ORDER OF THE COURT OF FIRST INSTANCE (Third Chamber)
17 September 2003 *

In Case T-54/98,

Aruba, represented by P. Bos and M. Slotboom, lawyers, with an address for service in Luxembourg,

applicant,

v

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

defendant,

* Language of the case: Dutch.

supported by

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

and by

United Kingdom of Great Britain and Northern Ireland, represented by R. Magrill, acting as Agent, with an address for service in Luxembourg,

interveners,

APPLICATION for annulment of Commission Regulation (EC) No 2553/97 of 17 December 1997 on rules for issuing import licences for certain products covered by CN codes 1701, 1702, 1703 and 1704 and qualifying as ACP/OCT originating products (OJ 1997 L 349, p. 26),

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (Third Chamber),

composed of: K. Lenaerts, President, J. Azizi and M. Jaeger, Judges,

Registrar: H. Jung,

makes the following

Order

The relevant provisions

1 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 (OCTs), in order to increase trade and promote jointly economic and social development.

2 Aruba is one of the OCTs.

3 In accordance with 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 Treaty are to apply to the OCTs listed in Annex IV to the EC Treaty (now, after amendment, Annex II EC). Aruba is included in that Annex.

4 The second paragraph of Article 136 of the EC Treaty (now, after amendment, Article 187 EC) provides that the Council, acting unanimously, is, on the basis of the experience acquired under the association of the OCTs with the Community and of the principles set out in the Treaty, to lay down provisions as regards the detailed rules and the procedure for the association of the countries and territories with the Community. On that basis, on 25 February 1964 the Council adopted Decision 64/349/EEC on the association of the overseas countries and territories with the European Economic Community (Journal Officiel 1964, 93, p. 1472; not available in English). This decision was designed to replace, with effect from 1 June 1964, the date of entry into force of the internal agreement on the financing and management of Community aid, signed at Yaoundé on 20 July 1963, the Implementing Convention on the association of the OCTs with the Community, annexed to the Treaty and concluded for a period of five years.

5 Following several decisions relating to the same subject-matter, the Council adopted Decision 91/482/EEC of 25 July 1991 on the association of the overseas countries and territories with the European Economic Community (OJ 1991 L 263, p. 1, the 'OCT Decision'). By virtue of Article 240(1) thereof, the OCT Decision was to be applicable for a period of 10 years from 1 March 1990. Article 240(3)(a) and (b) provides, however, that before the end of the first period of five years, the Council, acting unanimously on a proposal from the Commission, is to establish, where necessary, in addition to Community financial assistance, any amendments to be made for the next five-year period to the association of the OCTs with the Community. Thus it was that the Council adopted Decision 97/803/EC of 24 November 1997 amending at mid-term the OCT Decision (OJ 1997 L 329, p. 50).

6 In its original version, Article 101(1) of the OCT Decision provided:

'Products originating in the OCT shall be imported into the Community free of customs duties and charges having equivalent effect.'

7 Article 102 of the same Decision provided:

'The Community shall not apply to imports of products originating in the OCT any quantitative restrictions or measures having equivalent effect.'

8 The first indent of Article 108(1) of the OCT Decision refers to Annex II thereto ('Annex II') for the definition of the concept of originating products and the methods of administrative cooperation relating thereto. Under Article 1 of Annex II, a product is to be considered as originating in the OCTs, the Community or the African, Caribbean and Pacific States ('the ACP States') if it has been either wholly obtained or sufficiently worked or processed there.

9 Article 3(3) of Annex II lists a number of operations that are to be considered as insufficient working or processing to confer the status of OCT-originating products.

10 Article 6(2) of Annex II states, however:

'When products wholly obtained... in the ACP States undergo working or processing in the OCT, they shall be considered as having been wholly obtained in the OCTs.'

11 By virtue of Article 6(4) of Annex II, the rule cited above, the 'ACP/OCT cumulation of origin' rule, is to apply 'to any working or processing carried out in the OCT, including the operations listed in Article 3(3)'.

12 Decision 97/803 confined the application of the ACP/OCT cumulation of origin rule to sugar from the OCTs. To that end, Decision 97/803 inserted into the OCT decision, inter alia, Article 108b which allows the ACP/OCT cumulation of origin for a fixed annual quantity of sugar. Article 108b provides:

'1. The ACP/OCT cumulation of origin referred to in Article 6 of Annex II shall be allowed for an annual quantity of 3 000 tonnes of sugar...

2. For the purposes of implementing the ACP/OCT cumulation rules referred to in paragraph 1, forming sugar lumps or colouring shall be considered as sufficient to confer the status of OCT-originating products'.

13 On 17 December 1997 the Commission adopted Regulation (EC) No 2553/97 on rules for issuing import licences for certain products covered by CN codes 1701, 1702, 1703 and 1704 and qualifying as ACP/OCT originating products (OJ 1997 L 349, p. 26, 'the contested regulation'). In accordance with that regulation, sugar imports under the ACP/OCT cumulation of origin provided for in Article 108b of the OCT Decision are conditional upon the production of an import licence.

14 The contested regulation entered into force, in accordance with the first paragraph of Article 8 thereof, on 19 December 1997.

Procedure

15 By application lodged at the Registry of the Court of First Instance on 1 April 1998 the applicant brought these proceedings.

16 By a document lodged with the Registry of the Court of First Instance on 9 July 1998, the Commission raised a plea of inadmissibility under Article 114(1) of the Rules of Procedure of the Court of First Instance. On 14 August 1998, the applicant lodged its observations on that plea.

17 By documents lodged at the Registry of the Court of First Instance on 8 July 1998 and 18 August 1998 respectively, the Council and the United Kingdom of Great Britain and Northern Ireland sought, in accordance with Article 115 of the Rules of Procedure, to intervene in support of the Commission's arguments. Those applications were granted by order of the President of the Third Chamber of the Court of First Instance on 17 December 1998.

18 Pursuant to Article 177 of the EC Treaty (now Article 234 EC), the President of the Arrondissementsrechtbank (District Court) te 's-Gravenhage (Netherlands) requested the Court to give a preliminary ruling on the validity of Decision 97/803 (Case C-17/98).

19 By order of the Court of First Instance of 11 February 1999, the procedure in this case was suspended until delivery of the Court's final judgment in Case C-17/98. The Court's judgment of 8 February 2000, *Emesa Sugar* (Case C-17/98 [2000] ECR I-675), brought that suspension to an end.

20 By order of 5 October 2000, the President of the Third Chamber of the Court of First Instance decided to suspend this case until delivery of the Court's judgment in Case C-142/00 P, which dealt, inter alia, with the question whether the Netherlands Antilles had *locus standi* to take action against measures limiting imports from the OCTs. The Court's judgment of 10 April 2003, *Commission* v *Nederlandse Antillen* (Case C-142/00 P [2003] ECR I-3483), which set aside the judgment of the Court of First Instance of 10 February 2000, *Nederlandse Antillen* v *Commission* (Joined Cases T-32/98 and T-41/98 [2000] ECR II-201), on the grounds that the Court of First Instance had wrongly held that the measures contested directly concerned the Netherlands Antilles within the meaning of the fourth paragraph of Article 173 of the EC Treaty (now, after amendment, the fourth paragraph of Article 230 EC), brought that suspension to an end.

21 By letter of 28 April 2003, the parties were requested to lodge their observations on the continuation of the present proceedings. The applicant and the United Kingdom of Great Britain and Northern Ireland did not lodge observations. The Commission and the Council lodged their observations by letters dated 11 June and 12 June 2003 respectively.

Form of order sought by the parties

22 In its application, the applicant claims that the Court of First Instance should:

— annul the contested Regulation;

— order the Commission to pay the costs.

23 In its plea of inadmissibility the Commission, supported by the Council and the United Kingdom of Great Britain and Northern Ireland, contends that the Court of First Instance should:

— declare the application for annulment inadmissible;

— order the applicant to pay the costs.

24 In its observations on the plea of inadmissibility, the applicant claims that the Court of First Instance should:

— reserve its decision on the plea of inadmissibility for final judgment;

— reject the plea of inadmissibility;

— if the Court of First Instance should not reserve its decision on the plea of inadmissibility for the final judgment, reserve the costs.

Admissibility

25 By virtue of Article 114(1) of the Rules of Procedure of the Court of First Instance, if a party so requests, the Court of First Instance may rule on admissibility without considering the substance of the case. In accordance with paragraph 3 of that article, the remainder of the proceedings is to be oral, unless the Court of First Instance decides otherwise. In the present case, the Court of First Instance considers that it has sufficient information from its examination of the documents on the file to give a ruling on the application made by the Commission without opening the oral procedure.

Arguments of the parties

26 In its plea of inadmissibility, the Commission claims that the applicant is concerned neither directly nor individually by the contested regulation within the meaning of the fourth paragraph of Article 173 of the Treaty. The Commission and the Council emphasise, in their observations on the future conduct of the proceedings, that the judgment in the *Commission* v *Nederlandse Antillen* case cited at paragraph 20 above leads inevitably to the conclusion that this claim is inadmissible.

27 The applicant submits as its main argument that Aruba possesses a special status. It refers in this regard to the fourth section of the EC Treaty and to Annex IV to the EC Treaty which expressly mentions Aruba among the OCT countries. It claims that, by analogy with the European Parliament's situation (see the judgment in Case C-70/88 *Parliament* v *Council* [1990] ECR I-2041), it has the right to seek annulment where its claim is intended to protect its prerogatives recognised by the Treaty. By analogy, the application of the provisions of the second and third paragraphs of Article 173 of the Treaty would therefore lead to the present claim's being declared admissible.

28 As an subsidiary argument, the applicant maintains that the contested regulation is of direct and individual concern to the applicant within the meaning of the fourth paragraph of Article 173 of the Treaty.

29 Firstly, the applicant claims that it is directly concerned by the contested regulation since the latter leaves no discretion to the national authorities of the Member States responsible for its application (see the judgments in Joined Cases 41/70 to 44/70 *International Fruit Company and Others* v *Commission* [1971] ECR 411, paragraphs 23 to 28; Joined Cases 87/77, 130/77, 22/83, 9/84 and 10/84 *Salerno and Others* v *Commission and Council* [1985] ECR 2523, paragraphs 31 and 32; and Case 207/86 *Apesco* v *Commission* [1988] ECR 2151, paragraphs 11 to 23).

30 Secondly, the applicant is individually concerned by the contested regulation. In this regard it submits that the regulation restricts imports of sugar originating from the OCTs. The contested regulation thus affects a closed group of territories and countries, exhaustively listed in Annex IV to the EC Treaty, of which group Aruba is a member.

31 Moreover, the applicant claims that the contested regulation is of individual concern to it because it is not bound by Decision 97/803, upon which the contested regulation is based, with regard to various Member States. The applicant contends in this connection that the Acts of Accession to the European Communities of Austria, Finland, Portugal, Spain and Sweden were ratified only with regard to the Netherlands and not to Aruba. Thus the latter's position is different from that of other OCTs.

32 Furthermore, the applicant is individually concerned by the contested regulation, which limits exports of sugar originating in the OCTs, because of its status as an OCT producer and exporter of such sugar. The applicant submits that, at the

time of the adoption of the contested regulation, almost all the sugar benefiting from the ACP/OCT cumulation of origin rule came from Aruba.

33 Finally, the applicant affirms that it is individually concerned by the contested regulation because, before the adoption of Decision 97/803, it had discussions with the Commission and the Council relating to the amendment of the provisions of the OCT Decision, which culminated in the adoption of the contested regulation.

Findings of the Court

34 First of all, it must be borne in mind that neither the second paragraph of Article 173 of the Treaty (see, in this regard, the orders of the Court of Justice in Cases C-95/97 *Région wallone* v *Commission* [1997] ECR I-1787, paragraph 6, and C-180/97 *Regione Toscana* v *Commission* [1997] ECR I-5245, paragraph 6) nor its third paragraph lends itself to application by analogy. Consequently the applicant's standing to bring proceedings may be assessed only in the light of the fourth paragraph of Article 173 of the Treaty (Case C-452/98 *Nederlandse Antillen* v *Council* [2001] ECR I-8973, paragraph 50).

35 It must be noted, furthermore, that the contested regulation is of general application. It applies to all imports into the Community of sugar benefiting from the ACP/OCT cumulation of origin rule.

36 It is, however, important to consider whether, notwithstanding the general application of the contested regulation, the applicant 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 within the meaning of the fourth paragraph of Article 173 of the Treaty (see the judgment in Case C-309/89 *Codorniu* v *Council* [1994] ECR I-1853, paragraph 19 and *Nederlandse Antillen* v *Council*, cited at paragraph 34 above, paragraph 55).

37 The inevitable conclusion is that the contested regulation is of direct concern to the applicant. It leaves no discretion to the national authorities of the Member States responsible for its application (see, in this regard, the judgment in Case T-43/98 *Emesa Sugar* v *Council* [2001] ECR II-3519, paragraph 48).

38 As regards the question whether the applicant is individually concerned by the contested regulation, it must be borne in mind that, for natural and legal persons to be regarded as individually concerned by a measure of general application, 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 of a decision would be distinguished (see the judgments in Case 25/62 *Plaumann* v *Commission* [1963] ECR 95, 223, and Case C-452/98 *Nederlandse Antillen* v *Council*, cited at paragraph 34 above, paragraph 60).

39 It is evident from the judgments in *Nederlandse Antillen* v *Council*, cited at paragraph 34 above, and *Commission* v *Nederlandse Antillen*, cited at paragraph 20 above, that the fact that the applicant is included in the limited group of OCTs identified in Annex IV to the EC Treaty is not sufficient for it to be regarded as individually concerned by the contested regulation.

40 Moreover, 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 the contested regulation (see, the judgment in *Netherlands Antillen* v *Council*, cited at paragraph 34 above, paragraph 64).

41 As regards the argument based on the position occupied by the applicant in the sugar market, it must be observed that the processing of sugar coming from third countries in the territory of OCTs and the export of sugar benefiting from the ACP/OCT cumulation of origin rule are commercial activities that may be carried out by any economic operator in any OCT. The applicant itself admits that processing of sugar is carried out in the Netherlands Antilles. The processing of sugar and the export of sugar benefiting from the ACP/OCT cumulation of origin rule are therefore not activities such as to differentiate the applicant from all other OCTs (see, in this regard, the judgment in *Nederlandse Antillen* v *Council*, cited at paragraph 34 above, paragraph 74).

42 Furthermore, the fact that discussions were held between the applicant, on one side, and representatives of the Commission and the Council, on the other, before the adoption of Decision 97/803 is not such as to show that the applicant is individually concerned by the contested regulation. Even if those discussions were held as part of the procedure for the adoption of the contested regulation, this circumstance would not be such as to particularise the applicant's position within the meaning of the fourth paragraph of Article 173 of the Treaty. The fact that a person intervenes, in one way or another, in the procedure leading to the adoption of a Community measure is not such as to differentiate that person from any other in respect of the measure in question except where the Community legislation applicable grants him certain procedural safeguards (orders in Case T-585/93 *Greenpeace and Others* v *Commission* [1995] ECR II-2205, paragraphs 56 and 63; and Case T-12/96 *Area Cova and Others* v *Council and Commission* [1999] ECR II-2301, paragraph 59; and the judgment in Joined Cases T-38/99 to T-50/99 *Sociedade Agricola dos Arinhos and Others* v *Commission* [2001] ECR II-585, paragraph 46), which is not the situation in the present case.

43 Finally, the fact that the Acts of Accession to the European Communities of Austria, Finland, Portugal, Spain and Sweden were ratified only as regards the Netherlands and not as regards Aruba does not show that the contested regulation, which is a measure adopted by the Commission, affects the applicant in a manner different from that in which it affects the other OCTs.

44 It follows from all the above that the applicant has not proved that it is individually concerned by the contested regulation.

45 In the circumstances, the application must be rejected as inadmissible.

Costs

46 Under Article 87(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 applicant has been unsuccessful, it must, having regard to the form of order sought by the Commission, be ordered to pay the costs.

47 In accordance with Article 87(4) of the Rules of Procedure, the United Kingdom of Great Britain and Northern Ireland and the Council, interveners, are to bear their own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Third Chamber)

hereby orders:

1. **The application is dismissed as inadmissible.**

2. **The applicant shall bear its own costs and those of the Commission.**

3. **The interveners shall bear their own costs.**

Luxembourg, 17 September 2003.

H. Jung
Registrar

K. Lenaerts
President