteyn and van Dijk have based their identical conclusions concerning this point in particular on the *Toepfer* case, the *Bock* case and Joined Cases 41 to 44/70 *International Fruit Company* [1971] ECR 411, and van Dijk has also relied on Case 100/74 *CAM* [1975] ECR 1393 and Case 123/77 *UNICME* [1978] ECR 845. In the latter case, as in Case 69/69 *Alcan* [1970] ECR 385, which preceded it, the applicant was held not to be

3 — See in this connection the extremely well-documented note by P.J.G. Kapteyn on the *Bock* judgment, SEW 1972, pp. 596 to 602, and P. van Dijk's standard work cited in footnote 2, pp. 302 to 305; See also G. Bebr: Development of judicial control of the European Communities, pp. 77 to 80.

directly concerned, since the regulation in question covered only a total quantity of 18 000 motor-cycles for which import licences could be issued; below that limit the Italian Government was to enjoy complete freedom of action. In such a case, it is of course impossible to foresee with certainty or with a high degree of probability any consequences which the measure may have in relation to the identity of the importers affected, in the sense intended by Daig. Such a regulation would be of concern to importers only 'if, pursuant to that measure, they were refused an import authorization' (paragraphs 10 and 11 of the decision), in which case 'they will be able to raise the matter before the national court having jurisdiction, if necessary raising before that court their questions concerning the validity of the regulation, which the court will, if it thinks fit, be able to deal with by means of the procedure under Article 177 of the Treaty' (paragraph 12 of the decision).

In other words, therefore, in the case-law concerning the requirement of 'direct concern', a rational distribution of functions was gradually developed as a result of which the Court of Justice exercises direct jurisdiction if the legal effects on interested parties and their identity can with certainty or with a high degree of probability be inferred from the decision, whereas if that is not the case the national court exercises jurisdiction at first instance. Such a distribution of functions is also in my opinion fully in keeping with the view which I put forward earlier to the effect that Article 173 must be interpreted as meaning that in each specific case interested parties must be able to seek redress from 'somewhere' against unlawful Community measures which affect them.

5. Clarification and solution of the questions which require an answer in the present case

According to the observations made by the applicants during the written and oral procedures concerning the question of the admissibility of the application, the following questions require further consideration in the light of the case-law which I have analysed:

5.1. Can the applicants, who are Greek producers and exporters of cotton yarn, be regarded as individually concerned by the Commission's decision which was considered in detail earlier? In support of their contention that this question should be answered in the affirmative, the applicants rely first of all on the fact that, unlike the measure at issue in Case 1/64, the decision concerned in this case affects in particular a restricted group of undertakings from one Member State which at the time of the adoption of the decision were identifiable and individually distinguishable by reference to criteria (of both time and place) relating to their products, organization and economic activity. Secondly, the applicants believe that in reality they are the identifiable and individually distinguishable addressees of the decision and, on that account too, fulfil the criteria contained in the definition in the *Plaumann* case, referred to earlier.

That reference in their first argument to the definition in the *Plaumann* case also means that the applicants regard themselves as individually distinguished in the contested decision in the same way as the addressee, namely Greece. Against the Commission's defence that the decision concerns an indeterminate number of importers, the applicants point out that in the *Bock* and *CAM* cases, cited earlier, the fact that an indeterminate number of other persons were affected did not prevent the Court from discerning within the wider circle an identifiable and individually distinguishable group of particularly and individually affected persons whose applications were

regarded as admissible. At the hearing, the applicants explained their views in greater detail.

In my opinion, the applicants' argument is quite tenable on the basis of the Court's case-law, if it is accepted that Greek producers who export cotton yarn are clearly distinguishable from the indeterminate group of other affected importers, inasmuch as those importers are subject to the conditions governing production and sale imposed by the producers in question and, moreover, do not as a rule specialize in the importation of Greek cotton yarn. Since the Commission decision expressly refers to Greece as an addressee, it may also in my opinion be stated that Greek producers who export cotton yarn are described and individually distinguished in the same way as the addressee of the decision. Consequently, I consider it unnecessary to rely on the views expressed by Advocates General Roemer, Reischl, Warner and Sir Gordon Slynn to which the applicants have referred.

Such an interpretation of the Court's case-law would not only be well within the rules laid down in the *Plaumann* case but would also take into account an essential feature of the Court's judgments in the *Toepfer* and *Bock* cases. Both of those cases were concerned with situations in which applications for an import licence had already been submitted when the decision in question came into effect. The most crucial feature of that restriction strikes me as being, as stated earlier, that the Commission was in a position to know, when it adopted its decision, which undertakings — whose number and identity were clearly discernible — would be particularly and individually concerned by that decision. In this case, the Greek producers who were engaged in the manufacture of cotton yarn at the material time fall within that category. Thus the Court's decision in the *Toepfer* case could be adopted almost word for word in order to support the conclusion that the Greek producers' application is admissible.

However, in the *Toepfer* case and even more clearly in the *Bock* case, the Court also established a link, for the purposes of the application of the definition in the Plaumann case, with the content of the decision granting authorization. In both of those cases, the Court found that the decision specified certain legal consequences which were to follow for the group of persons whose application was declared admissible. As I have already stated in my analysis of the decision at issue in this case, in Article 3 thereof the Commission evinces special concern for contracts which have already been concluded in so far as they have already resulted in the dispatch of the products concerned from Greece. The substantive question, which I do not propose to examine at this stage, may be raised whether the Commission should not to some extent have accorded preferential treatment to *all* contracts already concluded, or whether it should by other means have ensured that contracts which had already become legally binding would not be interfered with any more than was strictly required in this case by considerations relating to the interests of the Community. Finally, in the light of that reasoning, Article 3 of the decision prompts me to suggest to the Court that it consider as being individually concerned by the decision at least all Greek producers of cotton yarn which was to be exported to France by virtue of contracts concluded at the time of the adoption of the decision. In my opinion, another factor which militates in favour of that view is that legal protection against unnecessary interference with contracts which have already been concluded is a matter for the producers

affected thereby, rather than for the Member States affected by the measure, which, in considering whether to exercise their right of action, will be guided by an entirely different set of considerations. Moreover, according to their submissions at the hearing, the applicants themselves consider that they are particularly affected as regards the contracts which they had already concluded. As in the *Toepfer* and *Bock* cases, it is possible to state that the contested decision had retroactive effect in relation to the contracts which had already been concluded at the time of its adoption.

5.2. As regards the requirement that the measure must be of direct concern to the applicants, it must be concluded in the light of the Court's decisions that the legal consequences for the parties concerned, as well as their identity, can be deduced from the contested decision with certainty or with a high degree of probability. In the light of my analysis of the decision and of the French implementing measures, the content of which was determined entirely by the Commission decision, and in view of the background to that decision outlined in great detail by the applicants during the written and oral procedures, I am of the opinion that in this case the measures adopted by France to implement the Commission decision were of a purely technical nature and could be foreseen by the Commission with certainty or with a high degree of probability and that the content of the measures was derived entirely from that decision. In those circumstances, it cannot in my view be doubted that the applicants are directly concerned by the Commission decision. The legal effects produced by the decision following its implementation by the French measure could be foreseen in their entirety, particularly in relation to the applicants' export contracts which had already become legally binding. In that connection, it was also admitted by the Commission at the hearing, in reply to a question which I put to it on that point, that it was aware that even before the adoption of the decision granting authorization all imports of cotton yarn from Greece were already subjected by France to a system of import licences conflicting with Community law, as is apparent from the second paragraph of the first French implementing measure which I have cited. Against that background, the authorization granted by the Commission to France to refrain from implementing its decision or to implement it only in part was, as in the *Bock* case, purely theoretical in nature, as the applicants rightly emphasized at the hearing.

6. Conclusion

For those reasons, it is my opinion that the objection of inadmissibility raised by the Commission must be rejected in so far as the action relates to the export contracts which had already been concluded by the applicants at the time when the Commission decision was adopted.