JUDGMENT OF THE COURT OF FIRST INSTANCE (Fifth Chamber, Extended Composition)

16 October 2003 *

In Case T-148/00,

The Panhellenic Union of Cotton Ginners and Exporters, established in Thessaloniki (Greece), represented by K. Adamantopoulos, V. Akritidis and J. Gutiérrez Gisbert, lawyers, with an address for service in Luxembourg,

applicant,

v

Commission of the European Communities, represented by M. Condou and D. Triantafyllou, acting as Agents, with an address for service in Luxembourg,

defendant,

* Language of the case: English.

supported by

Hellenic Republic, represented by I. Chalkias and C. Tsiavou, acting as Agents, with an address for service in Luxembourg,

intervener,

APPLICATION for the partial annulment of Commission Decision 2000/206/EC of 20 July 1999 on an aid scheme applied in Greece to cotton by the Greek Cotton Board (OJ 2000 L 63, p. 27),

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES
(Fifth Chamber, Extended Composition),

composed of: R. García-Valdecasas, President, P. Lindh, J.D. Cooke, P. Mengozzi and H. Legal, Judges,

Registrar: J. Plingers, Administrator,

having regard to the written procedure and further to the hearing on 27 February 2003,

gives the following

Judgment

Legal framework

1 Protocol 4 on cotton annexed to the Act of Accession of the Hellenic Republic (OJ 1979 L 291, p. 174, 'Protocol 4') establishes a system designed principally to support the production of cotton in regions of the Community where it is important for the agricultural economy, to permit the producers concerned to earn a fair income and to stabilise the market by structural improvements at the level of supply and marketing.

2 Paragraph 3 of Protocol 4 provides that the system shall include 'the grant of an aid to production', which, 'in order to facilitate management and supervision,... shall be granted via cotton ginning undertakings'.

3 It is also stated in paragraph 3 that the amount of that aid is to be established from time to time on the basis of the difference between a guide price fixed for cotton that has not been ginned and the world market price determined on the basis of offers and prices recorded on the world market. The guide price is fixed by the Council (paragraph 8 of Protocol 4), whilst the Commission determines the world market price and the amount of the aid (paragraph 10 of Protocol 4).

4 Paragraph 5 of Protocol 4 states that 'the Community trading system with third countries may not be affected [and], in particular, no measure restricting imports may be laid down'.

5 In accordance with paragraph 9 of Protocol 4, the Council adopted Regulation (EEC) No 2169/81 of 27 July 1981 laying down the general rules for the system of aid for cotton (OJ 1981 L 211, p. 2). That regulation was replaced by Council Regulation (EC) No 1554/95 of 29 June 1995 laying down the general rules for the system of aid for cotton and repealing Regulation [No 2169/81] (OJ 1995 L 148, p. 48).

6 The third recital of Regulation No 2169/81 ran as follows:

'... in order to facilitate the management and control of the aid system [for cotton], the aid should be granted to cotton ginning undertakings;... so that producers may benefit from the system, the grant of aid should be made subject to the condition that they have obtained a price not less than a minimum purchase price to be determined, which should be close to the guide price fixed in accordance with paragraph 8 of [Protocol 4], or that the aid will be passed on to them.'

7 Article 6 of Regulation No 2169/81 governed the financial relations between the ginning undertakings and the cotton producers. It provided, in essence, that aid should be granted only to ginning undertakings which applied for it and which had submitted either a contract stipulating payment to the producer of a price at least equal to the minimum price referred to in Article 9 of that regulation, or, where the undertaking ginned cotton on behalf of an individual producer or a producer who was a member of that undertaking, a statement giving details of the conditions on which the ginning was carried out and how the aid was passed on to producers. Article 9 of Regulation No 2169/81 stipulated that the Council was

to fix each year a minimum price for unginned cotton at the same time as the guide price, and that that price should be fixed 'at a level enabling producers to sell at a price as close as possible to the guide price'. Article 7 of Regulation No 1554/95 reproduced, in essence, Article 6 of Regulation No 2169/81.

8 Article 5(3) of Regulation No 2169/81 provided, in particular, that 'entitlement to the aid [was to] be acquired at the time when the cotton [was] ginned' and that 'the aid [could], however, be paid in advance when the unginned cotton [entered] the cotton ginning undertaking, provided that an adequate guarantee [was] provided'. Article 5(3) of Regulation No 1554/95 provided essentially the same.

9 On 3 May 1989, the Commission adopted Regulation (EEC) No 1201/89 laying down rules implementing the system of aid for cotton (OJ 1989 L 123, p. 23). Article 7(2) of that regulation, as amended by Commission Regulation (EC) No 2878/95 of 13 December 1995 amending [Regulation No 1201/89] (OJ 1995 L 301, p. 21), provided that 'where an application for aid [was] lodged before the application for supervised storage is made, it [was to] be valid only if a security of ECU 12 per 100 kilograms [was] given'. Article 7(3) provided that that security was to be 'given in one of the forms provided for in Article 8 of Commission Regulation (EEC) No 2220/85 [of 22 July 1985 laying down common detailed rules for the application of the system of securities for agricultural products (OJ 1985 L 205, p. 5)]', that it was to be 'released pro rata to the quantities for which the obligation provided for in Article 9(1) [was] fulfilled' and was to be 'forfeited pro rata to the quantities for which the obligation provided for in Article 9(1) [was] not fulfilled'. Article 9(1) of Regulation No 1201/89 stated that 'all ginning plants [were to] lodge an application for supervised storage when the unginned cotton [entered] the ginning plant'. Article 9(8), as amended by Commission Regulation (EC) No 2064/95 of 29 August 1995 amending [Regulation No 1201/89] (OJ 1995 L 204, p. 8), provided that as soon as the unginned cotton was taken into supervised storage, Member States were, on request, to grant those concerned an advance on the aid, provided a security at least equal to 110% of the aid to be advanced was lodged, that the amount of the advance was to be calculated on the basis of the quantities taken into supervised storage, and that the security was to be lodged in one of the forms provided for in Article 8 of Regulation No 2220/85 and be forfeited in the amount by which the advance paid exceeded the amount of the aid to be granted.

10 On 23 April 1992, the Hellenic Republic adopted Law 2040/92 concerning matters falling within the competence of the Ministry of Agriculture and the legal entities under its supervision (Official Journal of the Hellenic Republic, Part One, No 70, hereinafter 'Law 2040/92').

11 Article 30(1) of Law 2040/92, which is entitled 'Readjustment of the resources of the Greek Cotton Board', provides:

'From the date of publication of the present Law, a compensatory levy in favour of the Greek Cotton Board is imposed upon the ginning undertakings, equal to 1% of the price paid to the producer per kilogram of unginned cotton...'.

12 Article 30(3) of Law 2040/92 also imposes a special charge in favour of the Greek Cotton Board on cotton imported for industrial use and on imported artificial or synthetic fibres, of up to three deniers, fixed at 1% of their value (hereinafter 'the special charge').

Background to the dispute

13 The applicant is a professional association, established in accordance with Greek law, whose membership comprises all the Greek cotton ginners and traders.

14 The Greek Cotton Board is a non-profit-making public body whose objective, according to its statutes, is to provide a range of services to cotton producers and

ginning undertakings. Those services are financed through the compensatory levy referred to in paragraph 11 above (hereinafter 'the compensatory levy') and the special charge.

15 By letter of 12 November 1992, the applicant submitted a complaint to the Commission's Directorate-General (DG) for Agriculture, in which it claimed that the compensatory levy was unlawful inasmuch as it was calculated on the basis of the total amount received by the producers for the sale of unginned cotton, that is, including the amount of the Community aid. It also maintained that the ginning undertakings did not receive the abovementioned services from the Greek Cotton Board and that the letters of guarantee lodged by the undertakings in order to obtain an advance were withheld by the Board until the compensatory levy was paid.

16 Following that complaint, the DG for Agriculture asked the Greek authorities to provide it with information on the operations of the Greek Cotton Board and on the 'parafiscal charge' imposed in favour of the Board. The Greek authorities responded to that request and the applicant submitted observations on their response.

17 On 17 June 1994, the applicant informed the DG for Agriculture that it had brought an action against the Greek Cotton Board before the Greek courts for refund of the compensatory levy in so far as it was applied to the amount of Community aid.

18 On 27 January 1995, the Commission sent a letter to the Greek Government informing it that it raised no objection to certain activities of the Greek Cotton Board, that other activities of the Board were 'State functions, thus not involving aid to individual undertakings', and that it had decided to initiate the procedure provided for in Article 93(2) of the EC Treaty (now Article 88(2) EC) in respect of the Greek Cotton Board's other activities.

19 In the same letter, the Commission stated that 'since the aids in question are financed by a compulsory charge, in this case the compensatory levy and the special charge, [it had] also examined the financing of all those aids'. It concluded as follows:

— the special charge also applied to products imported from other Member States;

— according to the case-law, the financing of a State aid by a compulsory charge was an essential element of that aid and, when assessing that aid, the Commission had to examine in the light of Community law both the aid and its financing;

— 'even if the aid is compatible in form and objectives, it is clear that in accordance with the case-law... the fact that it is financed by charges also applied to... products imported from other Member States and European Economic Area countries has a protective effect going beyond the actual aid itself';

— 'even if the aid financed by the Greek Cotton Board [conferred] some benefit in the case of imported products, the fact [remained] that it [did] not result in equality of advantage to all parties since in practice the aid was by its nature more favourable to Greek operators, as the results sought and the measures

taken [proceeded] from national specialisation, requirements and shortcomings';

— 'the imposition of an additional requirement (actual payment of the parafiscal charge) not provided for in the Community regulations for the release of the security [constituted] an infringement of Regulation... No 2169/81';

— the application of the special charge contravened Article 5 of Protocol 4 annexed to the Act of Accession of Greece and Article 12 of the EC Treaty (now, after amendment, Article 25 EC).

20 The Commission stated that in view of those factors it had decided to open the procedure under Article 88(2) EC also in respect of all the aid measures 'on account of their financing by the special charge also levied on imported products from other Member States and member countries of the EEA and the fact that financing by the compensatory levy and the special charge [was] an infringement of the Community legislation'.

21 Finally, by the letter of 27 January 1995, the Commission called on the Greek Government to submit its observations and to supply certain information. The other Member States and interested parties were informed that the procedure was to be opened and were invited to submit any comments they might have, by publication of that letter in the *Official Journal of the European Communities* of 24 October 1995 (OJ 1995 C 278, p. 4). By letter of 12 April 1995, the Greek Government submitted comments and the information requested. Interested third parties also submitted comments, amongst them the applicant by letter of 23 November 1995.

22 At the same time as it opened the procedure under Article 88(2) EC, the Commission initiated proceedings under Article 169 of the EC Treaty (now Article 226 EC) against the Hellenic Republic (hereinafter 'the infringement proceedings') by letter of 15 January 1996. It considered, in essence, that the fact that the Greek Cotton Board made the release of the bank guarantees conditional on actual payment of the compensatory levy constituted an infringement of Articles 7(3) and 9(1) of Regulation No 1201/89, the rules on the common organisation of the cotton market and, more particularly, Regulation No 2169/81, the principle of proportionality and Article 40(3) of the EC Treaty (now, after amendment, Article 34(2) EC). It gave the Greek Government notice to submit its observations and to supply certain information. By fax of 25 January 1996, the DG for Agriculture informed the applicant of the commencement of the infringement proceedings.

23 On 14 May 1996, the applicant submitted a second complaint against the Hellenic Republic to the DG for Agriculture under Article 226 EC. It stated, first, that Article 30(1) of Law 2040/92 infringed Article 5(3) of Regulation No 2169/81, Article 7 of Regulation No 1201/89, the provisions of Protocol 4, Article 189 of the EC Treaty (now Article 249 EC) and Article 34(2) EC. It also maintained that Article 30(3) of that law infringed Article 9 of the EC Treaty (now, after amendment, Article 23 EC) and Article 12 of the EC Treaty (now, after amendment, Article 25 EC), Article 249 EC, the provisions of Protocol 4, Articles 18 to 27 of the EC Treaty (repealed by the Treaty of Amsterdam), Article 28 of the EC Treaty (now, after amendment, Article 26 EC) and Article 29 of the EC Treaty (now, after amendment, Article 27 EC), and Article 113 et seq. of the EC Treaty (now, after amendment, Article 133 et seq. EC), as well as the rules of the General Agreement on Tariffs and Trade (GATT). In a memorandum annexed to that complaint, the applicant also alleged that the mechanism for financing the Greek Cotton Board's activities constituted State aid which was unlawful and incompatible with the common market. Furthermore, it asked the Commission to adopt interim measures requiring the Hellenic Republic to suspend application of Law 2040/92.

24 By fax dated 19 November 1997, the DG for Agriculture asked the applicant, in connection with the infringement proceedings, to provide it with certain

documents. The applicant replied to that request by letter of 28 November 1997 and submitted observations by letters of 8 July 1998, and 2 and 16 September 1998.

25 On 2 December 1998, the Commission decided to take no further action on the file relating to the infringement proceedings.

26 On 20 July 1999 the Commission adopted Decision 2000/206/EC on an aid scheme applied in Greece to cotton by the Greek Cotton Board (OJ 2000 L 63, p. 27, hereinafter 'the contested decision').

27 Point IV(2) of the contested decision reads as follows:

'The Commission treated under an infringement procedure the question of compatibility with the market organisation for cotton of the 1% levy on Greek domestic production and on the Community aid paid to Greek growers. Since Regulation... No 1554/95 does not specifically exclude such a levy, the Commission decided on 2 December 1998 to close this dossier.'

28 Point IV(3) of the contested decision reads as follows:

'Comments made to the Commission under the procedure provided for in Article 88(2) [EC] show that the parafiscal charges in question present some

degree of cross-subsidy, being levied at ginning plant level to finance measures mainly addressed to farmers. The Commission's established practice on parafiscal charges is to agree to their being collected at a different stage from the production process (e.g. from slaughterhouses to finance action against epizootics). In the case in point it does not appear possible, given the market organisation mechanisms, for ginners to transfer payment of the charge to farmers.

In view of the foregoing the Commission concludes that since the method of financing the aid by a 1% levy on domestic production and on Community aid paid to Greek producers is consonant with the market organisation it has no reason under Articles 87 to 89 [EC] to object to the financing method.'

29 The operative part of the contested decision reads as follows:

'*Article 1*

The State aids granted in Greece in discharge of the statutory functions of the Greek Cotton Board that are financed by the compulsory contributions specified in Article 30(3) of Law 2040/92 are incompatible with the common market in that they are financed by a parafiscal charge on imported products.

Article 2

Greece must adjust the aid scheme referred to in Article 1 to make it compatible with this decision.

Article 3

1. Greece shall take all necessary action to recover from recipients the illegally granted aid referred to in Article 1.

2. Recovery shall be made in accordance with the procedures of national law. Interest shall be charged on the amounts to be recovered, to run from the date on which they were made available to recipients to that of actual recovery. It shall be calculated at the reference rate used for subsidy equivalent calculation in connection with aids for regional purposes.

Article 4

Within two months of notification of this decision Greece shall inform the Commission of the action it intends to take to comply with it.

Article 5

This decision is addressed to the Hellenic Republic.'

Procedure and forms of order sought

30 By application lodged at the Registry of the Court of First Instance on 2 June 2000, the applicant brought the present action.

31 By a separate document lodged at the Court Registry on 14 July 2000, the Commission raised an objection of inadmissibility under Article 114(1) of the Rules of Procedure of the Court of First Instance. On 15 September 2000, the applicant submitted its observations thereon.

32 By a document lodged at the Court Registry on 7 December 2000, the Hellenic Republic requested leave to intervene in the proceedings in support of the form of order sought by the Commission. By order of 9 March 2001, the President of the Fifth Chamber (Extended Composition) allowed the application to intervene.

33 By order of 15 December 2000, the Court decided to reserve a decision on the objection of inadmissibility for the final judgment.

34 The Hellenic Republic lodged its statement in intervention on 23 April 2001, on which the applicant submitted observations. The Commission waived its right to submit observations on the statement.

35 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance (Fifth Chamber, Extended Composition) decided to open the oral procedure. By way of measures of organisation of procedure, it requested the Commission to reply to written questions and to produce certain documents. The Commission complied with those requests.

36 The parties presented oral argument and replied to the Court's questions at the hearing on 27 February 2003.

37 The applicant claims that the Court should:

— declare the action admissible;

— annul Article 1 of the contested decision 'in so far as it only declares Article 30(3) of Law 2040/92..., and not Article 30(1) [of the same law] as well, as incompatible with the common market';

— order the Commission to pay the costs.

38 The Commission contends that the Court should:

— dismiss the action as inadmissible;

— alternatively, dismiss the action as unfounded;

— order the applicant to pay the costs.

39 The Hellenic Republic claims that the Court should:

— dismiss the action as inadmissible;

— alternatively, dismiss the action as unfounded.

Law

Arguments of the parties

40 The Commission and the Hellenic Republic maintain that the action is inadmissible.

41 First of all, it constitutes an abuse of procedure.

42 First, by its action the applicant is 'disregarding the State aid aspects' and in reality seeking a ruling from the Court of First Instance on the legality of the compensatory levy and on the Commission's decision to close the infringement proceedings. However, 'taken in isolation', an infringement of Community law as alleged here by the applicant does not fall within a review of State aid and may be examined only in proceedings for failure to fulfil obligations under Article 226

EC. It is, moreover, settled case-law that private individuals are not entitled to bring proceedings against a refusal by the Commission to institute or continue such proceedings (Case T-277/94 *AITEC* v *Commission* [1996] ECR II-351, paragraph 55).

43 Secondly, the applicant is also attempting to use the present case as an action for failure to act within the meaning of Article 175 of the EC Treaty (now Article 232 EC). It criticises the Commission for not having also declared Article 30(1) of Law 2040/92 incompatible with the common market. However, Article 232 EC covers failure to act or failure to adopt a position, not adoption of a measure other than the one desired or considered necessary by the interested parties.

44 As a second point, the Commission, supported by the Hellenic Republic, submits that the applicant is not individually concerned by the contested decision, which is addressed to the Hellenic Republic.

45 It points out, first, that, according to the case-law, associations may be regarded as individually concerned by a State aid decision only if they are associations of competing undertakings, have taken an active part in the administrative procedure under Article 88(2) EC and if their capacity as a negotiating partner has been affected or if, by bringing the action for annulment, they have substituted themselves for one or more of the members whom they represent, on condition that those members are themselves in a position to bring an admissible action (judgments of the Court of Justice in Case 169/84 *Cofaz and Others* v *Commission* [1986] ECR 391, paragraph 25; Joined Cases 67/85, 68/85 and 70/85 *Van der Kooy and Others* v *Commission* [1988] ECR 219, paragraphs 21 to 24; Case C-313/90 *CIRFS and Others* v *Commission* [1993] ECR I-1125, paragraphs 28 to 30; and Case C-106/98 P *Comité d'entreprise de la Société française de production and Others* v *Commission* [2000] ECR I-3659, paragraph 42; judgment of the Court of First Instance in Case T-380/94

AIUFFASS and AKT v *Commission* [1996] ECR II-2169, paragraph 50). The applicant here fulfils none of these conditions, however, except for the one relating to active participation in the procedure.

46 Second, the contested decision relates to a general aid scheme, and according to the case-law, an undertaking which is a competitor of a potential beneficiary of aid authorised under such a scheme does not have *locus standi* to challenge a Commission decision authorising that scheme (Case T-398/94 *Kahn Scheepvaart* v *Commission* [1996] ECR II-477). That must apply *a fortiori* to non-competitor undertakings and to the associations which represent them. It also relies on the judgment in Case T-86/96 *Arbeitsgemeinschaft Deutscher Luftfahrt-Unternehmen and Hapag-Lloyd* v *Commission* [1999] ECR II-179, paragraph 45, in which the Court of First Instance held that potential beneficiaries of a general aid scheme were not individually concerned by a Commission decision relating to that scheme.

47 As a third point, the Commission submits in its defence that the applicant, assuming it does represent the interests of undertakings which benefit from the aid in question, does not have *locus standi* to bring the present action. The applicant is, in effect, criticising the contested decision not because it refuses the grant of a benefit to its members but because it is not 'sufficiently negative with regard to the financing of the aid'. If the Commission had accepted the applicant's criticisms of Article 30(1) of Law 2040/92, it would have declared the aid in question in its entirety to be incompatible with the common market, that is, not only in so far as it is financed by the special charge, but also in so far as it is financed by the compensatory levy.

48 Furthermore, the applicant challenges the fact that one of the two methods of financing the aid measures in question has not been declared incompatible, and consequently it does not call into question the operative part of the contested decision, which relates to the aid measures and not their financing. The incompatibility of the special charge is only the ground on which the incom-

patibility of the aid is based. Assessments contained in the reasoning of a decision are not capable of forming the subject of an application for annulment unless they constitute the necessary support for the operative part of the measure adversely affecting the applicant (Case T-138/89 *NBV and NVB* v *Commission* [1992] ECR II-2181, paragraph 31). In this case, since the assessments of the compatibility of the compensatory levy are in line with a declaration of the compatibility of the aid measures in the operative part of the contested decision, the applicant, in its capacity as an association of undertakings benefiting from the aid measures, has no legal interest in contesting them. Furthermore, those assessments do not constitute the support for the operative part of the contested decision, since only the incompatibility of the special charge can prevent the aid measures from being authorised.

49 As a fourth point, the Commission notes in its rejoinder that in its reply the applicant carried out a 'fundamental reorientation of the application' and a 'reformulation of most of the original pleas'. It observes that, in the reply, the applicant 'carefully avoids the question of compatibility of the (compensatory) levy with the common market organisation for cotton that used to be the main argument in the application'. By so doing, the applicant has not only introduced new pleas which are inadmissible under Article 48(2) of the Rules of Procedure, but also adopted a position which contradicts the forms of order sought in the application.

50 The applicant denies, first, that the action constitutes an abuse of procedure.

51 In its observations on the objection of inadmissibility, it claims, first, that the action is not directed against the compensatory levy, but clearly seeks to 'prove that the Commission committed a manifest error by not fulfilling its obligation to consider the compatibility of the aid component of Article 30(1) of Law 2040/92 under the State aid rules separately and independently from the method of financing'. More specifically, it states that it criticises the Commission's legal assessment in the second subparagraph of point IV(3) of the contested decision. It explains that 'the Commission, when evaluating the compatibility with the

common market of a measure such as Article 30(1) and (3) of Law 2040/92 in [the light of] Articles 87 and 88 [EC] should first consider the method by which the aid is financed and then, separately, go on to consider the compatibility of the aid component'. It considers that in the present case, since the Commission declared the method of financing established in Article 30(3) of Law 2040/92 to be 'incompatible with the common market in so far as it infringes the regulations on the common market organisation for cotton', it did not need also to assess the compatibility of that provision with the State aid rules. On the other hand, with respect to Article 30(1) of Law 2040/92, once it had declared it compatible with the common market organisation for cotton, the Commission should then also have examined the 'State aid component' in the light of the State aid rules. In bringing this action, 'the applicant's main aim is to obtain a judgment from the Court confirming that the Commission committed a manifest error in the appreciation of the facts by declaring the aid component of Article 30(1) of Law 2040/92 as compatible with Articles 87 to 89 [EC] without applying a diligent and proper analysis, i.e. an analysis of whether Article 30(1) of Law 2040/92 contains the four elements of Article 87 [EC]'.

52 Second, the applicant denies that, by the present action, it is alleging that the Commission failed to act or is contesting its decision to close the infringement proceedings.

53 As a second point, the applicant submits that, in its capacity as an association of undertakings benefiting from the aid measures, it must be considered as individually concerned by the contested decision. It also questions the well-foundedness of the Commission's arguments based on the fact that the contested decision concerns a general aid scheme. It submits that the Commission's references to *Kahn Scheepvaart* v *Commission* and *Arbeitsgemeinschaft Deutscher Luftfahrt-Unternehmen and Hapag-Lloyd* v *Commission*, cited above, are not relevant.

54 As a third point, the applicant maintains that the Commission's argument that it has no legitimate interest in the annulment of the contested decision because it is not 'sufficiently negative' is not relevant. Its capacity alone as an association of undertakings benefiting from the aid measures gives it *locus standi* to challenge the contested decision, regardless of the reasons which might have led it to bring the present proceedings.

Findings of the Court

55 It is appropriate to examine first the subject-matter of this action.

56 In the forms of order sought, the applicant claims that the Court should annul 'Article 1 of the contested decision in so far as it only declares Article 30(3) of Law 2040/92..., and not Article 30(1) [of the same law] as well, as incompatible with the common market'.

57 However, Article 1 does not declare Article 30(3) of Law 2040/92 incompatible with the common market, any more than does the rest of the operative part of the contested decision. The declaration of incompatibility in fact concerns only the aid measures granted by the Greek Cotton Board which are financed by the special tax introduced by that provision. The validity of this aspect of the contested decision is not in any way disputed by the applicant.

58 What the applicant really questions is not the operative part of the decision per se, but rather some of the statements made by the Commission in its reasons for the decision, more specifically those relating to the compensatory levy in points IV(2) and (3).

59 Second, the Court finds that it is clear from the application that, contrary to the position it adopts in its subsequent written pleadings (see paragraph 51 above), the applicant's principal objection relates to the validity of the Commission's finding that the compensatory levy is compatible with the common market organisation for cotton (point IV(2) of the contested decision). The substance of the legal argument developed in its application is devoted to that issue and calls into question the decision taken by the Commission in the infringement proceedings.

60 The applicant, however, has no *locus standi* to challenge that decision.

61 First of all, that finding follows from the decision of 2 December 1998 to close the infringement proceedings. Point IV(2) of the contested decision merely refers to the stance adopted by the Commission in its decision of 2 December 1998 and does not contain any new factor capable of having mandatory legal effects such as to affect the applicant's interests by bringing about a substantial change in its legal position.

62 Next, it is obvious that, by contesting as it does the assessment in point IV(2) of the contested decision, the applicant is actually attempting to call into question the outcome of the infringement proceedings, in the guise of an action for annulment directed against a State aid decision. Two points are worth noting here: one, this violates the principle of independent legal remedies and, two, individuals may not challenge a decision by the Commission not to bring infringement proceedings against a Member State (Case 48/65 *Lütticke and Others* v *Commission* [1966] ECR 19, p. 27; Case 247/87 *Star Fruit* v *Commission* [1989] ECR 291, paragraphs 11 and 12; and Case C-87/89 *Sonito and Others* v *Commission* [1990] ECR I-1981, paragraphs 6 and 7).

63 The applicant also puts forward an alternative argument — which, in its written pleadings subsequent to the application, it attempts to present as its principal argument — to the effect that, assuming Article 30(1) of Law 2040/92 to be compatible with the common market organisation for cotton, the Commission was still bound to analyse, 'separately and independently from the method of financing', the compatibility of that provision 'under the State aid rules'. It thus criticises the assessment in the second subparagraph of point IV(3) of the contested decision and, more specifically, the fact that the Commission allegedly found Article 30(1) of Law 2040/92 to be compatible with the State aid rules on the sole basis that it was compatible with the common market organisation for cotton.

64 It is clear that this alternative argument evolved in the course of the proceedings. In any event, regardless of which version is accepted, the action must be declared inadmissible.

65 The alternative argument, as put forward in the application, is based on the notion that Article 30(1) of Law 2040/92 is itself State aid (see paragraphs 157 to 159 of the application) or that it contains a 'State aid component' (see paragraphs 160, 162, 163 and 164 of the application). It is obvious, however — as the applicant itself acknowledges in its subsequent written pleadings — that that provision neither constitutes State aid nor contains such a 'component', but is merely one of two State aid financing methods granted by the Greek Cotton Board. It is just as obvious that the Commission could not have declared that provision compatible or incompatible with the common market under Article 87 EC, since such a declaration can only be made with respect to actual aid measures.

66 In fact, it is clear that, by erroneously equating Article 30(1) of Law 2040/92 with State aid, the applicant is once again attempting to have the Court review the legality of that provision, even though the Commission has already taken a decision on that point in the infringement proceedings. In so doing, the applicant violates the principle of independent legal remedies.

67 This finding is supported by the fact that, in the reply, the applicant moves away from its initial position and states that it is 'fully aware of the fact that the levy itself does not constitute aid' and that it has 'always considered that the State aid measures at issue are the services provided by the [Greek Cotton] Board and not the levy itself' (see paragraphs 3, 17, 36 and 39 of the reply). In the reply it thus now focuses its alternative argument more specifically not on Article 30(1) of Law 2040/92 as such, but rather on those services, as financed by the compensatory levy (see paragraphs 19, 20, 26 and 39 of the reply).

68 This modification of the alternative argument as set out in the application cannot be accepted, however. It is in effect a new plea and thus inadmissible under Article 48(2) of the Rules of Procedure.

69 It follows from all the foregoing that the action must be dismissed as inadmissible, without its being necessary to rule on the other grounds of inadmissibility raised by the Commission.

Costs

70 Under the first subparagraph of Article 87(2) of the Rules of Procedure of the Court of First Instance, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicant has been unsuccessful, it must be ordered to pay not only its own costs but also the costs incurred by the Commission, in accordance with the forms of order sought by the Commission.

71 Under Article 87(4) of those Rules, the Hellenic Republic, which has intervened in the proceedings, is to bear its own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Fifth Chamber, Extended Composition)

hereby:

1. Dismisses the application as inadmissible;

2. Orders the applicant to bear its own costs and to pay those of the Commission;

3. Orders the Hellenic Republic to bear its own costs.

García-Valdecasas Lindh Cooke

Mengozzi Legal

Delivered in open court in Luxembourg on 16 October 2003.

H. Jung P. Lindh

Registrar President