2. A measure does not cease to be a regulation because it is possible to determine the number or even the identity of the persons to whom it applies at any given time as long as it is established that such application takes effect by virtue of an objective legal or factual situation defined by the measure in relation to its purpose.

In Case 231/82

SPIJKER KWASTEN BV, a company having its registered office at Beverwijk, The Netherlands, represented by A. F. Savornin Lohman of the Rotterdam Bar, and I. G. F. Cath of the Rotterdam Bar, with an address for service in Luxembourg at the Chambers of Lambert H. Dupong, 14a Rue des Bains,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Peter Gilsdorf, acting as Agent, assisted by Pieter Jan Kuyper, a member of its Legal Department, with an address for service in Luxembourg at the office of Oreste Montalto, a member of its Legal Department, Jean Monnet Building, Kirchberg,

defendant,

concerning, at the present stage of the proceedings, the admissibility of an action brought under the second paragraph of Article 173 of the EEC Treaty for a declaration that the Commission's decision of 7 July 1982 authorizing the Kingdom of the Netherlands not to apply Community treatment to brushes falling within subheading 96.01 of the Common Customs Tariff originating in the People's Republic of China and in free circulation in the other Member States (Official Journal 1982, C 171, p. 12) is void,

THE COURT (Third Chamber),

composed of: U. Everling, President of Chamber, Y. Galmot and C. Kakouris, Judges,

Advocate General: S. Rozès
Registrar: H. A. Rühl, Principal Administrator

gives the following

JUDGMENT

Facts and Issues

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

I — Facts and written procedure

1. The applicant in the present case, Spijker Kwasten BV, a company with limited liability having its registered office at Beverwijk, imports brushes and similar products falling within subheading ex 96.01 of the Common Customs Tariff, especially from the People's Republic of China. It is the only trader-importer in the Benelux States which regularly imports brushes originating in China. On 18 June 1982 Spijker Kwasten BV applied to the Netherlands authorities for an import licence for a consignment of brushes originating in the People's Republic of China and intended to be imported from the Federal Republic of Germany.

By letter of 29 June 1982 the competent Netherlands authority replied that the application could not be dealt with immediately as a request for authorization to take protective measures within the meaning of Article 115 of the Treaty was pending before the Commission in respect of that transaction and that "if that request is granted Community treatment will not be applied to the importation of the aforementioned products".

2. The importation of the goods in question from the People's Republic of China was governed, at the relevant time, in particular by the following provisions:

On the one hand, Article 1 of Council Regulation (EEC) No 2532/78 of 16 October 1978 (Official Journal 1978, L 306, p. 1) and Article 1 of Council Regulation (EEC) No 1766/82 of 30 June 1982 (Official Journal 1982, L 195, p. 21) on common rules for imports from the People's Republic of China, provide that, subject to certain exceptions, imports into the Community of, *inter alia*, products falling within subheadings 96.01 A (brooms and brushes, and the like) and 96.01 B II (brushes of a kind used as parts of machines) of the Common Customs Tariff are not to be subject to any quantitative restriction. However, the other products falling within tariff heading 96.01, such as those falling within subheadings B I (tooth brushes) and B III (other brushes) are not covered by those provisions.

On the other hand, Article 2 (1) of Council Regulation (EEC) No 3286/80 of 4 December 1980 on import arrangements in respect of State-trading countries (Official Journal 1980, L 353, p. 1) provides that the putting into free circulation of certain products falling within subheadings 96.01 B I or 96.01 B III originating in State-trading countries may be subject to quantitative restrictions in certain Member States, which include the Benelux States.

3. On 7 July 1982 the Commission adopted the contested decision (Official

Journal 1982, C 171, p. 12) pursuant to Article 115 of the Treaty and in accordance with Article 3 of Commission Decision 80/47/EEC of 20 December 1979 on surveillance and protective measures which Member States may be authorized to take in respect of imports of certain products originating in third countries and put into free circulation in another Member State (Official Journal 1980, L 16, p. 14). The decision of 7 July 1982 authorizes the Kingdom of Belgium, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands not to apply Community treatment until 31 December 1982 to brushes falling within subheading ex 96.01 of the Common Customs Tariff, originating in the People's Republic of China and put into free circulation in other Member States, in respect of which import licences were applied for after 25 June 1982.

Thus, the contested decision does not relate to the application for an import licence with which the present case is concerned. It is apparent from the documents before the Court that the competent Netherlands authorities granted the applicant the import licence for which it applied. However the applicant considers itself to be adversely affected by the decision in so far as it affects future imports.

4. By application lodged at the Court Registry on 8 September 1982 the applicant instituted the present proceedings under the second paragraph of Article 173 of the Treaty for a declaration that the aforementioned Commission decision is void.

The Commission raised an objection of inadmissibility under Article 91 of the Rules of Procedure.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided, by order of 23 February 1983, to assign the case to the Third Chamber pursuant to Article 95 of the Rules of Procedure and to open the oral procedure with regard to the objection of inadmissibility without any preparatory inquiry.

II — Conclusions of the parties

The *Commission* claims that the Court should:

Declare the application inadmissible;

Order the applicant to pay the costs.

The *applicant* contends that the objection should be dismissed.

III — Submissions and arguments of the parties with regard to the admissibility of the application

1. The *Commission* claims that the contested decision is addressed to the Benelux States. Consequently the action is not admissible under the second paragraph of Article 173 of the Treaty unless the decision is of direct and individual concern to the applicant.

The Commission maintains, first, that the decision is not of direct concern to Spijker Kwasten since it contains only an authorization granted to the Benelux States, which are free to make use of it or otherwise. In that connection the Commission states that the present case is different from Case 62/70 *Bock* (judgment of 23 November 1971, [1971] ECR 897) inasmuch as the authorization granted in this case does not relate to the applicant's application for a licence. It follows, on the one hand, that the decision does not adversely affect the applicant with regard to its present

application for an import licence and, on the other hand, that, as regards any future applications, the decision is merely in the nature of an authorization.

Secondly, the Commission maintains that the decision is not of individual concern to the applicant. In its judgment of 15 July 1963 in Case 25/62 *Plaumann* [1963] ECR 95 the Court stated that persons other than those to whom a decision is addressed may claim to be individually concerned only "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 present case the contested decision is of concern to Spijker Kwasten in the same way as to all other importers of brushes originating in China during the period of validity of the decision.

That conclusion is not affected by the fact that Spijker Kwasten is the only trader-importer established in the Benelux States which regularly imports into the Netherlands brushes from the People's Republic of China. In that respect the Commission claims in particular that the contested decision is of general economic application in so far as it is intended to protect a sector of the economy in the Benelux States from competition arising from imports from the People's Republic of China. Moreover, anyone is entitled to operate as an importer of brushes. Finally, in order to establish that the contested decision is of direct and individual concern to the applicant the fact that it simply affects competition on the Netherlands market is not sufficient.

2. *Spijker Kwasten BV* states in the first place that Article 173 of the Treaty is intended to provide effective legal protection for interests affected by any specific measure adopted by the Commission which is illegal. Therefore the provision is not to be interpreted restrictively.

Spijker Kwasten goes on to refute the Commission's argument that it is not directly and individually concerned.

In that connection it contends in the first place that the decision is of individual concern to it. On the one hand, the request for authorization made by the Netherlands was made in connection with a consignment imported by Spijker Kwasten. On the other hand, the decision affects only the applicant's position as it is the sole trader-importer established in the Benelux States which regularly imports into the Netherlands from the People's Republic of China.

The judgment of 2 July 1964 in Case 1/64 *Glucoseries Réunies* [1964] ECR 413 is not relevant to the present case. It is true that in that judgment the Court rejected as inadmissible an application for the annulment of a decision to impose a countervailing charge on the importation of goods. Yet it is clear from the grounds of the judgment that, by contrast with the present case, the decision in question was intended to cover imports from the whole of the Community and was not therefore limited to imports from a single Member State.

On the other hand, the jugdments of 1 July 1965 (Joined Cases 106 and 107/63 *Toepfer* [1965] ECR 405) and of 23 November 1971 (Case 62/70 *Bock* [1971] ECR 897) show that an action brought against an authorization to take

protective measures fulfils the requirement that the applicant must be individually concerned, at least where the Commission might have known that the legal position of certain persons forming part of a group which is defined in general and abstract terms would be particularly affected. Whilst admitting that the Netherlands authorities have in fact issued an import licence to it in respect of the consignment of brushes in question, the applicant contends that the decision is expressly directed against it.

With regard to the requirement that the decision must be of direct concern to it, the applicant states that the Court's case-law has moved away from a purely formal approach and now places more emphasis on consideration of the material effect of the decision on the legal position of the person concerned. According to the latter approach a Community measure is of direct and material concern to the person in question as soon as it has been adopted — even if a national measure is still needed to implement it — circumstances such that it is possible to determine with almost total certainty that the measure will affect the interests and legal position of a specific person.

That proposition is particularly valid in the present case since the legal protection afforded to Spijker Kwasten within the framework of an action in the national court is insufficient. In that connection the applicant states that two questions are raised in the present case: one is whether the rules concerning national commercial policy really are threatened and the other is whether less wide-ranging protective measures might suffice. Those questions cannot be referred to the Court for a preliminary ruling by the national court before which an action has been brought against a decision refusing to grant an import licence.

IV — Oral procedure

The parties presented oral argument at the sitting on 5 May 1983.

The Advocate General delivered her opinion at the sitting on 9 June 1983.

Decision

1 By application lodged at the Court Registry on 8 September 1982 Spijker Kwasten BV, Beverwijk, brought an action under the second paragraph of Article 173 of the EEC Treaty for a declaration that the decision of the Commission of 7 July 1982 (Official Journal 1982, C 171, p. 12) is void. That decision, which was adopted on the basis of Article 115 of the Treaty, authorized the Kingdom of Belgium, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands not to apply Community treatment until 31 December 1982 to brushes falling within subheading ex 96.01 of the Common Customs Tariff, originating in the People's Republic of China and in free circulation in the Member States, in respect of which import licences were applied for after 25 June 1982.

2 The applicant, a company governed by Netherlands law which imports brushes and similar products falling within subheading ex 96.01 of the Common Customs Tariff, applied on 18 June 1982 to the Netherlands authorities for an import licence for a consignment of brushes originating in the People's Republic of China, which were to be imported from the Federal Republic of Germany. The Netherlands authorities postponed dealing with that application pending the adoption of the contested decision by the Commission. However, the import licence was granted subsequently when it became clear that that decision did not concern the imports in respect of which the import licence had been applied for before 25 June 1982.

3 The applicant instituted the present proceedings because it considered that the contested decision affected it adversely inasmuch as it affected its future imports.

4 The Commission raised an objection of inadmissibility under Article 91 (1) of the Rules of Procedure and the Court decided to give a decision on the admissibility of the present action without considering the substance of the case.

5 The Commission objects that the contested decision is addressed to the Benelux States alone and that it is neither of direct nor of individual concern to the applicant within the meaning of the second paragraph of Article 173 of the Treaty.

6 On the other hand the applicant contends in support of the admissibility of the action that the said decision is of direct and individual concern to it with regard to its legal position since it is the only trader-importer established in the Benelux States which regularly imports into the Netherlands brushes originating in the People's Republic of China and since, moreover, the contested decision was adopted on account of the importation with which the present case is concerned.

7 Under the second paragraph of Article 173 of the Treaty the admissibility of an action for a declaration that a decsion is void brought by a natural or legal person to whom the decision was not addressed is subject to the requirement that the decision must be of direct and individual concern to the

applicant. In this case since Spijker Kwasten BV is not one of the persons to whom the contested decision was addressed it is necessary to consider whether the decision is of direct and individual concern to it.

8 The Court has already stated in its judgment of 15 July 1963 in Case 25/62 *Plaumann* [1963] ECR 95 that persons other than those to whom a decision is addressed may claim to be individually concerned by that decision only if it 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 if by virtue of those factors it distinguishes them individually just as in the case of the person addressed.

9 That is not the case in the present proceedings. The contested decision concerns the applicant merely by virtue of its objective capacity as an importer of the goods in question in the same manner as any other trader who is, or might be in the future, in the same situation. In fact the purpose of the decision is to authorize the Benelux States not to apply Community treatment for a fixed period to all imports of brushes originating in the Poeple's Republic of China and in free circulation in another Member State. With regard to the importers of such products it is therefore a measure of general application covering situations which are determined objectively and it entails legal effects for categories of persons envisaged in a general and abstract manner. Thus the contested decision is not of individual concern to the applicant.

10 That conclusion is not invalidated by the fact that the applicant, according to its statement which was not disputed by the Commission, is the only trader-importer established in the Benelux States regularly importing into the Netherlands brushes originating in the People's Republic of China and that it was one of its imports which led to the adoption of the contested decision. As the Court stated in its judgment of 6 October 1982 in Case 307/81 *Alusuisse* [1982] ECR 3463, a measure does not cease to be a regulation because it is possible to determine the number or even the identity of the persons to whom it applies at any given time as long as it is established that such application takes effect by virtue of an objective legal or factual situation defined by the measure in relation to its purpose.

11 In those circumstances the contested decision cannot be challenged by the applicant under the second paragraph of Article 173 of the Treaty. Furthermore, that conclusion is consistent with the scheme of remedies provided for by Community law since the importers in question have the right to challenge before the national courts the refusal on the part of the national authorities, based on the application of Community law, to grant an import licence.

12 For all those reasons the application must be declared inadmissible.

Costs

13 Under Article 69 (2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs. As the applicant has failed in its submissions it must be ordered to pay the costs.

On those grounds,

THE COURT (Third Chamber)

hereby:

1. **Dismisses the application as inadmissible;**

2. **Orders the applicant to pay the costs.**

Everling Galmot Kakouris

Delivered in open court in Luxembourg on 14 July 1983.

For the Registrar

H. A. Rühl
Principal Administrator

U. Everling
President of the Third Chamber