

JUDGMENT OF THE COURT (Sixth Chamber)
10 April 2003 *

In Case C-142/00 P,

Commission of the European Communities, represented by T. van Rijn, acting as Agent, with an address for service in Luxembourg,

appellant,

supported by

French Republic, represented by G. de Bergues and L. Bernheim, acting as Agents, with an address for service in Luxembourg,

and by

Council of the European Union, represented by J. Huber and G. Houttuin, acting as Agents,

interveners in the appeal,

* Language of the case: Dutch.

APPEAL against the judgment of the Court of First Instance of the European Communities (Third Chamber) of 10 February 2000 in Joined Cases T-32/98 and T-41/98 *Nederlandse Antillen v Commission* [2000] ECR II-201, seeking to have that judgment set aside

the other parties to the proceedings being:

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

applicant at first instance,

and

Kingdom of Spain, represented by N. Díaz Abad, acting as Agents, with an
address for service in Luxembourg,

intervener at first instance

THE COURT (Sixth Chamber),

composed of: J.-P. Puissechet, President of the Chamber, R. Schintgen, C. Gulmann, V. Skouris and F. Macken (Rapporteur), Judges,

Advocate General: P. Léger,
Registrar: M.-F. Contet, Principal Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 27 June 2002,

after hearing the Opinion of the Advocate General at the sitting on 12 September 2002,

gives the following

Judgment

- 1 By notice lodged at the Court Registry on 14 April 2000, the Commission of the European Communities brought an appeal under Article 49 of the EC Statute of

the Court of Justice against the judgment of the Court of First Instance of 10 February 2000 in Joined Cases T-32/98 and T-41/98 *Nederlandse Antillen v Commission* [2000] ECR II-201, ('the contested judgment') annulling Commission Regulation (EC) No 2352/97 of 27 November 1997 introducing specific measures in respect of imports of rice originating in the overseas countries and territories (OJ 1997 L 326, p. 21) and Commission Regulation (EC) No 2494/97 of 12 December 1997 on the issuing of import licences for rice falling within CN code 1006 and originating in the overseas countries and territories under the specific measures introduced by Regulation (EC) No 2352/97 (OJ 1997 L 343, p. 17).

- 2 The Nederlandse Antillen (Netherlands Antilles) and the Kingdom of Spain, the applicant at first instance and intervener at first instance respectively, have lodged written pleadings.
- 3 By orders of the President of the Court of 23 November 2000, the French Republic and the Council of the European Union were granted leave to intervene in support of the form of order sought by the Commission and lodged written pleadings.

The law

EC Treaty

- 4 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.

- 5 Under Article 227(3) of the EC Treaty (now, after amendment, Article 299(3) EC), the special arrangements for association set out in Part Four of the EC Treaty are to apply to the OCTs included in Annex IV to that Treaty (now, after amendment, Annex II EC). The Netherlands Antilles are included in that annex.
- 6 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).
- 7 Pursuant to the second and third paragraphs of Article 131 of the Treaty, the purpose of the association of the OCTs and 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.
- 8 Article 132(1) of the EC 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.
- 9 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.

- 10 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.
- 11 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 EC 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

- 12 On 25 July 1991, the Council adopted, on the basis of Article 136 of the Treaty, Decision 91/482/EEC on the association of the overseas countries and territories with the European Economic Community (OJ 1991 L 263, p. 1, 'the OCT Decision').
- 13 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.

- 14 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.
- 15 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.
- 16 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'.
- 17 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.

Regulation No 2352/97

- 18 It is apparent from the first, second and sixth recitals in the preamble to Regulation No 2352/97 that, as the safeguard measures in respect of imports of rice originating in the OCTs introduced by Council Regulation (EC) No 1036/97 would expire on 30 November 1997, in order, *inter alia*, to prevent the import of large quantities of rice originating in the OCTs since 1 December 1997 from seriously undermining the Community rice market during the 1997/98 marketing year, the Commission considered it necessary to introduce, with effect from 1 December 1997, arrangements for the surveillance of imports originating in the OCTs.
- 19 The seventh and eighth recitals in the preamble to Regulation No 2352/97 are worded as follows:

‘Whereas the Dutch authorities have sent the Commission a decision by the Ministers of Economic Affairs and Finance of the Netherlands Antilles establishing, for the purposes of Annex II to [the OCT] Decision, a minimum price for the export to the Community of rice originating in the Netherlands Antilles; whereas that measure could help avoid serious disturbance to the Community market;

Whereas, however, that measure, which is, in any case, limited to a single OCT, is not such as to render unnecessary the arrangements for the surveillance of the Community market in rice required for the reasons set out above’.

20 Article 1 of Regulation No 2352/97 provides that '[f]rom 1 December 1997 imports into the Community of rice originating in the OCTs falling within CN code 1006 and benefiting from exemption from customs duties shall be subject to this Regulation'.

21 Article 3(4) of Regulation No 2352/97 provides that 'the amount of the security in respect of the import licences shall be equal to 50% of the customs duty calculated in accordance with Article 11 of Regulation (EC) No 3072/95... applicable on the date on which the application was lodged'.

22 Article 4(3) of Regulation No 2352/97 provides:

'If the quantities applied for exceed the monthly total of 13 300 tonnes of rice expressed as the equivalent in husked rice and, on the basis of an assessment of the Community market, this situation threatens to substantially disturb that market, the Commission shall, within 10 working days following the day the quantity was exceeded:

— fix a percentage reduction to be applied to all the applications lodged on the day the quantity was exceeded,

— reject applications made after the day on which the quantity was exceeded,

— suspend the lodging of new applications for that month.’

- 23 Regulation No 2352/97, which entered into force on 1 December 1997, applied until 31 January 1998.

Regulation No 2494/97

- 24 Article 2 of Regulation No 2494/97 provides that ‘[n]o import licences shall be issued under the arrangements laid down in Regulation (EC) No 2352/97 for rice and broken rice falling within CN code 1006 in respect of applications submitted from 3 December 1997’.
- 25 Article 3 of Regulation No 2494/97 provides that ‘[t]he submission of import licence applications for rice and broken rice falling within CN code 1006 under the arrangements laid down in Regulation (EC) No 2352/97 is hereby suspended until 31 December 1997’.

Proceedings before the Court of First Instance and the contested judgment

- 26 By two applications lodged at the Registry of the Court of First Instance on 24 February 1998 (T-32/98) and 6 March 1998 (T-41/98) respectively, the Netherlands Antilles brought actions under Article 173 of the EC Treaty (now, after amendment, Article 230 EC) for the annulment of Regulations No 2352/97 and No 2494/97.

- 27 By orders of the President of the Fourth Chamber of the Court of First Instance of 1 July 1998 and 10 July 1998, the Kingdom of Spain was granted leave to intervene in those two cases in support of the form of order sought by the Commission.
- 28 The Court of First Instance joined the two cases for the purposes of the contested judgment.
- 29 The Netherlands Antilles claimed that the Court of First Instance should annul Regulations No 2352/97 and No 2494/97. The Commission and the Kingdom of Spain contended that the actions should be dismissed as inadmissible since, according to the Commission, the Netherlands Antilles was not entitled to base its applications on either the second or fourth paragraphs of Article 173 of the Treaty or, in any case, as unfounded.

Admissibility of the applications to the Court of First Instance

- 30 At paragraphs 42 and 43 of the contested judgment, the Court of First Instance held that the Netherlands Antilles' applications were inadmissible in so far as they were founded on the second paragraph of Article 173 of the Treaty.
- 31 At paragraphs 50 to 62 of the contested judgment, the Court of First Instance rejected the Commission's plea of inadmissibility and held that, in so far as they were founded on the fourth paragraph of Article 173 of the Treaty, the applications were admissible on the following grounds:

'50 As regards, first, the question whether [Regulations No 2352/97 and No 2494/97] are of individual concern to [the Netherlands Antilles], it must

be borne in mind that, for it to be possible for a measure of general application adopted by a Community institution to be of individual concern to a natural or legal person, the latter must be affected by the measure at issue by virtue of certain attributes which are peculiar to that person or circumstances must exist in which that person is differentiated from all other persons with regard to that measure ([Case 25/62] *Plaumann v Commission* [[1963] ECR 95], p. 107, [Case C-309/89] *Codorniu v Council* [[1994] ECR I-1853], paragraph 20, Case T-12/93 *CCE de Vittel and Others v Commission* [1995] ECR II-1247, paragraph 36, and Case T-135/96 *UEAPME v Council* [1998] ECR II-2335, paragraph 69, and the order of the Court of First Instance of 30 September 1997 in Case T-122/96 *Federolio v Commission* [1997] ECR II-1559, paragraph 59).

- 51 In that regard, it is settled case-law that where the Commission is, by virtue of specific provisions, under a duty to take account of the consequences of a measure which it envisages adopting for the situation of certain individuals, that fact is such as to distinguish them individually (Case 11/82 *Piraiki-Patraiki and Others v Commission* [1985] ECR 207, Case C-152/88 *Sofrimport v Commission* [1999] ECR I-2477, Joined Cases T-480/93 and T-483/93 *Antillean Rice Mills and Others v Commission* [[1995] ECR II-2305], paragraph 67, and in Case C-390/95 *P Antillean Rice Mills and Others v Commission* [1999] ECR I-769, paragraphs 25 to 30).
- 52 In this case, Regulation No 2352/97 and Regulation No 2494/97, adopted for its implementation, were based on Article 109 of the OCT Decision, paragraph 1 of which provides that the Commission is authorised, under certain conditions, to take safeguard measures.
- 53 Article 109(2) provides that “[f]or the purpose of implementing paragraph 1, priority shall be given to such measures as would least disturb the functioning

of the association and the Community. These measures shall not exceed the limits of what is strictly necessary to remedy the difficulties that have arisen”.

54 It is clear from that provision that, where the Commission envisages taking safeguard measures on the basis of Article 109(1) of the OCT Decision, it is required to take account of the negative effects which its decision might have on the economy of the overseas country or territory concerned as well as on the undertakings concerned (Case C-390/95 P *Antillean Rice Mills and Others*, cited above, paragraph 28, and Joined Cases T-480/93 and T-483/93 *Antillean Rice Mills and Others*, cited above, paragraph 70).

55 The [Netherlands Antilles] is one of the OCTs specifically named in Annex IV to the Treaty to which the provisions of Part Four of the Treaty concerning association of the OCTs apply. Under Article 109(2) of the OCT Decision, the Commission was therefore required, when adopting [Regulations No 2352/97 and No 2494/97] to take account of the particular situation of the [Netherlands Antilles], particularly since it was foreseeable that the adverse repercussions of the measures taken would be felt mainly in the [latter's] territory. When [Regulations No 2352/97 and 2494/97] were adopted, the Commission was aware, as it in fact acknowledged both in its written pleadings and at the hearing, that most imports of OCT rice into the Community came from the Netherlands Antilles.

56 The [Netherlands Antilles], benefiting as it thus did from specific protection under Community law when the Commission adopted [Regulations No 2352/97 and No 2494/97], [are] affected by them by virtue of factual

circumstances which distinguish [them] from any other person (*Plaumann v Commission*, cited above, at p. 107, *Piraiki-Patraiki [and Others v Commission]*, cited above, paragraphs 28 to 31, and Case C-390/95 P *Antillean Rice Mills and Others*, cited above, paragraph 28). Consequently, [Regulations No 2352/97 and No 2494/97] are of individual concern to the [Netherlands Antilles] within the meaning of the fourth paragraph of Article 173 of the Treaty.

57 It is true, as the Commission points out, that the fact that a local or regional authority of a Member State demonstrates that the application or implementation of a Community measure is capable of affecting socio-economic conditions within its territory is not sufficient for it to be recognised that that measure is of individual concern to it (see the orders [of the Court of First Instance of 16 June 1998] in [Case T-238/97] *Comunidad Autónoma de Cantabria v Council* [[1998] ECR II-2271], paragraphs 49 and 50, and [of 23 October 1998] in [Case T-609/97] *Regione Puglia v Commission and Spain* [[1998] ECR II-4051], paragraphs 21 and 22). However, in this case, [Regulations No 2352/97 and 2494/97] are of individual concern to the [Netherlands Antilles] in so far as the Commission, when envisaging their adoption, was under a duty specifically to take account of the [Netherlands Antilles'] situation by virtue of Article 109(2) of the OCT Decision.

58 Second, the [Netherlands Antilles] cannot be regarded as having no interest in bringing proceedings for annulment of [Regulations No 2352/97 and No 2494/97] merely because the Kingdom of the Netherlands has an independent right of action under the second paragraph of Article 173 of the Treaty. It must be pointed out that, in other areas, the fact that a Member State and one of its entities both have an interest in bringing proceedings against the same measure has not led the Court of First Instance to hold that the entity's interest in bringing proceedings was not sufficient to render admissible an action for annulment based on the fourth paragraph of Article 173 of the Treaty (see the judgments in [Case T-214/95] *Vlaams*

Gewest v Commission [[1998] ECR II-717], paragraph 30, and in Joined Cases T-132/96 and T-143/96 *Freistaat Sachsen and Volkswagen v Commission* [1999] ECR II-3663, paragraph 92). The fact that the Kingdom of the Netherlands could have invoked Article 1(5) of Annex IV to the OCT Decision to make a special appeal to the Council against [Regulations No 2352/97 and No 2494/97] likewise does not affect the [Netherlands Antilles] interest in bringing proceedings in this case.

59 ...

60 As regards, finally, the question whether [Regulations No 2352/97 and No 2494/97] are of direct concern to the [Netherlands Antilles], Regulation No 2352/97 contains comprehensive rules leaving no latitude to the authorities of the Member States. As regards rice from the OCTs, it regulates in a binding manner the machinery for submission and issue of import licences and also authorises the Commission to suspend the issue thereof if a quota determined by it is exceeded or there are serious disturbances of the market. Regulation No 2352/97 is therefore of direct concern to the [Netherlands Antilles] (see Joined Cases 41/70 to 44/70 *International Fruit Company and Others v Commission* [1971] ECR 411, paragraphs 23 to 28, and Case 294/83 *Les Verts v Parliament* [1986] ECR 1339, paragraph 31).

61 Regulation No 2494/97 is also of direct concern to the [Netherlands Antilles] in that it excludes the issue of import licences for rice falling within CN code 1006 and originating in the OCTs for applications submitted from 3 December 1997 and suspends until 31 December 1997 the submission of further import licence applications for rice from that origin.

62 It follows that the present actions must be declared admissible.’

Substance of the applications to the Court of First Instance

- 32 In Case T-32/98, the Netherlands Antilles sought the annulment of Regulation No 2352/97 on the basis of 10 pleas in law. In Case T-41/98 they sought the annulment of Regulation No 2494/97 by pleading the illegality of Regulation No 2352/97 on the basis of the same pleas in law as in Case T-32/98.
- 33 At paragraphs 73 to 87 of the contested judgment, the Court of First Instance held that the Netherlands Antilles’ seventh plea in law alleging infringement of Article 109(1) of the OCT Decision was well founded. It considered that, contrary to the requirements of that provision, the Commission had not established a causal link between the volume of imports from the OCTs deriving from the application of the OCT Decision and any serious disturbances recorded on the Community rice market.
- 34 The Court of First Instance noted that that omission arose from an error of law and accordingly annulled Regulation No 2352/97 and, consequently, Regulation No 2494/97.

The appeal

³⁵ The Commission, supported by the French Republic and the Council, advances four grounds of appeal and claims that the Court of Justice should:

- set aside the contested judgment;
- deciding the present case itself, declare the applications for annulment of Regulations No 2352/97 and No 2494/97 to be inadmissible;
- in the alternative, refer the case back to the Court of First Instance;
- order the Netherlands Antilles to pay the costs at first instance and on appeal.

³⁶ The Netherlands Antilles contend that the Court should dismiss the appeal as inadmissible or, in any case, unfounded and order the Commission to pay the costs.

37 The Kingdom of Spain claims that the Court should:

- set aside the contested judgment;
- deciding the present case itself, declare the applications for annulment of Regulations No 2352/97 and No 2494/97 to be inadmissible or, in the alternative, declare those regulations to be valid;
- in the alternative, refer the case back to the Court of First Instance;
- order the Netherlands Antilles to pay the costs at first instance and on appeal.

The application to reopen the oral procedure

38 The oral procedure was closed on 12 September 2002 following the delivery of the Advocate General's Opinion.

- 39 By letter of 25 September 2002, the Government of the Netherlands Antilles requested that the oral procedure be reopened. In support of that application, it submits that Regulations No 2352/97 and No 2494/97 refer to the Netherlands Antilles by name, unlike the measures in question in the judgment in Case C-452/98 *Nederlandse Antillen v Council* [2001] ECR I-8973, on which the Advocate General based his Opinion. According to the Government of the Netherlands Antilles, that fact, which the Advocate General did not take into account in his Opinion in the present case, shows that the Netherlands Antilles are clearly distinguishable from the other OCTs and is important for the purpose of determining whether they are individually concerned by those regulations.
- 40 In that respect, it should be noted that the Court may of its own motion, on a proposal from the Advocate General or at the request of the parties order the reopening of the oral procedure, in accordance with Article 61 of its Rules of Procedure, if it considers that it lacks sufficient information or that the case must be dealt with on the basis of an argument which has not been debated between the parties (see Joined Cases C-270/97 and C-271/97 *Deutsche Post* [2000] ECR I-929, paragraph 30, and Case C-299/99 *Philips* [2002] ECR I-5475, paragraph 20).
- 41 After receiving the Netherlands Antilles Government's request for the reopening of the oral procedure and the Commission's response thereto, the Court, having heard the Advocate General on the matter, decided to reject that request.
- 42 The Court's decision not to allow that request was notified to the Government of the Netherlands Antilles by letter of 22 January 2003.

- 43 The Court considered that the question whether the Netherlands Antilles were individually concerned or not by Regulations No 2352/97 and No 2494/97 had been covered extensively by the parties both in their written pleadings and at the hearing and that it possessed all the information necessary for it to decide the present appeal.

The plea in law alleging infringement of Community law by the Court of First Instance in so far as it held that the Netherlands Antilles are individually concerned by Regulations No 2352/97 and No 2494/97

Arguments of the parties

- 44 Under its first plea in law, the Commission submits that the Court of First Instance wrongly held that the effect of Article 109(2) of the OCT Decision was that, following the adoption of Regulations No 2352/97 and No 2494/97, the Commission was under an obligation to take account of the particular situation of the Netherlands Antilles.

- 45 It is true that in the judgment in *Piraiiki-Patraiki and Others v Commission*, cited above, the Court of Justice held that, in adopting safeguard measures, the Commission 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 Member State concerned. However, in contrast to that case, in which the safeguard

measures concerned imports from a single Member State, the present case is characterised by the fact that Regulations No 2352/97 and No 2494/97 apply to imports from all of the OCTs, and not just to those from the Netherlands Antilles. Accordingly, in the Commission's submission, it was only able to inquire into the potential effects of the proposed measures in general terms, for all the OCTs taken together and for the operation of the association between the OCTs and the Community as a whole.

- 46 In any event, the Commission contends that the terms of Article 109(2) of the OCT Decision, which provides that it must take account of potential effects on the operation of the Community, show that it is required to extend its assessment to the consequences of the measure for the operation of the association between the OCTs and the Community as such and for that of the Community.
- 47 The Commission adds that Case C-390/95 P *Antillean Rice Mills and Others v Commission*, cited above, does not in the least undermine that view, since that case concerned a decision which expressly affected imports of rice from the Netherlands Antilles only.
- 48 The Commission submits that if the Court were to hold that Article 109(2) of the OCT Decision is to be interpreted as meaning that all OCTs are individually concerned by a regulation applicable to the OCTs as a whole, the OCTs would enjoy standing comparable to that conferred on the Member States under the second paragraph of Article 173 of the Treaty. Such an interpretation would run

counter to the settled case-law of the Court which states that it does not suffice to belong to a closed class of persons in order to be individually concerned.

- 49 According to the Commission, the fact that the majority of imports to the Community of rice from the OCTs come from a single OCT does not suffice to show that the economy of that OCT is more seriously affected than that of another OCT. The Court of First Instance committed an error of reasoning when it adopted that criterion in assessing whether the negative effects of Regulations No 2352/97 and No 2494/97 were felt primarily in the Netherlands Antilles.
- 50 The Spanish Government submits that, contrary to Case C-390/95 P *Antillean Rice Mills and Others v Commission*, cited above, which concerned safeguard measures in respect of imports of rice originating in the Netherlands Antilles, that OCT is not distinguished from the other OCTs by Regulations No 2352/97 and No 2494/97. The Netherlands Antilles have not shown that they were different from the other OCTs, to which those regulations also applied. The fact that the Netherlands Antilles exported more rice to the Community than the other OCTs does not suffice to distinguish them from those others.
- 51 The French Government submits that, even if the Court of First Instance were entitled to base its decision on the judgment in *Piraiiki-Patraiki and Others v Commission*, cited above, and Case C-390/95 P *Antillean Rice Mills and Others v Commission*, cited above, it could not infer from those judgments that the obligation on the Community institutions to take account of the impact that the intended safeguard measures might have on the economy of an OCT constituted a sufficient condition for that OCT to be regarded as an 'interested person' within

the meaning of that case-law. In any event, the Netherlands Antilles had to demonstrate attributes peculiar to themselves or a situation of fact which distinguished them from all other OCTs.

- 52 Neither does the fact that the majority of imports of rice from the OCTs into the Community came from the Netherlands Antilles suffice to distinguish them from the other rice-producing OCTs such as Montserrat and the Turks and Caicos Islands. That fact does not necessarily mean that its economy is affected any more than that of other OCTs.
- 53 The French Government submits, in short, that whilst it is true that the economic effects are taken into account in the case-law of the Court and of the Court of First Instance in assessing the admissibility of actions brought by individuals, the fact that certain operators are more affected by a measure than their competitors is not sufficient for them to be regarded as individually concerned by that measure. The fact that a measure concerns a very limited number of persons, or even a single person by reason of his objective characterisation (such as, for example, that of primary exporter of rice from the OCTs), is therefore insufficient to show that that measure is of individual concern to that or those persons.
- 54 The Council contends that, on the question whether the Government of the Netherlands Antilles is individually concerned by Regulations No 2352/97 and No 2494/97, the Court of First Instance wrongly found that the Commission was under an obligation, under Article 109(2) of the OCT Decision, to take account of the particular situation of the Netherlands Antilles. Such an obligation cannot be inferred from the Community case-law.

- 55 According to the Council, the fact that most imports into the Community of rice originating in the OCTs came from the Netherlands Antilles, on which the Court of First Instance also based its finding that the Netherlands Antilles were individually concerned, does not permit that OCT to be distinguished from the other OCTs in such a way that the Netherlands Antilles can be regarded as individually concerned. The fact that most imports come from one OCT does not necessarily mean that that OCT's economy is more affected than that of the other OCTs. It is perfectly possible that, in the present case, the negative effects are felt more sharply in a small territory like Montserrat or the Turks and Caicos Islands.
- 56 The Government of the Netherlands Antilles contends that the Court should reject that plea in law.
- 57 According to that government, it follows from the case-law of the Court that, where the Commission adopts safeguard measures, it must inquire into the negative effects which its decision might have on the economy of the OCT concerned (see Case C-390/95 P *Antillean Rice Mills and Others v Commission*, cited above, paragraphs 25 and 26). Accordingly, that case-law requires the Commission to take account of the economy of the OCTs affected by the intended safeguard measure, without determining whether that measure affects one or more OCTs.
- 58 The Commission's view that it is only required to inquire 'in general terms, for all the OCTs taken together' into the potential effects of a measure it intends to take would produce unacceptable results. The Commission could thus ruin completely

the economy of a single OCT by a safeguard measure the repercussions of which appear nevertheless to be minimal ‘in general terms, for all the OCTs taken together’ because the other OCTs do not export the products concerned by that measure to the Community.

Findings of the Court

- 59 It should be observed that, to the extent that they have legal personality under Netherlands law, the Netherlands Antilles may, in principle, bring an action for annulment under the fourth paragraph of Article 173 of the Treaty, 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.
- 60 In the present case, in enacting Regulations No 2352/97 and No 2494/97, the Commission has adopted measures of general application, applicable without distinction to imports into the Community of rice originating in all OCTs.
- 61 Whilst the Netherlands Antilles are mentioned in the seventh recital in the preamble to Regulation No 2352/97, it is plain from Article 1 of that regulation that it applies to imports into the Community of rice originating in the OCTs as a whole.

- 62 Furthermore, it is apparent from the seventh and eighth recitals in the preamble to Regulation No 2352/97 that the express mention of the decision of the Netherlands Antilles to charge a minimum price for the export to the Community of rice originating in that OCT was intended to emphasise that that decision was limited to a single OCT and to show that it was not such as to render unnecessary the adoption of the contested safeguard measures which are the subject of that regulation.
- 63 Consequently, Regulations No 2352/97 and No 2494/97 are, by their nature, of general application and do not constitute decisions within the meaning of Article 189 of the EC Treaty (now Article 249 EC).
- 64 It is, however, important to consider whether, even though those regulations are of general application, the Netherlands Antilles may nevertheless be regarded as directly and individually concerned by them. The fact that a measure is of general application does not mean that it cannot be of direct and individual concern to certain natural or legal persons (see *Codorniu v Council*, cited above, paragraph 19).
- 65 According to settled case-law, a measure of general application such as a regulation can be of individual concern to natural and legal persons only if it affects them 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, *inter alia*, Case C-451/98 *Antillean Rice Mills v Council* [2001] ECR I-8949, paragraph 49; Case C-50/00 P *Unión de Pequeños Agricultores v Council* [2002] ECR I-6677, paragraph 36, and Case C-312/00 P *Commission v Camar and Tico* [2002] ECR I-11355, paragraph 73).

- ⁶⁶ As regards, first, the attributes said to be peculiar to the Netherlands Antilles by comparison with the other OCTs, the Netherlands Antilles point out that the safeguard measures introduced by Regulations No 2352/97 and No 2494/97 imposed considerable restrictions on imports of rice originating in the OCTs into the Community and stress that most imports of rice originating in the OCTs into the Community came from the Netherlands Antilles.
- ⁶⁷ Whilst it is true that the imposition of safeguard measures affects the rice-milling sector in the Netherlands Antilles, and that, when Regulations No 2352/97 and No 2494/97 were adopted, most imports of rice originating in the OCTs into the Community came from the Netherlands Antilles, the fact nevertheless remains that, in 1996, the reference year for the purpose of deciding whether or not to adopt the safeguard measures in question in the present case, that sector constituted only 0.9% of the Netherlands Antilles' gross national product. Moreover, it is not in dispute that, at least when Regulations No 2352/97 and No 2494/97 were adopted, the Netherlands Antilles were not the only rice-producing OCT.
- ⁶⁸ In those circumstances, it is not established that Regulations No 2352/97 and No 2494/97 had serious consequences in a significant sector of the economy of the Netherlands Antilles as distinct from every other OCT, or that they have been affected by the safeguard measures in question by reason of attributes distinguishing them from all other OCTs to which those regulations also apply.
- ⁶⁹ 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 Regulations No 2352/97 and No 2494/97 (see *Nederlandse Antillen v Council*, cited above, paragraph 64).

- 70 The Netherlands Antilles have not therefore proved that they are individually concerned, by reason of attributes peculiar to them, by Regulations No 2352/97 and No 2494/97.
- 71 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, they submit that they were exporting the greater part of rice originating in the OCTs to the Community and that, at the time when Regulations No 2352/97 and No 2494/97 were adopted, the Commission was aware of that particular situation and ought, therefore, to have taken it into account in assessing the impact of the planned safeguard measures on the Netherlands Antilles' economy.
- 72 It should be noted in that regard 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, *Piraiki-Patraiki and Others v Commission*, cited above, paragraphs 28 and 31; Case C-390/95 P *Antillean Rice Mills and Others v Commission*, cited above, paragraph 25, and *Nederlandse Antillen v Council*, cited above, paragraph 67).

- 73 Thus, 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 OCTs concerned as well as on the undertakings concerned (see Case C-390/95 P *Antillean Rice Mills and Others v Commission*, cited above, paragraph 26, and *Nederlandse Antillen v Council*, cited above, paragraph 68).
- 74 However, it is clear from *Piraiiki-Patraiki and Others v Commission*, cited above, 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 (see *Nederlandse Antillen v Council*, cited above, paragraph 70).
- 75 At paragraph 28 of the judgment in *Piraiiki-Patraiki and Others v Commission*, cited above, 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 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 *Piraiiki-Patraiki and Others v Commission*, paragraphs 28, 31 and 32, and *Nederlandse Antillen v Council*, paragraph 71).

- 76 It follows from the foregoing that the finding that the Commission was required, in so far as the circumstances of the case so permitted, to take account, at the time when Regulations No 2352/97 and No 2494/97 were adopted, of the negative effects which those regulations 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 those regulations by reason of a factual situation which differentiates them from all other persons.
- 77 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 Regulations No 2352/97 and No 2494/97 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.
- 78 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.

- 79 In the light of the foregoing, the Netherlands Antilles cannot be considered to have 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.
- 80 The Court of First Instance therefore wrongly held that the Netherlands Antilles were individually concerned by Regulations No 2352/97 and No 2494/97
- 81 It follows that the contested judgment must be set aside.

The applications at first instance

- 82 Pursuant to Article 61 of the Statute of the Court of Justice, where the appeal is well founded and the Court of Justice quashes the decision of the Court of First Instance, it may itself give final judgment in the matter, where the state of the proceedings so permits.

- 83 In that regard, it should be pointed out, first, that the Netherlands Antilles have no standing under the second paragraph of Article 173 of the Treaty (see *Nederlandse Antillen v Council*, cited above, paragraph 50).
- 84 Next, it follows from paragraphs 59 to 80 of the present judgment that neither do the Netherlands Antilles have standing under the fourth paragraph of Article 173 of the Treaty.
- 85 Therefore, the applications at first instance should be dismissed as inadmissible.

Costs

- 86 Under the first paragraph of Article 122 of the Rules of Procedure of the Court of Justice, where the appeal is well founded and the Court of Justice itself gives final judgment in the case, it is to make a decision as to costs.
- 87 Under Article 69(2) of the Rules of Procedure, which applies to appeal proceedings by virtue of Article 118, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

- 88 The Commission has applied for an order for costs against the Netherlands Antilles, to cover also the proceedings before the Court of First Instance. Since the Netherlands Antilles have been unsuccessful in the appeal proceedings, they must be ordered to bear their own costs and to pay those of the Commission, both before the Court of First Instance and the Court of Justice.
- 89 Under Article 69(4) of the Rules of Procedure, Member States and institutions which intervene in proceedings are to bear their own costs. The Kingdom of Spain, the French Republic and the Council are to bear their own costs.

On those grounds,

THE COURT (Sixth Chamber),

hereby:

1. Sets aside the judgment of the Court of First Instance of the European Communities of 10 February 2000 in Joined Cases T-32/98 and T-41/98 *Nederlandse Antillen v Commission*;

2. Dismisses as inadmissible the Nederlandse Antillen's applications for annulment;
3. Orders the Nederlandse Antillen to pay the costs both at first instance and on appeal;
4. Orders the Kingdom of Spain, the French Republic and the Council of the European Union to bear their own costs.

Puissochet

Schintgen

Gulmann

Skouris

Macken

Delivered in open court in Luxembourg on 10 April 2003.

R. Grass

J.-P. Puissochet

Registrar

President of the Sixth Chamber