strictively; where the Treaty is silent a limitation in this respect may not be presumed.

4. 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.
5. If an applicant includes in his application a request for a declaration with regard to the damage which may result from the contested measure and specifies in the course of the written and oral procedures the subject matter of that request and sets a value on the amount of the damage, the conclusions of an application for compensation formulated in the reply may be considered as an amplification of those contained in the application and therefore as admissible under Article 38 (1) (d) of the Rules of Procedure.
6. An administrative measure which has not been annulled cannot of itself constitute a wrongful act on the part of the administration inflicting damage upon those whom it affects. The latter cannot therefore claim damages by reason of that measure.

In Case 25/62

PLAUMANN & Co., Hamburg, represented by Harald Ditges, advocate of the Cologne Bar, with an address for service in Luxembourg at the offices of Mr Audry, Fédération des Commerçants, 8 Avenue de l'Arsenal,

applicant,

v

COMMISSION OF THE EUROPEAN ECONOMIC COMMUNITY, represented by Hubert Ehring, Legal Adviser to the European Executives, acting as Agent, assisted by Ernst Steindorff, Professor of Law at the University of Tübingen, with an address for service in Luxembourg at the offices of Henri Manzanarès, Secretary of the Legal Service of the European Executives, 2 Place de Metz,

defendant,

Application for:

—annulment of the Decision No SIII 03079 of the Commission of 22 May 1962, refusing to authorize the Federal Republic of Germany to suspend in part customs duties applicable to 'mandarins and clementines, fresh' imported from third countries;

—payment of 39 414.01 DM compensation;

THE COURT

composed of: A. M. Donner, President, L. Delvaux and R. Lecourt (Presidents of Chambers), Ch. L. Hammes, R. Rossi (Rapporteur), A. Trabucchi and W. Strauß, Judges,

Advocate-General: K. Roemer
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Facts

The facts may be summarized as follows:

On 16 June 1961 the Federal Republic of Germany requested the Commission to authorize it to suspend the collection of the customs duty of 13%, set out in the Common Customs Tariff, for fresh clementines imported from third countries (tariff heading ex 08.02 of the Common Customs Tariff) and to apply the 10% duty set out in the German customs tariff. This request was amended orally in Brussels so as to seek the creation of 'an ex-tariff heading for clementines' with a 10% duty applicable.

In its Decision No SIII 03079 of 22 May 1962 addressed to the Government of the Federal Republic of Germany, the Commission refused the authorization asked for. Against this Decision refusing the request, the applicant, a limited partnership, brought the present action on 30 July 1962.

II — Conclusions of the parties

The *applicant* claims that the Court should:

'1. Annul the Decision No SIII 03079 of the defendant of 22 May 1962 and

(a) declare that the defendant is obliged to authorize the Federal Republic of Germany to suspend the collection of the customs duty applicable to 'clementines, fresh' (tariff heading ex 08.02B of the Common Customs Tariff) for the period 1 January 1962 to 31 December 1962, or give a fresh ruling without delay on the request of the Federal Republic of Germany of 16 June 1961 for the partial suspension of the external customs tariff for 'clementines, fresh' (cf. tariff heading referred to above) having regard to the Court's view of the law regarding interpretation of the Treaty in relation to the suspension of customs duties;

as a subsidiary point

(b) declare that the defendant is obliged to grant the Federal Republic of Germany a customs quota of a maximum of 11 000 metric tons at the rate of 10% for its imports of clementines originating in third countries, tariff heading ex 08.02B of the Common Customs Tariff;

2. declare that the defendant is obliged to compensate the applicant for future damage arising from the refusal to authorize partial suspension of the customs duty;

3. order the defendant to pay the costs;

4. accept German as the language of the case;

5. order the appearance of the Federal Republic of Germany.'

In its reply it claims that the Court should:

'—annul the contested Decision;
—order the defendant to pay compensation amounting to 43 265.30 DM;
—order the defendant to pay the costs;
—accept German as the language of the case.'

The *defendant* contends that the Court should:

'—dismiss the action as inadmissible and, alternatively, as unfounded;
—order the applicant to pay the costs.'

III — Submissions and arguments of the parties

The submissions and arguments of the parties in the written procedure may be summarized as follows:

Before argument on admissibility and the substance of the claim the defendant protests against the complaints made by the applicant which in the defendant's view amount to an unfounded accusation that the Commission in making its decision was inspired by political motives and which could prejudice the Court against the defendant.

On Admissibility

The *defendant* disputes the admissibility of the application and contends as follows:

1. On the request for annulment

—It is not the form but the nature of the measure at issue which is material in deciding on the admissibility of actions brought by individuals. Moreover as regards the substance there is nothing to prevent the contested Decision from being considered as a legislative measure. This does not contradict Article 189 of the Treaty since this Article distinguishes decisions from regulations only by criteria of form.

—In the EEC the adoption of legislative measures is still largely a matter for the States though this is often done upon a directive from the Community. In certain cases this directive may be issued in the *form* of a decision because it is addressed only to a given Member State and its only purpose is a concrete process, namely a legislative measure. If, by reason of this form, actions were allowed against the decisions of the Commission concerned with legislative measures, the result would be that parties affected would have much wider scope for bringing actions under the EEC Treaty than under national law, whilst the purpose of the second paragraph of Article 173 of the Treaty is precisely to deny to individuals the capacity to contest measures which in substance are of a legislative nature.

—In these circumstances, actions brought against measures of the Commission, imposing reductions or increases in customs duties on a Member State should be declared inadmissible because, at least in the Federal Republic of Germany and in the matter at issue here, these reductions or increases are based on legislative measures. The same applies too where the Commission forbids the State concerned to adopt a legislative measure for the purpose of reducing customs duties, because as regards the capacity to challenge the decisions provided for in Article 25 (3) of the Treaty, it matters little whether

these decisions accept or reject a request for suspension or reduction of duties.

—The present application is inadmissible also because the contested Decision is not addressed 'to another person' within the meaning of the second paragraph of Article 173 of the Treaty. The Federal Republic of Germany, as the Member State to which the contested Decision was addressed, cannot be deemed 'another person' in relation to the individual instituting the proceedings. First, the interests of the individual and those of the Member State to which the decision is addressed are not on the same level and on this point it must be asked whether the general interests which Member States must protect in implementing such a decision do not take precedence over individual interests to the extent that only Member States may institute proceedings against that decision. Secondly it must not be forgotten that where a decision is addressed to a Member State the damage caused to individuals is usually of the same nature as that suffered by the State in question (contrary to what happens where a decision is addressed to individuals and the damage suffered by the applicant normally arises from the advantage accruing to the person to whom the decision is addressed) with the result that in this event there is a real possibility of the decision's being contested also by the Member State to which it is addressed and of the individual's having the benefit of indirect protection. Thirdly it is to be emphasized that for a proper interpretation of a rule of law regard must be had to its origin and its basic intention. There can therefore be no doubt that the more correct interpretation of the second paragraph of Article 173 of the EEC Treaty is that which excludes any Member State from the concept of 'another person'.

Moreover it cannot be denied that in some cases the Community institutions do not impose direct obligations on the nationals of Member States and that it is the States themselves which impose such obligations within the framework of Community law and the instructions or authorizations issued by Community institutions. It seems reasonable therefore to adapt the procedure for bringing an action to the procedure for obtaining a decision by prohibiting private individuals in such cases from proceeding directly against institutions of the Community.

What has been said above is already sufficient to show that Member States alone are entitled to institute proceedings against decisions addressed to them. An investigation of the question whether such decisions are of 'direct' concern to individuals in order to refuse the right of action in some cases and allow it in others does not seem the best way of solving the problem under discussion because the result would be that this quality of directness would be required to fulfil two barely compatible functions. The concept of 'quality of directness' would in effect need to be used both as regards measures addressed to Member States, as in the present case, and Community measures addressed to private individuals other than the applicant.

—In any event, while the second paragraph of Article 33 of the ECSC Treaty requires as a condition of admissibility only that the contested Decision should be one 'concerning' the applicant, the second paragraph of Article 173 of the EEC Treaty requires that it should be of 'direct and individual' concern to the applicant.

(a) In the present case the contested Decision is not of *direct* concern to the applicant. First it is beyond doubt that this Decision affects not only importers but also the Federal Republic of Germany because its interest in the collection of customs duties is recognized by Article 106 of the Basic Law ('Grundgesetz'). Secondly, it is to be noted that

decisions, unlike regulations, are not 'directly applicable' in the Member States; they must for this purpose be put into the form of a rule of domestic law and cannot therefore directly concern the nationals of Member States. Finally, the contested Decision does not lay down any duty of abstention on the part of the Federal Republic; it reiterates and confirms the obligation contained in Article 23 of the Treaty. Moreover if it be taken that this Decision imposes obligations it is to be noted that under the fourth paragraph of Article 189 of the Treaty it would bind only the person to whom it is addressed.

(b) Further, the contested Decision is not even of *individual* concern to the applicant. Only persons affected by a decision by reason of their individuality or of their special position may be considered as individually concerned for the purpose of bringing an action. For more convincing proof that this conclusion is valid, it is sufficient to observe that Article 184 of the Treaty precludes the possibility of raising any objection against a Community measure in the nature of a decision on the ground of inapplicability. The fact that the measure contested is a decision and not a regulation does not automatically mean that it is one affecting the individual. In the present case the contested Decision concerns 'certain products in the Common Market' and the class of those likely to be affected is conceived in such an abstract way that those belonging to it at the time of the said Decision may change in course of time. This class of persons could in fact change in 1962, that is to say during the period in which the Decision is in force, as regards not only the merchants importing, buying and selling the products in question but also consumers and producers of clementines or fruits such as mandarins which are in competition with them. On the other hand the Decision in question concerns not only importers but equally domestic and foreign producers as well as consumers.

—Finally, on the question whether any legal protection is available to the applicant if the present application is inadmissible, it need be mentioned only that the procedure provided for by Article 177 of the EEC Treaty still remains open to the applicant for the defence of its interests in the national field, in relation to Community measures.

2. On the claim for compensation

—The claim for compensation was first raised in the reply. In fact in its application the applicant only asked the Court of Justice to declare the Commission liable to make good damage to be incurred in the future by the applicant by reason of the contested Decision. However, since such a conclusion, now abandoned, could not form the basis of a claim for compensation, it follows that this claim is inadmissible under Article 38 (1) (d) of the Rules of Procedure. On the other hand it must not be overlooked that the particulars furnished by the applicant as to the amount of the damage suffered are not yet final, so that if the applicant specifies a figure for this amount in the course of the oral procedure, the defendant runs the risk of being unable to express an effective opinion on this point.

Furthermore the applicant does not prove that all the conditions necessary for the admissibility of the claim are fulfilled in the present case. It relies on an alleged infringement of the Treaty, whereas a claim for compensation is admissible only if the existence of an error on the part of the Commission is alleged. The relationship between the request for compensation and the re-

quest for annulment is therefore illogical. The purpose of the second request is in fact that the Commission, after annulling the contested measure, should require the Federal Republic to change its attitude and repay to the applicant the customs duties overpaid; the purpose of the first request is that the Commission itself should be ordered to repay to the applicant the amount of these duties. Moreover the second paragraph of Article 176 of the Treaty envisages the possibility of the request for annulment being joined with a request for compensation, only if the latter has an object other than that flowing from the annulment itself. In the present case the repayment to the applicant of customs duties overpaid would only be the logical consequences of the annulment of the contested Decision.

Finally it should be emphasized that if the applicant's claim for compensation were admitted, the conditions mentioned in the second paragraph of Article 173 of the Treaty as regards the admissibility of annulment proceedings instituted by individuals would lose their significance. This applies especially where, as in the present case, the applicant by its request for compensation is pursuing an aim almost identical to the one which it is pursuing in its request for annulment.

This is why the application should be declared inadmissible on the ground also that it contains this request for compensation.

The *applicant,* after indicating its interest in a quick decision by the Court on the matter before it, advances the following arguments against the defendant:

1. On the request for annulment

—In the economic field the contested Decision affects the applicant as well as other importers and consumers of clementines. There is no material damage to the Federal Republic of Germany because in the present case the customs duties have a protective not a fiscal aim. Thus, to deny the applicant a right of action against the contested Decision and to reserve that right to that government would deprive a person suffering material damage of all legal protection before the Court. Moreover that person could not bring the question before a German court since, under the second paragraph of Article 173 of the Treaty, the Court of Justice has exclusive jurisdiction in the matter. Moreover it would be completely incomprehensible to an outside individual that an administrative authority like the Commission should seek on grounds of form to prevent investigation into the substance of its decisions, since such conduct could well lead to a wholly intolerable form of dirigisme, the more dangerous because it is inherent in the very structure of the EEC.

—The argument that the words 'other person' in the second paragraph of Article 173 cannot in any event refer to Member States is contrary to a reasonable interpretation of the Treaty. It takes no account of the fact that in the present case the damage affects not the Federal Republic but the applicant and that the Treaty has given formal recognition to third parties of the right to be heard by the Court.

—The concepts of 'direct' and 'individual' must be looked at as a whole, for each standing alone is very imprecise. Indeed, it is hard to distinguish between general and individual damage and this distinction is unknown to German law.

In any event, even if these concepts be considered separately for the purpose of the argument, it is to be noted that the damage suffered by the applicant is *direct and individual.* It is *direct* because:

(a) The partial suspension of customs duties needed to avoid the damage

in question cannot be ordered by the Federal Republic save by authorization of the Commission. Hence the Decision in dispute prohibiting such action is the direct cause of the damage suffered by the applicant. The applicant would only have been affected by a measure adopted by the Federal Republic if the latter, after being authorized to apply the measures requested, had refused to apply them and to avail itself of this authorization. Further the economic consequences of the contested measure affect only importers and thus affect the applicant.

(b) The Federal government would have availed itself of the authorization to suspend the contested customs duties if it had been granted at the appropriate time. The truth of this statement could be confirmed by hearing the evidence of a representative of the Federal government in the capacity of witness or expert.

This loss is at the same time *individual* because:

(a) The action is not against a regulation of the Council but a decision of the Commission which, according to the judgment of 14 December 1962, gives rise to legal consequences as regards persons addressed by name or persons who are ascertainable. Moreover from a further reference to the principles set out in this judgment, it may be concluded that the contested Decision affects an ascertained class of persons addressed. It concerns in fact some 35 importers of clementines in the Federal Republic. The fact that the class may vary in course of time in no way alters the individual nature of the decision.

(b) It is wrong to say that the contested Decision concerns 'certain Common Market products' because clementines are by and large not a product of that market.

(c) The Court has decided in its judgment in Joined Cases 7 and 9/54 that a decision such as the grant of an authorization is an individual decision.

(d) It is not correct that the applicant can in every case pass on to the buyer the whole of the increase in the duty. The applicant cannot do this because of the keen competition in the fruit market in Germany. The applicant has therefore an individual and personal interest in seeing that the duty on clementines should be low, since the duty can well have a decisive effect upon the purchase price and so upon the volume of sales.

The application further refers to the reasoning developed in Case 27/62.

2. The claim for compensation

On this claim, which is based on the second paragraph of Article 215 of the Treaty, it should be noted, on the one hand, that the conclusions in the application for a declaration that the Commission is obliged to make good future damage can no longer be maintained since the year 1962 is now past, and, on the other hand, that the damage in question now arises from the fact that no repayment of the increased customs duties has been granted to the applicant. The damage amounts to some 43 265.30 DM from 1 August to 31 December 1962. A more accurate assessment has not in fact yet been possible.

On the Substance

A — Request for annulment

The *applicant* puts forward three submissions: infringement of an essential procedural requirement, infringement of the Treaty and misuse of powers.

1. Infringement of an essential procedural requirement

The *applicant* observes on this matter that the Commission has partly limited itself to reproducing the conditions required by the Treaty without examining either the legal points or the facts mentioned by the Federal Republic of Germany. Moreover, the Decision in question makes no mention of any economic considerations and gives the impression that the Commission considers that it can rule on this issue as it thinks fit and by virtue of an absolute discretion.

The *defendant* on the other hand argues that the statement of reasons for a decision need neither refute nor examine critically other possible interpretations and that the Commission has mentioned in its Decision the decisive considerations and clearly indicated the factors on which it relied.

2. Infringement of the Treaty

Apart from the arguments mentioned above and in part those which it invokes concerning misuse of powers the *applicant* stresses more especially, as regards the submission of infringement of the Treaty, the following points:

— The conditions required by Article 25(3) of the Treaty for granting the authorizations therein provided are much less stringent than those required by paragraphs (1) and (2) of the same Article.

— In the contested Decision, the Commission has failed to deal with the fundamental question of disturbance of the market. In any event the statement therein that the other Member States are not in a position to meet the Federal Republic's quantitative requirements for clementines, is already enough to justify the measures asked for by the German Government.

— Mandarins cannot take the place of clementines.

— The increase in the duty applicable would not involve improved competitive capacity of Community undertakings.

— The contested Decision refers to Regulation No 23 of the Council but this Regulation entered into force as from 30 July 1962 for the 'extra' commercial category. This reference does not appear relevant in the present case as regards imports of clementines in 1962.

— In the contested Decision, the Commission has remained silent on Article 29(a) of the Treaty for the very good reason that if it had taken account of the aim set out in this provision it would have had difficulty in justifying its refusal to give the authorization.

— The Decision of the Commission is limited to a verbatim reproduction of Article 29(b) of the Treaty without a factual appraisal of the case in point.

— The authorization asked for would not have adversely affected the aims set out in Article 29(d).

— The contested Decision also infringes Article 39(1)(d) of the Treaty since the increase in the duty raises the cost of supplying clementines and only up to 10% of the supply can come from the Community Market.

— The contested Decision moreover infringes Article 39(1)(e) of the Treaty because calculations made by the associations concerned show that the retail price will increase by 10 DM per 100 kg.

— The Commission's argument that a partial suspension of customs duties would have harmful psychological effects on the opening up of new plantations is unfounded.

The applicant ends by referring in addition to the arguments put forward by the applicants in Cases 24/62 and 27/62.

The *defendant* raises doubts whether it is possible to invoke such a ground for

complaint in cases where, as here, the administrative authority is not obliged to exercise a defined power but enjoys a discretionary power. In such cases the only conceivable ground of complaint against an administrative act is, in the defendant's view, that of misuse of powers. Nevertheless the defendant analyses this ground of complaint in case the Court should feel bound to accept the opposite view. It argues as follows:

— The applicant's argument that, as the production of clementines in the Common Market is insufficient, it is impossible to improve the competitive capacity of this market for the products in question appears to be directed against the exercise of the Commission's technical discretionary power in this matter. Moreover the applicant overlooks the fact that the attainment of the objective pursued by the Commission, that is to say, the setting up of new clementine plantations and the improvement of the cultivation of mandarins is ensured by prohibiting any exceptions to the Common Customs Tariff applicable to these products.

— The assertion by the applicant that mandarins cannot take the place of clementines is contradicted not only by the available statistics but also by the particulars supplied by the Federal Republic itself.

3. Misuse of powers

The *applicant* adduces several arguments on this issue which have already been put forward or touched on in relation to the submission of infringement of the Treaty. In particular, it argues as follows:

— On the question whether in the present case the Commission enjoys a discretionary power, reference need only be made to the arguments put forward on this subject by the applicant in Case 34/62.

— What the Commission wanted to achieve by the contested Decision was to substitute mandarins for clementines for consumption within the Community, and it is a matter for consideration whether the Commission can impose a fixed choice on the consumer.

— By the term 'products concerned' Article 25(3) clearly shows that any decision must take account of the market for the product for which a suspension of customs duties is requested and not of the entire market for all the products listed in Annex II.

— The inadequacy of the statement of reasons on which the refusal is based creates the impression that the authorization in question was refused for political not economic reasons. The procedure followed by the Commission in consulting the Member States about the Federal government's request is contrary to Article 25(3) of the Treaty.

— Agricultural policy as described by the defendant and as it appears from Regulation No 135 of the Commission seems to lean towards economic self-sufficiency.

— The argument of the Commission that the Common Customs Tariff forms a single unit to which no exceptions may be made save for a compelling reason has no force in relation to Article 25(3) of the Treaty.

— From an examination of other decisions taken within the framework of Article 25(3) of the Treaty it may be deduced that the requests made under this provision are often made the subject of 'compensatory transactions'.

The *defendant* on the other hand argues as follows:

— The condition set out in Article 25(3) of the Treaty for the authorization of a suspension of customs duties, that is to say, no 'serious disturbance of the market of the products concerned' should result from such a measure, is not the only condition to be taken into acount in applying that Article.

— The grant of a discretionary power to the Commission flows on the one hand from the very words of Article 25(3) of the Treaty, compared with the first subparagraph of each of paragraphs (1) and (2), in which the word 'may' does not appear, and on the other hand from the fact that paragraph (3) refers to agricultural products and thus touches on the agricultural policy of the Community for which the Treaty has laid down only certain objectives as binding, reserving the elaboration of the necessary measures for later negotiations and decisions.

— In the exercise of this discretionary power the Commission, far from acting capriciously, has held to the principles which Articles 29 and 39 of the Treaty require it to observe.

— As regards more especially the objective set out in Article 29(a) of the Treaty, it is to be noted that, since the Community must be considered as a single entity, the Commission had to take into account the trade of all Member States of the Community with third countries.

— The defendant was also guided by the objective set out in Article 29(b) of the Treaty because this is an objective which appears too in the second paragraph of Article 110 of the Treaty in relation to the common commercial policy.

— The ever increasing turnover in clementines has not so far been influenced to any appreciable extent by the increase in customs duties.

— Equally the Commission has respected the objectives contained in Article 29(d) of the Treaty.

— The arguments invoked on the subject of Article 29(b) of the Treaty may also be invoked in respect of Article 39(1)(a).

— As regards Article 39(1)(b), it is to be noted that the fair standard of living for the agricultural community must come first and foremost from a rationalization of production.

— The objectives set out in Article 39(1)(c) and (d) have not been of vital importance in the present case.

— The increase in prices brought about by the application of the customs tariff is such that supplies to consumers will still be available at reasonable prices.

— No provision in Articles 25, 29 or 39 of the Treaty prohibits the Commission from taking account of the repercussions of decisions taken under Article 25(3) upon the market in products competing with those for which a suspension of customs duties is requested.

— Lastly, the applicant has adduced no facts to substantiate the allegation of arbitrary and discriminatory treatment.

B — The claim for compensation

The *applicant* contends that the damage suffered, amounting to some 43 265.30 DM, has been assessed approximately because it has not in fact been possible to do all the calculations for the year 1962.

Moreover it has not been possible to pass on the increased customs charge.

Further, the question whether such a charge can be passed on to other persons or not has already been examined in the requests for an interim order for the suspension of the contested Decision.

The *defendant* on the contrary puts forward the following arguments:

— The request for compensation, made under the second paragraph of Article 215 of the Treaty, is based on a decision of the Commission which is not unlawful.

— German, Belgian and Italian domestic law as well as the decisions of the Court require that an action for compensation be considered as well founded only if the administrative authority has infringed a rule of law operating for the protection of the applicant. Moreover, in the present case, the applicant

has not indicated which such rule it claims has been infringed and it would be wrong to assume that Article 25(3) of the Treaty was intended to protect importers.

— The claim is for compensation by way of repayment of amounts paid as customs duties, but the claim for compensation provided for by the second paragraph of Article 215 of the Treaty cannot have this form of restitution in view, since this is the logical consequence of the annulment of the contested Decision should the action be deemed admissible and well founded.

IV — Procedure

By application of 16 August 1962, the applicant requested suspension of the contested Decision. A second application to the same effect was lodged on 6 December 1962. These two applications for an interim order were dismissed by order of the President on 31 August and 21 December 1962 respectively.

By application lodged on 28 August 1962 under Article 91 of the Rules of Procedure, the defendant raised a preliminary objection of the inadmissibility of the present action. By order of the Court of 24 October 1962 this objection was reserved for consideration in the final judgment.

By order of 6 December 1962 the Court decided to hear the parties orally on the admissibility of the conclusions in the application for an order for the appearance of the Federal Republic of Germany. In its written observations lodged on 21 December 1962, the applicant withdrew these conclusions. By order of 24 January 1963 the Court decided that it was no longer necessary to rule on the said conclusions.

In the course of the oral procedure the applicant assessed the damage alleged at 39 414.01 DM.

Grounds of judgment

I — On the application for annulment

Admissibility

Under the second paragraph of Article 173 of the EEC Treaty 'any natural or legal person may . . . institute proceedings against a decision . . . which, although in the form of . . . a decision addressed to another person, is of direct and individual concern to the former'. The defendant contends that the words 'other person' in this paragraph do not refer to Member States in their capacity as sovereign authorities and that individuals may not therefore bring an action for annulment against the decisions of the Commission or of the Council addressed to Member States.

However the second paragraph of Article 173 does allow an individual to bring an action against decisions addressed to 'another person' which are of direct and individual concern to the former, but this Article neither defines nor limits the scope of these words. The words and the natural meaning of this provision

justify the broadest interpretation. Moreover provisions of the Treaty regarding the right of interested parties to bring an action must not be interpreted restrictively. Therefore, the Treaty being silent on the point, a limitation in this respect may not be presumed.

It follows that the defendant's argument cannot be regarded as well founded.

The defendant further contends that the contested decision is by its very nature a regulation in the form of an individual decision and therefore action against it is no more available to individuals than in the case of legislative measures of general application.

It follows however from Articles 189 and 191 of the EEC Treaty that decisions are characterized by the limited number of persons to whom they are addressed. In order to determine whether or not a measure constitutes a decision one must enquire whether that measure concerns specific persons. The contested Decision was addressed to the government of the Federal Republic of Germany and refuses to grant it authorization for the partial suspension of customs duties on certain products imported from third countries. Therefore the contested measure must be regarded as a decision referring to a particular person and binding that person alone.

Under the second paragraph of Article 173 of the Treaty private individuals may institute proceedings for annulment against decisions which, although addressed to another person, are of direct and individual concern to them, but in the present case the defendant denies that the contested decision is of direct and individual concern to the applicant.

It is appropriate in the first place to examine whether the second requirement of admissibility is fulfilled because, if the applicant is not individually concerned by the decision, it becomes unnecessary to enquire whether he is directly concerned.

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 present case the applicant is affected by the disputed Decision as an importer of clementines, that is to say, by reason of 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.

For these reasons the present action for annulment must be declared inadmissible.

II — On the action for compensation

Admissibility

The defendant maintains that the conclusions in the present action, having been formulated for the first time in the reply, were submitted out of time and are not therefore admissible under Article 38(1)(d) of the Rules of Procedure.

The applicant has however included in the application a request for a declaration with regard to the damage which may result from the contested Decision. In the course of the written and oral procedures, the applicant specified the subject matter of this request and set a value on the amount of the damage. Therefore the conclusions of the action for compensation may be considered as a permissible amplification of those contained in the application. They are therefore admissible under the above-mentioned Article 38(1)(d).

Substance

The conclusions of the applicant ask for payment of compensation equivalent to the customs duties and turnover tax which the applicant had to pay in consequence of the Decision against which it has at the same time instituted proceedings for annulment. In these circumstances it must be declared that the damage allegedly suffered by the applicant issues from this Decision and that the action for compensation in fact seeks to set aside the legal effects on the applicant of the contested Decision.

In the present case the contested Decision has not been annulled. An administrative measure which has not been annulled cannot of itself constitute a wrongful act on the part of the administration inflicting damage upon those whom it affects. The latter cannot therefore claim damages by reason of that measure. The Court cannot by way of an action for compensation take steps which would nullify the legal effects of a decision which, as stated, has not been annulled.

The action brought by the applicant must therefore be dismissed as unfounded.

III — Costs

Under the terms of Article 69(2) of the Rules of Procedure the unsuccessful party shall be ordered to pay the costs.

The applicant having failed in its action must be ordered to bear the costs.

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the parties;
Upon hearing the opinion of the Advocate-General;
Having regard to the second paragraph of Article 173, Articles 176, 189, 191 and the second paragraph of Article 215 of the Treaty establishing the European Economic Community;
Having regard to the Protocol on the Statute of the Court of Justice annexed to the Treaty establishing the European Economic Community;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities, especially Article 69(2);

THE COURT

hereby:

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

2. **Dismisses the claim for compensation as unfounded;**

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

Donner Delvaux Lecourt

Hammes Rossi Trabucchi Strauß

Delivered in open court in Luxembourg on 15 July 1963.

A. Van Houtte — Registrar

A. M. Donner — President