JUDGMENT OF THE COURT (Second Chamber)
14 February 1989 *

In Case 206/87

Lefebvre Frère et Sœur SA, whose registered office is in Douai, represented by J. P. Kunlin, of the Paris Bar, and J. Cloetens, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of P. P. Schleimer, 26 rue Philippe-II,

applicant,

v

Commission of the European Communities, represented by M.-J. Jonczy, Legal Adviser to the Commission, acting as Agent, with an address for service in Luxembourg at the office of Georgios Kremlis, a member of the Commission's Legal Department, Wagner Centre, C 254, Kirchberg,

defendant,

supported by

French Republic, represented by J. P. Puissochet and Géraud de Bergues, acting as Agents, with an address for service in Luxembourg at the French Embassy,

intervener,

APPLICATION for a declaration that the Commission's decision of 8 May 1987 authorizing the French Republic to exclude from Community treatment bananas originating in certain non-member countries and in free circulation in other Member States (Official Journal 1987, C 127, p. 4) is void,

* Language of the case: French

THE COURT (Second Chamber),

composed of T. F. O'Higgins, President of Chamber, G. F. Mancini and F. A. Schockweiler, Judges,

Advocate General: C. O. Lenz
Registrar: D. Louterman, Administrator

having regard to the Report for the Hearing and further to the hearing on 30 November 1988,

after hearing the Opinion of the Advocate General delivered at the sitting on 14 December 1988,

gives the following

Judgment

1 By an application lodged at the Court Registry on 7 July 1987, Lefebvre Frère et Sœur SA, whose registered office is in Douai (France), brought an action under the second paragraph of Article 173 of the EEC Treaty for a declaration that the Commission's decision of 8 May 1987 addressed to the French Republic and authorizing that Member State to exclude from Community treatment fresh bananas originating in non-member countries in the 'dollar area' and in free circulation in the other Member States (Official Journal C 127, 13.5.1987, p. 4) is void.

2 Fearing that the importation into France of bananas in free circulation in the other Member States would disturb the French market, since most of its needs are met by bananas produced in the French overseas departments and in three ACP countries which are traditional suppliers to France, on 30 April 1987 the French Government applied to the Commission for authorization to exclude from Community treatment bananas originating in non-member countries, with the exception of the three abovementioned ACP countries, and in free circulation in the other Member States.

3 By the abovementioned decision adopted under the first paragraph of Article 115 of the EEC Treaty, the Commission granted that authorization for the future, but stipulated that it was only to be valid until 30 April 1988 and restricted its scope *ratione materiae* to bananas originating from non-member countries in the dollar area and in free circulation in the Community.

4 The applicant, which in the past has unsuccessfully tried to import into France bananas covered by the disputed decision, takes the view that the decision is illegal and has consequently brought this action.

5 By a separate document lodged at the Court Registry on 7 July 1987 the Commission raised an objection of inadmissibility under Article 91 of the Rules of Procedure and asked the Court to rule on this objection without hearing argument on the merits.

6 The objection raised by the Commission, which is supported by the French Republic, which has been given leave to intervene in support of its conclusions, is that the contested decision merely grants the French authorities discretion to issue or refuse to grant import licences to importers in the future and that with regard to such importers that decision is a measure of general application. That decision is not therefore of direct or individual concern to the applicant within the meaning of the second paragraph of Article 173 of the Treaty.

7 On the other hand, the applicant submits that the disputed decision does concern it directly because its purpose is not to authorize the French Republic to exclude certain bananas from Community treatment but to validate restrictions on importation applied by the French Republic for many years.

8 The applicant also considers that the decision is of individual concern to it on the ground that since 1977 it has repeatedly and unsuccessfully applied to the French authorities for licences to import bananas. Moreover, consignments of bananas from Belgium destined for the applicant have been systematically turned back at the frontier by French customs. Finally, the applicant has brought the matter

before the French courts and the Commission. Consequently, it claims to be differentiated from all other persons and distinguished individually in the same way as the person to whom the decision is addressed.

9 Reference is made to to the Report for the Hearing for a fuller account of the facts of the case, the course of the procedure and the submissions and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

10 Under the second paragraph of Article 173 of the Treaty, the admissibility of an application for a declaration that a decision is void brought by an individual to whom that decision is not addressed is subject to the condition that the decision is of direct and individual concern to that applicant.

11 Since the disputed decision is not addressed to the applicant, it must be examined whether it is of direct and individual concern to it.

12 The Court has held (see judgment of 15 July 1963 in Case 25/62 *Plaumann & Co.* v *Commission* [1963] ECR 95) that third parties may be individually concerned by a decision addressed to another person 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.

13 It is apparent that the purpose of the contested decision is to authorize the French Republic in future to exclude from Community treatment for a specified period all imports of bananas originating from non-member countries in the dollar area and in free circulation in another Member State. Consequently, with regard to all banana importers, it is a measure of general application which applies to situations determined objectively and has legal effects with regard to categories of persons referred to in a general and abstract manner.

14 The disputed decision is accordingly of concern to the applicant solely by reason of its objective quality as a banana importer on the same basis as any other trader who is actually or potentially in an identical position.

15 That conclusion is not invalidated by the fact that before the disputed decision was adopted the applicant had on several occasions unsuccessfully attempted to import into France bananas in free circulation and had brought the matter before the French courts and the Commission.

16 The applicant has not proved that the applications for import licences which it had submitted to the French authorities were still pending at the date when the disputed decision was adopted.

17 Furthermore, the fact that consignments of bananas destined for the applicant were turned back before the decision was adopted are entirely irrelevant to the issue of the admissibility of this action since the decision had no retroactive effect.

18 Finally, the Court also cannot accept the applicant's argument that the Commission was aware of the applicant's situation when it adopted the disputed decision. 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 (see judgment of 6 October 1982 in Case 307/81 *Alusuisse Italia SpA* v *Council and Commission* [1982] ECR 3463).

19 In those circumstances, the disputed decision may not be challenged by the applicant under the second paragraph of Article 173 of the Treaty. Consequently, the application must be dismissed as inadmissible.

Costs

20 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party must be ordered to pay the costs if they have been asked for in the successful party's pleadings.

21 Since the applicant has failed in its submissions, it must be ordered to pay the costs.

22 Since only the Commission has asked for costs, the order for costs must be limited to those costs incurred by the Commission.

On those grounds,

THE COURT (Second Chamber)

hereby:

(1) Dismisses the application as inadmissible.

(2) Orders the applicant to pay the costs incurred by the Commission.

(3) Orders the French Republic to bear its own costs.

O'Higgins Mancini Schockweiler

Delivered in open court in Luxembourg on 14 February 1989.

J.-G. Giraud
Registrar

T. F. O'Higgins
President of the Second Chamber