

JUDGMENT OF THE COURT

22 November 2001 \*

In Case C-452/98,

**Nederlandse Antillen**, represented by P.V.F. Bos and M. Slotboom, advocaten,  
with an address for service in Luxembourg,

applicant,

v

**Council of the European Union**, represented by R. Torrent, J. Huber and  
G. Houttuin, acting as Agents, with an address for service in Luxembourg,

defendant,

supported by

**Kingdom of Spain**, represented by R. Silva de Lapuerta, acting as Agent, with an  
address for service in Luxembourg,

\* Language of the case: Dutch.

Italian Republic, represented by U. Leanza, acting as Agent, assisted by F. Quadri, avvocatessa dello Stato, with an address for service in Luxembourg,

and

Commission of the European Communities, represented by P.J. Kuijper and T. van Rijn, acting as Agents, with an address for service in Luxembourg,

interveners,

APPLICATION for the annulment of Council Regulation (EC) No 1036/97 of 2 June 1997 introducing safeguard measures in respect of imports of rice originating in the overseas countries and territories (OJ 1997 L 151, p. 8),

### THE COURT,

composed of G.C. Rodríguez Iglesias, President, P. Jann and F. Macken (Rapporteur) (Presidents of Chambers), C. Gulmann, D.A.O. Edward, A. La Pergola, J.P. Puissochet, L. Sevón, M. Wathelet, R. Schintgen and V. Skouris, Judges,

Advocate General: P. Léger,  
Registrar: H. von Holstein, Deputy Registrar,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 7 November 2000, at which Nederlandse Antillen was represented by P.V.F. Bos and M. Slotboom; the Council by G. Houttuin; the Kingdom of Spain by N. Díaz Abad, acting as Agent; the Italian Republic by F. Quadri; and the Commission by T. van Rijn,

after hearing the Opinion of the Advocate General at the sitting on 13 March 2001,

gives the following

### Judgment

- 1 By application lodged at the Registry of the Court of First Instance on 11 June 1997 and registered under number T-179/97, Nederlandse Antillen (Netherlands Antilles) applied, under Article 173 of the EC Treaty (now, after amendment, Article 230 EC), for the annulment of Council Regulation (EC) No 1036/97 of 2 June 1997 introducing safeguard measures in respect of imports of rice originating in the overseas countries and territories (OJ 1997 L 151, p. 8).
  
- 2 By orders of 5 August and 15 December 1997 the Kingdom of Spain, the Italian Republic and the Commission of the European Communities were granted leave to intervene in support of the forms of order sought by the Council of the European Union in Case T-179/97.

- 3 By application lodged at the Registry of the Court of First Instance on 23 May 1997, registered under number T-163/97, the Netherlands Antilles had already brought an action against the Council and the Commission seeking, first, the annulment of Commission Regulation (EC) No 764/97 of 23 April 1997 introducing safeguard measures in respect of imports of rice originating in the overseas countries and territories (OJ 1997 L 112, p. 3), and, second, compensation for the damage allegedly suffered by it as a result of the adoption of Regulation No 1036/97.
  
- 4 At the request of the Council, Cases T-163/97 and T-179/97 were joined by order of 6 August 1997 for the purposes of the written procedure, the oral procedure and judgment.
  
- 5 By application lodged at the Registry of the Court of Justice on 20 August 1997, registered under number C-301/97, the Kingdom of the Netherlands also brought an action for the annulment of Regulation No 1036/97.
  
- 6 Since the actions in Case T-179/97 and C-301/97 both sought the annulment of Regulation No 1036/97, the parties were heard on the question of whether the previously joined Cases T-163/97 and T-179/97 should be disjoined, and on whether proceedings should be stayed or whether the Court of First Instance should decline jurisdiction in those cases.
  
- 7 By order of 16 November 1998, the Court of First Instance decided, in accordance with the third paragraph of Article 47 of the EC Statute of the Court of Justice and Articles 50 and 80 of the Rules of Procedure of the Court of First Instance, to disjoin Cases T-163/97 and T-179/97, to stay proceedings in Case T-163/97 until judgment in Case C-301/97 and to decline jurisdiction in Case T-179/97 in favour of the Court of Justice.

## Legal background

### *EC Treaty*

- 8 Under Article 3(r) of the EC Treaty (now, after amendment, Article 3(1)(s) EC), the activities of the Community are to include the association of the overseas countries and territories ('the OCTs') in order to increase trade and promote jointly economic and social development.
- 9 Under Article 227(3) of the EC Treaty (now, after amendment, Article 299(3) EC), the arrangements for association set out in Part Four of the Treaty are to apply to the OCTs included in Annex IV to the EC Treaty (now, after amendment, Annex II EC). The Netherlands Antilles are included in that annex.
- 10 Article 228(7) of the EC Treaty (now, after amendment, Article 300(7) EC) provides that agreements concluded under the conditions set out in that Article are to be binding on the institutions of the Community and on Member States.
- 11 Part Four of the EC Treaty, entitled 'Association of the overseas countries and territories' includes in particular, Article 131 (now, after amendment, Article 182 EC), Article 132 (now Article 183 EC), Article 133 (now, after amendment, Article 184 EC), Article 134 (now Article 185 EC) and Article 136 (now, after amendment, Article 187 EC).

- 12 Pursuant to the second and third paragraphs of Article 131 of the Treaty, the purpose of the association of the OCTs with the European Community is to promote the economic and social development of the OCTs and to establish close economic relations between them and the Community as a whole. In accordance with the principles set out in the Preamble to the EC Treaty, association is to serve primarily to further the interests and prosperity of the inhabitants of the OCTs in order to lead them to the economic, social and cultural development to which they aspire.
- 13 Article 132(1) of the Treaty provides that Member States are to apply to their trade with the OCTs the same treatment as they accord each other pursuant to the Treaty.
- 14 Article 133(1) of the Treaty provides that customs duties on imports into the Member States of goods originating in the OCTs are to be completely abolished in conformity with the progressive abolition of customs duties between Member States in accordance with the provisions of the Treaty.
- 15 According to Article 134 of the Treaty, if the level of the duties applicable to goods from a third country on entry into an OCT is liable, when the provisions of Article 133(1) have been applied, to cause deflections of trade to the detriment of any Member State, the latter may request the Commission to propose to the other Member States the measures needed to remedy the situation.
- 16 Article 136 of the Treaty provides that the Council, acting unanimously, on the basis of experience acquired under the association of the OCTs with the Community and of the principles set out in the Treaty, is to lay down provisions as regards the details of and procedure for the association of the OCTs with the Community.

*Decision 91/482/EEC*

- 17 On 25 July 1991 the Council adopted, on the basis of Article 136 of the Treaty, Decision 91/482 on the association of the overseas countries and territories with the European Economic Community (OJ 1991 L 263, p. 1, 'the OCT Decision').
- 18 Under Article 101(1) of the OCT Decision, products originating in the OCTs are to be imported into the Community free of customs duties and charges having equivalent effect.
- 19 Article 102 of the OCT Decision provides that the Community is not to apply to imports of products originating in the OCTs any quantitative restrictions or measures having equivalent effect.
- 20 Under Article 6(2) of Annex II to the OCT Decision, when products wholly obtained in the Community or in the ACP (African, Caribbean and Pacific) States undergo working or processing in the OCTs, they are to be considered to have been wholly obtained in the OCTs.
- 21 By way of derogation from the principle established in Article 101(1), Article 109(1) of the OCT Decision empowers the Commission to adopt safeguard measures '[i]f, as a result of the application of [that] Decision, serious disturbances occur in a sector of the economy of the Community or one or more of its Member States, or their external financial stability is jeopardised, or if difficulties arise which may result in a deterioration in a sector of the Community's activity or in a region of the Community'.

- 22 Under Article 109(2), for the purpose of implementing paragraph 1, priority is to be given to such measures as would least disturb the functioning of the association and the Community. Those measures are not to exceed the limits of what is strictly necessary to remedy the difficulties that have arisen.
- 23 Pursuant to Article 1(5) and (7) of Annex IV to the OCT Decision, any Member State may refer the Commission's decision introducing safeguard measures to the Council within 10 working days of receiving notification of the decision. In such a case the Council, acting by a qualified majority, may adopt a different decision within 21 working days.

*General Agreement on Tariffs and Trade 1994*

- 24 The General Agreement on Tariffs and Trade 1994, which is set out at Annex 1A to the Agreement establishing the World Trade Organisation ('WTO'), approved on behalf of the European Community by Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986-1994) (OJ 1994 L 336, p. 1), provides, in Article XIX(1)(a), that:

'If, as a result of unforeseen developments and of the effect of the obligations incurred by a contracting party under this Agreement, including tariff concessions, any product is being imported into the territory of that contracting party in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers in that territory of like or directly competitive products, the contracting party shall be free, in respect of such

product, and to the extent and for such time as may be necessary to prevent or remedy such injury, to suspend the obligation in whole or in part or to withdraw or modify the concession’.

*Agreement on Safeguards*

- 25 The Agreement on Safeguards, which also appears at Annex 1A to the Agreement establishing the WTO, provides, at Article 7(5) that: ‘[n]o safeguard measure shall be applied again to the import of a product which has been subject to such a measure, taken after the date of entry into force of the WTO Agreement, for a period of time equal to that during which such measure had been previously applied, provided that the period of non-application is at least two years’.

*Regulation No 764/97*

- 26 In response to the Italian Government’s request for an extension of the safeguard measures on imports of rice originating in the OCTs introduced by Council Regulation (EC) No 304/97 of 17 February 1997 (OJ L 1997 51, p. 1), the Commission adopted Regulation No 764/97 pursuant to Article 109 of the OCT Decision.

- 27 Article 1 of that Regulation introduced a tariff quota restricting imports of rice originating in the OCTs falling within CN code 1006 and exempt from customs

duties to 10 000 tonnes of rice originating in Montserrat and the Turks and Caicos Islands, and to 59 610 tonnes of rice originating in the other OCTs.

- 28 Pursuant to the second paragraph of Article 7, Regulation No 764/97 was to apply from 1 May 1997 to 30 September 1997.
- 29 The Spanish and United Kingdom Governments subsequently referred Regulation No 764/97 to the Council pursuant to Article 1(5) of Annex IV to the OCT Decision, requesting it to increase the quota allocated to Montserrat and the Turks and Caicos Islands.

*Regulation No 1036/97*

- 30 On 2 June 1997 the Council adopted Regulation No 1036/97 which, by Article 7, repeals Regulation No 764/97.
- 31 Essentially the Council Regulation differs from that of the Commission in respect of the division of the quota between the OCTs and the period of its application.

32 Article 1 of Regulation No 1036/97 provides:

‘Imports into the Community of rice originating in the OCTs falling within CN code 1006 and benefiting from exemption from customs duties shall be restricted during the period 1 May to 30 November 1997 to the following quantities of husked rice equivalent:

- (a) 13 430 tonnes for rice originating in Montserrat and the Turks and Caicos Islands; and
  
- (b) 56 180 tonnes for rice originating in the other OCTs’.

33 Regulation No 1036/97, which entered into force on 10 June 1997 when it was published in the *Official Journal of the European Communities*, was to apply from 1 May 1997 to 30 November 1997.

### The Community market in rice

34 A distinction is made between the Japonica and Indica varieties of rice.

- 35 The rice producing countries in the Community are essentially, France, Spain and Italy. About 80% of the rice produced in the Community is of the Japonica variety and 20% of the Indica variety. Japonica rice is primarily consumed in the southern Member States whilst Indica rice is primarily consumed in the northern Member States.
- 36 Since the Community produces surplus Japonica rice it is a net exporter of that variety. On the other hand it does not produce enough Indica rice to meet its own needs and is a net importer of that variety.
- 37 Rice must be processed before it can be consumed. After harvesting, it is husked and then polished in several stages.
- 38 It is possible to distinguish four stages of processing:
- paddy rice: this is the rice as harvested and is not yet fit for consumption,
  - husked rice (also called brown rice): this is rice from which the husk has been removed. It is fit for consumption, but is also capable of further processing,
  - semi-milled rice (also called partly-polished rice): this is the rice after part of the pericarp has been removed. It is a semi-finished product, generally sold with a view to further processing rather than for consumption,

— milled rice (also called polished rice): this is the fully-processed rice after both the husk and the pericarp have been removed.

39 The Community only produces milled rice, whilst the Netherlands Antilles only produce semi-milled rice. Semi-milled rice originating in the Netherlands Antilles must therefore undergo final processing before it is consumed in the Community.

40 About half-a-dozen undertakings established in the Netherlands Antilles process husked rice there from Surinam and Guyana into semi-milled rice.

41 That processing operation is sufficient to confer on that rice the status of a product originating in the OCTs, according to the rules contained in Annex II to the OCT Decision.

## The action

42 The Netherlands Antilles ask the Court to annul Regulation No 1036/97 and order the Council to pay the costs.

43 The Netherlands Antilles put forward eight arguments in support of their action as follows: (i) misuse of powers, (ii) breach of the principle of legal certainty; (iii) infringement of Article 133(1) of the Treaty; (iv) infringement of Articles 132(1)

and 134 of the Treaty, read in conjunction with Article 102 of the OCT Decision and Article 4 of Council Decision 64/349/EEC of 25 February 1964 on the association of the overseas countries and territories with the European Economic Community (Journal Officiel L 1964, 93, p. 1472); (v) breach of Article 7(5) of the Agreement on Safeguards and infringement of Article 228(7) of the Treaty; (vi) breach of Article 109(1) of the OCT Decision, (vii) breach of Article 109(2) of the OCT Decision and (viii) infringement of Article 190 of the EC Treaty (now Article 253 EC).

- 44 The Council, supported by the Commission, the Kingdom of Spain and the Italian Republic, contends that the Court should:

— dismiss the action of the Netherlands Antilles as being inadmissible;

— alternatively, dismiss the action as unfounded;

— order the Netherlands Antilles Government to pay the costs.

#### Admissibility of the intervention of the Kingdom of Spain

- 45 The Netherlands Antilles claim, as a preliminary point, that the Court cannot take account of the observations of the Kingdom of Spain in its statement in

intervention on the ground that there is no connection in Community law between the Netherlands Antilles and that Member State, because the Kingdom of the Netherlands ratified the Treaty of Accession of the Kingdom of Spain only in respect of its European territory.

- 46 Contrary to the Netherlands Antilles' claim, the intervention of the Kingdom of Spain is admissible. Under the first paragraph of Article 37 of the EC Statute of the Court of Justice, Member States may intervene in any case before the Court. The fact that the Kingdom of the Netherlands ratified the Treaty of Accession of the Kingdom of Spain only in respect of its European territory does not affect the latter's exercise of that right in its capacity as a Member State.

### **Admissibility of the action for annulment**

- 47 The Netherlands Antilles claim that, under the constitution of the Kingdom of the Netherlands, they are one of three territories forming the Kingdom of the Netherlands, and that they may independently defend their own interests. They claim that the Kingdom of the Netherlands is not always entirely vigilant in respect of their interests. They have competence to manage their own economic affairs, and ought to be able to protect their own economy autonomously by applying to the Community court for the annulment of Regulation No 1036/97. Indeed in the declaration at Annex VIII to the OCT Decision, the Netherlands Government made clear that the Netherlands Antilles are autonomous within the Kingdom of the Netherlands for the purpose of bringing actions against measures taken pursuant to that decision. The Netherlands Antilles therefore conclude that, as an OCT mentioned in Part 4 and Annex IV to the EC Treaty, they do not have to show that they are directly and individually concerned by Regulation No 1036/97.

- 48 They also claim that, by analogy with the position of the European Parliament, they are entitled to bring an action for annulment where, in so doing, they seek to protect their prerogatives under the Treaty.
- 49 They therefore ask the Court to rule on their *locus standi* to bring proceedings by analogy with the second and third paragraphs of Article 173 of the Treaty (now, after amendment, the second and third paragraphs of Article 230 EC) where, as in the present case, their action seeks to protect their prerogatives.
- 50 But neither the second paragraph of Article 173 (see, to that effect, the orders in Case C-95/97 *Région wallonne v Commission* [1997] ECR I-1787, paragraph 6, and Case C-180/97 *Regione Toscana v Commission* [1997] ECR I-5245, paragraph 6), nor the third paragraph of that article lend themselves to an application by analogy. It follows that the Netherlands Antilles' right to bring proceedings can only be examined under the fourth paragraph of Article 173 of the Treaty.
- 51 To the extent that they have legal personality under Netherlands law, the Netherlands Antilles may, in principle, bring an action for annulment under that provision, which provides that any natural or legal person may institute proceedings against a decision addressed to that person or against a decision which, although in the form of a regulation or a decision addressed to another person, is of direct and individual concern to the former.
- 52 Since Regulation No 1036/97 is not a decision addressed to the Netherlands Antilles within the meaning of the fourth paragraph of Article 173 of the Treaty, it is necessary to consider whether it constitutes an act of general application, or if it should be considered as a decision in the form of a regulation. In order to determine whether an act is of general application or not, it is necessary to consider its nature and the legal effects which it is intended to, or does in fact produce (see the judgment in Case 307/81 *Alusuisse Italia v Council and Commission* [1982] ECR 3463, paragraph 8).

53 In the present case, in enacting Regulation No 1036/97, the Council has adopted measures of general application, applicable without distinction to imports of rice originating in all OCTs.

54 Consequently, Regulation No 1036/97 is, by its nature, of general application and does not constitute a decision within the meaning of Article 189 of the EC Treaty (now Article 249 EC).

55 It is, however, important to consider whether, notwithstanding the general application of that Regulation, the Netherlands Antilles may nevertheless be regarded as directly and individually concerned by it. The fact that an act is of general application does not prevent it from being of direct and individual concern to certain natural or legal persons (see the judgment in Case C-309/89 *Codorniu v Council* [1994] ECR I-1853, paragraph 19).

56 The Netherlands Antilles consider that they are directly and individually concerned by Regulation No 1036/97 within the meaning of the fourth paragraph of Article 173 of the Treaty.

57 First, as to whether the Netherlands Antilles are individually concerned, it claims that it is indisputable that it is individually affected by a measure which restricts trade in rice from the OCTs to the Community. The OCTs, which include the Netherlands Antilles, are cited as a 'discrete group' in Annex IV to the Treaty and Annex I to the OCT Decision. Furthermore, in accordance with Article 109 of the OCT Decision, the consequences that the planned safeguard measures might have on the Netherlands Antilles' economy must be taken into consideration at the time of their adoption. According to the Netherlands Antilles, at the time when the Council enacted Regulation No 1036/97, that institution knew that

they were exporting far more rice to the Community, in relative value, than any other OCT.

- 58 Second, as to whether they are directly concerned by Regulation No 1036/97, the Netherlands Antilles point out that that measure does not leave the Member States any margin of discretion as to its implementation. Furthermore, it imposes serious restrictions on a significant sector of the Netherlands Antilles' economy, namely the rice-milling sector, which constitutes 0.9% of their gross national product in 1996.
- 59 At the hearing the applicants also claimed that, in the judgment in Joined Cases T-32/98 and T-41/98 *Nederlandse Antillen v Commission* [2000] ECR II-201, the Court of First Instance, in similar circumstances, held the action for annulment introduced by the Netherlands Antilles on the basis of the fourth paragraph of Article 173 of the Treaty to be admissible.
- 60 It is apparent from settled-case law that, for natural and legal persons to be regarded as individually concerned by a measure, it must affect their legal position by reason of certain attributes peculiar to them, or by reason of a factual situation which differentiates them from all other persons and distinguishes them individually in the same way as the addressee (see, in particular, the judgments in Case 25/62 *Plaumann v Commission* [1963] ECR 95, 107, and Case C-321/95 P *Greenpeace Council and Others v Commission* [1998] ECR I-1651, paragraph 7).
- 61 As regards, first, the attributes peculiar to the Netherlands Antilles by comparison with the other OCTs, the applicant points out that Regulation No 1036/97 imposes considerable restrictions on a significant sector of its economy.

- 62 Whilst it is true that the imposition of safeguard measures affects the rice-milling sector, the fact remains that, according to the Netherlands Antilles' own observations, that sector constituted only 0.9% of its gross national product in 1996.
- 63 In those circumstances, it is not established that Regulation No 1036/97 had serious consequences in a significant sector of the economy of the Netherlands Antilles as distinct from every other OCT, nor that they have been affected by the safeguard measures in question by reason of attributes distinguishing them from all other OCTs to which Regulation No 1036/97 equally applies.
- 64 In any event, the general interest which an OCT, as an entity responsible for economic and social affairs within its jurisdiction, may have in obtaining a result that is favourable for its economic prosperity is not sufficient on its own to enable it to be regarded as being concerned, or — *a fortiori* — individually concerned, for the purposes of the fourth paragraph of Article 173 of the Treaty, by Regulation No 1036/97 (see, to that effect, the order in Case T-609/97 *Regione Puglia v Commission and Spain* [1998] ECR II-4051, paragraph 21).
- 65 The Netherlands Antilles has not therefore proved that they are individually concerned, by reason of attributes peculiar to them, by Regulation No 1036/97.
- 66 Second, as regards the question whether the Netherlands Antilles are in a factual situation which differentiates them from all other persons and distinguishes them individually in the same way as a person to whom a measure is addressed, the applicants claim that they were exporting by far the most rice originating in the OCTs to the Community and that, at the time when Regulation No 1036/97 was adopted, the Council was aware of that particular situation and ought to have taken it into account in assessing the impact of the planned safeguard measures on the Netherlands Antilles' economy.

- 67 On that last point, it should be noted that the fact that the Council or the Commission are required, by specific provisions, to take account of the consequences for the situation of certain individuals of the act they are intending to adopt may be such as to distinguish them individually (see, to that effect, Case 11/82 *Piraiki-Patraiki and Others v Commission* [1985] ECR 207, paragraphs 28 and 31, and Case C-390/95 P *Antillean Rice Mills and Others v Commission* [1999] ECR I-769, paragraph 25).
- 68 In this regard, where the Commission intends to adopt safeguard measures on the basis of Article 109(1) of the OCT Decision it must, in so far as the circumstances of the case permit, inquire into the negative effects which its decision might have on the economy of the OCT concerned as well as on the undertakings concerned (see *Antillean Rice Mills and Others v Commission*, paragraph 25).
- 69 Since Regulation No 1036/97 was adopted pursuant to Article 1(5) to 1(7) of Annex IV to the OCT Decision, the Council was also required to take account of the consequences that the intended safeguard measures might have for the OCTs concerned and the undertakings concerned.
- 70 However, it appears from *Piraiki-Patraiki and Others v Commission* that the finding of the existence of that obligation is not sufficient to establish that those OCTs and those undertakings are individually concerned by those measures within the meaning of the fourth paragraph of Article 173 of the Treaty.
- 71 At paragraph 28 of that judgment the Court, after finding that the Commission was required to inquire into the negative effects which its Decision might have on the economy of the Member State concerned and on the undertakings concerned,

did not conclude from that finding alone that all of the undertakings concerned were individually concerned within the meaning of the fourth paragraph of Article 173 of the Treaty. On the contrary, it considered that only those undertakings which had already entered into contracts which were due to be performed during the period of application of the contested Decision but which had been prevented from being performed, in part or at all, were individually concerned within the meaning of the fourth paragraph of Article 173 of the Treaty (see *Piraiki-Patraiki and Others v Commission*, paragraphs 28, 31 and 32).

72 It follows from the foregoing that the finding that the Council was required, in so far as the circumstances of the case so permitted, to take account at the time when Regulation No 1036/97 was adopted of the negative effects which that Regulation might have on the economy of the OCTs concerned and on the undertakings concerned does not discharge the Netherlands Antilles from the burden of proving that they were affected by the Regulation by reason of a factual situation which differentiates them from all other persons.

73 The fact that the Netherlands Antilles exported by far the most rice originating in the OCTs to the Community is not such as to distinguish them from all other OCTs. Even if the assertion that the safeguard measures laid down by Regulation No 1036/97 were liable to have significant socio-economic consequences for the Netherlands Antilles proved to be well-founded, the fact nevertheless remains that those measures will have similar consequences for the other OCTs.

74 The economic activity in question in the present case, namely, the processing of rice from third countries in the OCTs, is a commercial activity that may be carried out at any time by any economic operator in any OCT. Rice-processing factories also exist in other OCTs besides the Netherlands Antilles, namely Montserrat and the Turks and Caicos Islands. Such economic activity is not therefore such as to differentiate the Netherlands Antilles from all other OCTs.

- 75 In the light of the foregoing, the Netherlands Antilles have not established that their legal position has been affected by reason of certain attributes peculiar to them, or by reason of a factual situation which differentiates them from all other persons and distinguishes them individually.
- 76 Since they have not shown that they are individually concerned by Regulation No 1036/97, it is unnecessary to examine whether they are directly affected by that Regulation.
- 77 In those circumstances the action must be dismissed as inadmissible.

## Costs

- 78 Under Article 69(2) of the Rules of Procedure, 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 Council has applied for costs against the Netherlands Antilles, and they have been unsuccessful in their action, they must be ordered to pay the costs. Pursuant to Article 69(4) of the Rules of Procedure the Kingdom of Spain, the Italian Republic and the Commission, as interveners, shall bear their own costs.

On those grounds,

THE COURT,

hereby:

1. Dismisses the action as inadmissible;
2. Orders the Netherlands Antilles to pay the costs;
3. Orders the Kingdom of Spain, the Italian Republic and the Commission of the European Communities to bear their own costs.

Rodríguez Iglesias

Jann

Macken

Gulmann

Edward

La Pergola

Puissochet

Sevón

Wathelet

Schintgen

Skouris

Delivered in open court in Luxembourg on 22 November 2001.

R. Grass

G.C. Rodríguez Iglesias

Registrar

President