ORDER OF THE COURT (Second Chamber)
28 June 2001 *

In Case C-352/99 P,

Eridania SpA, formerly Zuccherifici Nazionali SpA, established in Genoa (Italy),

Industria Saccarifera Italiana Agroindustriale SpA (ISI), established in Padua (Italy),

Sadam Zuccherifici divisione della SECI — Società Esercizi Commerciali Industriali SpA, established in Bologna (Italy),

Sadam Castiglionese SpA, established in Bologna,

Sadam Abruzzo SpA, established in Bologna,

Zuccherificio del Molise SpA, established in Termoli (Italy),

and

Società Fondiaria Industriale Romagnola SpA (SFIR), established in Cesena (Italy),

represented by B. O'Connor, Solicitor, and I. Vigliotti, avvocato, with an address for service in Luxembourg,

appellants,

APPEAL against the judgment of the Court of First Instance of the European Communities (First Chamber) of 8 July 1999 in Case T-168/95 *Eridania and*

* Language of the case: Italian.

Others v *Council* [1999] ECR II-2245, seeking to have that judgment set aside,

the other parties to the proceedings being:

Council of the European Union, represented by I. Díez Parra and J.-P. Hix, acting as Agents, with an address for service in Luxembourg,

defendant at first instance,

Commission of the European Communities, represented by F.P. Ruggeri Laderchi, acting as Agent, with an address for service in Luxembourg,

intervener at first instance,

and

Ponteco Zuccheri SpA, established at Pontelagoscuro (Italy),

applicant at first instance,

THE COURT (Second Chamber),

composed of: V. Skouris, President of the Chamber, R. Schintgen and N. Colneric (Rapporteur), Judges,

Advocate General: J. Mischo,
Registrar: R. Grass,

after hearing the Advocate General,

makes the following

Order

1 By application lodged at the Registry of the Court of Justice on 22 September 1999, Eridania SpA, formerly Eridania Zuccherifici Nazionali SpA, Industria Saccarifera Italiana Agroindustriale SpA (ISI), Sadam Zuccherifici, divisione della SECI — Società Esercizi Commerciali Industriali SpA, Sadam Castiglionese SpA, Sadam Abruzzo SpA, Zuccherificio del Molise SpA and Società Fondiaria Industriale Romagnola SpA (SFIR) brought an appeal under Article 49 of the EC Statute of the Court of Justice against the judgment of the Court of First Instance (First Chamber) of 8 July 1999 in Case T-168/95 *Eridania and Others* v *Council* [1999] ECR II-2245 ('the judgment under appeal'), in which the Court dismissed

as inadmissible their application in substance for the annulment of Council Regulation (EC) No 1534/95 of 29 June 1995 fixing, for the 1995/96 marketing year, the derived intervention prices for white sugar, the intervention prices for raw sugar, the minimum prices for A and B beet, and the amount of compensation for storage costs (OJ 1995 L 148, p. 11), or at least Article 1(f).

Legal background

2 Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organisation of the markets in the sugar sector (OJ 1981 L 177, p. 4, hereinafter the 'basic regulation'), *inter alia* established a price system and a quota system.

3 Under the quota system each Member State is allocated a basic quota for national sugar production which is shared out, within each Member State, between producer undertakings in the form of A and B quotas. Those two quotas give entitlement to guaranteed sales and relate to the annual marketing year, which begins on 1 July of each year and ends on 30 June of the following year.

4 The price system includes a system of intervention designed to guarantee the prices and sales of the products; the prices applied by the intervention agencies are fixed each year by the Council.

5 The prices of white sugar are not the same throughout the Community. Article 3(1) of the basic regulation provides, for the benefit of sugar manufac-

turers, for the fixing of an 'intervention price' for non-deficit areas and a 'derived intervention price' for each of the deficit areas.

6 The consequence of that price difference, which is known as 'regionalisation', is that, for deficit areas, the basic regulation provides, within the limits of the quota allocated, for higher remuneration for sugar produced in those areas and, at the same time, for a higher price for the purchase of the raw material needed to produce sugar.

7 To the intervention price for non-deficit areas and the derived intervention price for each of the deficit areas correspond, for the purchase of beet, minimum prices for non-deficit areas and minimum prices adjusted upwards for deficit areas. The latter prices are payable by sugar manufacturers to beet growers.

8 In relation to the minimum prices applicable to non-deficit areas, the adjusted minimum prices are subject, in accordance with Article 5(3) of the basic regulation, to a double upward adjustment. First, they are increased by an amount equal to the difference between the intervention price and derived intervention price for the area in question. Secondly the resulting amount is adjusted by the coefficient 1.30.

9 Until the 1994/95 marketing year, the Council classified Italy among the deficit areas in the Community, whereas according to the Italian sugar industry, Italy was on the way to becoming a surplus area. Since a situation of deficit supply in Italy's production areas was also forecast for marketing year 1995/96, Article 1(f) of Regulation No 1534/95 fixed the derived intervention price for white sugar for

that year at ECU 65.53 per 100 kg for all the areas in Italy, while for non-deficit areas of the Community the intervention price was fixed at ECU 63.19 per 100 kg by Article 1(2) of Council Regulation (EC) No 1533/95 of 29 June 1995 fixing, for the 1995/96 marketing year, certain prices in the sugar sector and the standard quality for beet (OJ 1995 L 148, p. 9).

Proceedings before the Court of First Instance

10 It was in those circumstances that the applicants, companies established in Italy and together holding 92% of the sugar production quotas allocated to that Member State, brought an action pursuant to the fourth paragraph of Article 173 of the EC Treaty (now, after amendment, Article 230 EC), seeking in substance the annulment of Article 1(f) of Regulation No 1534/95.

11 By a separate document the Council raised an objection of inadmissibility against the action pursuant to Article 114(1) of the Rules of Procedure. In support of that objection, the Council essentially submitted three pleas in law, one of which was that the applicants could claim no individual interest, as provided for in the fourth paragraph of Article 173 of the Treaty.

12 As regards that latter plea, the Council maintained that, in so far as they sought annulment of Article 1(f) of Regulation No 1534/95, the applicants were not individually concerned by the contested measure, so that they had no standing under the fourth paragraph of Article 173 of the Treaty.

13 By order of 19 March 1996 of the President of the Second Chamber of the Court of First Instance, the Commission was granted leave to intervene in the proceedings in support of the forms of order sought by the Council.

The judgment under appeal

14 By the judgment under appeal, the Court of First Instance dismissed the application as inadmissible. In that connection it upheld, first, the plea of lack of sufficient precision in the application, in that the applicants had sought the annulment of all measures adopted prior to or subsequent to Regulation No 1534/95 which were connected to it, including the basic regulation, or, at the very least, Articles 3, 5 and 6 thereof and all implementing measures, and, second, the plea that the applicants had no individual interest. The Court of First Instance held, however, that the third plea alleging that the time-limit for bringing proceedings had expired, was devoid of purpose.

15 With regard to the dismissal of the application on the ground of the applicants' lack of individual interest, which is the sole ground of appeal, the Court of First Instance held, essentially, at paragraphs 38 and 39 of the judgment under appeal, that the fixing of the derived intervention price applied to an indeterminate number of transactions that would take place during the 1995/96 marketing year and that accordingly Regulation No 1534/95 applied to objectively determined situations and was aimed at categories of persons regarded in the abstract.

16 At paragraph 40, citing case-law according to which a provision that is general in character may individually concern natural or legal persons where it adversely affects them by reason of certain attributes which are peculiar to them or by reason of circumstances which differentiate them from all other persons, the Court of First Instance then examined certain aspects of the sugar regime. It

found, in paragraph 43, that 'the fact that the legislature fixes the derived intervention prices for white sugar not in a standard and general manner but on a basis as close as possible to economic realities ... is not in itself sufficient to confer on Article 1(f) of the contested regulation the nature of a bundle of decisions of individual concern to each of the sugar-producing undertakings established in the deficit areas'.

17 Having pointed out that the system of regionalisation is necessarily based on the production figures of each sugar-producing undertaking in a deficit or non-deficit area, the Court of First Instance stated, at paragraph 44, that '[t]he fact that the applicants communicated such information to the Community institutions is therefore not capable of distinguishing them, in the context of the system of "regionalisation" from all other Community sugar manufacturers, especially since, as is apparent from the papers before the Court, the Council did not adopt the contested regulation on the basis of the information provided by the Commission on the specific situation of each of the applicants'.

18 At paragraph 45, the Court of First Instance concluded that if the applicants' argument were upheld 'all economic operators belonging to the common organisation of the market in sugar who considered that they were adversely affected by the classification of their area would be able to call in question the entire system of differentiated prices applied throughout the Community ...'.

19 At paragraph 46, the Court of First Instance also rejected the applicants' argument that they were 'individually concerned' because they belonged to a 'limited class'. In that connection it referred first of all to the case-law according to which 'the general application and hence the legislative nature of a measure are not called in question by the fact that it is possible to define more or less precisely the number or even the identity of the persons to whom it applies at any given time, as long as it is established that such application takes effect by virtue of an objective situation of fact or of law defined by the measure in question (order in Case C-409/96 P *Sveriges Betodlares Centralförening and Henrikson* v *Commission* [1997] ECR I-7531, paragraph 37)'.

20 Secondly, the Court of First Instance pointed out, in paragraph 47, that 'the "limited class" to which the applicants refer is the consequence of the very nature of the system of "regionalisation" which ... has the precise consequence that the Community institutions are able to know the identity of the sugar manufacturers established in each production area. The applicants therefore form part of a "limited class" only in the same way as all other Community sugar manufacturers in the same situation'.

21 At paragraph 48 the Court of First Instance added that '[i]n any event ... while it is the case that before the various prices for sugar are fixed for each marketing year the Member States communicate to the Commission information on developments in sugar production and consumption in their territory and on the sugar production quotas already allocated, when the Council adopted the contested regulation it nevertheless did not have any particular information on each of the Italian undertakings holding sugar production quotas for the 1995/96 marketing year but fixed the various prices for white sugar on the basis of the overall figures on sugar production in Italy'.

22 The Court of First Instance further considered, at paragraph 49, that the case-law on which the applicants relied in support of the admissibility of their action — which refers to certain specific situations concerning individual applications for import licences which were submitted during a short period and related to specific quantities or involving the obligation imposed on the Community institutions to take account of the consequences which the measure they propose to adopt will have on the situation of certain individuals — was not relevant. It considered that there were no such circumstances in the case before it.

23 As regards the question whether the applicants were distinguished individually by the adverse effect on 'the individual production rights which they enjoy as holders of production quotas', the Court of First Instance confined itself, at paragraph 51, to observing that 'the allocation of production quotas to the applicants was not, prior to the adoption of the contested regulation, accompanied by an established

right that a specific intervention price would be fixed' and that 'the mere fact that the applicants held production quotas is not susceptible of establishing that specific rights, within the meaning of [Case C-309/89] *Codorniu* v *Council* [[1994] ECR I-1853], which they enjoyed were infringed'.

24 The Court of First Instance furthermore rejected, in paragraphs 52 and 53, the arguments which the applicants derived, in support of the admissibility of their application, from the abolition, by Regulation (EC) No 1101/95 of 24 April 1995 amending Regulation No 1785/81 (OJ 1995 L 110, p. 1), of the possibility for the Italian State to grant aid to the Italian sugar production industry, and from the conclusion of supply contracts with beet growers governed by the derived intervention price at issue.

The appeal

25 In their appeal the appellants seek, essentially, the annulment of the judgment under appeal in so far as it dismissed as inadmissible the application which they had lodged for the purpose of obtaining the annulment of Regulation No 1534/95, in particular Article 1(f) thereof, and for a declaration that the basic regulation, in particular Articles 3, 5 and 6 was unlawful.

26 The appellants put forward four grounds of appeal.

27 First, they claim that the Court of First Instance erred in deducing solely from the number of transactions likely to be affected by Article 1(f) of Regulation No 1534/95 that the latter applied to objectively determined situations and categories of persons regarded in the abstract, and was therefore of general application.

28 Secondly, the appellants contest the finding by the Court of First Instance, at paragraph 43 of the judgment under appeal, that the said provision does not correspond to a bundle of individual decisions. That ground of appeal has four parts.

29 In the first part, they complain that the Court of First Instance chose a fundamentally incorrect approach in that, at paragraphs 41 to 43 of the judgment under appeal, it examined the nature of the system of regionalisation as a whole.

30 In the second part, the appellants claim that the Court of First Instance did not take into consideration the fact that they are individually concerned by reason of the obligation they are under to pay a fixed price to any producer who supplies beet to them. That obligation distinguishes them individually, as sugar manufacturers in Italy, compared with sugar manufacturers in other areas of the Community.

31 In the third part of that ground of appeal, the appellants state that the Court of First Instance disregarded the difference between the entitlement of Italian sugar manufacturers to sell to the intervention agency at the derived intervention price — an entitlement which is individual in scope — and the right of beet growers to obtain a minimum price for beet. As regards that latter right, the appellants consider that this is a rule of general application.

32 In the fourth part of their second ground of appeal, the appellants contest the interpretation given by the Court of First Instance, at paragraph 45 of the judgment under appeal, that if their action were held to be admissible that might call into question the contractual relationships between sugar manufacturers and beet growers. According to the applicants, the contractual consequences of an action do not constitute a factor that should be taken into consideration in an assessment of their rights under Article 173 of the Treaty.

33 Thirdly, the appellants maintain that the Court of First Instance disregarded the fact that they make up a 'limited class' of sugar manufacturers. That class is constituted solely by Italian sugar manufacturers who have a quota and accordingly, *inter alia*, are obliged to pay, with the increased minimum price, a price different from that payable by producers in other areas of the Community. That distinguishes them individually from any other producer in the Community.

34 Fourthly, the appellants also complain, separately, that the Court of First Instance did not take sufficiently into account the fact that the contested regionalisation rules, in particular the prices established by the Council for all the areas of Italy, are based on individual data from Italian sugar manufacturers, and in particular the figures provided by them.

35 In that context the appellants maintain that there is a contradiction between paragraph 44 and paragraph 48 of the judgment under appeal. At paragraph 48 the Court of First Instance states that the Council did not have any particular information on each of the Italian undertakings holding sugar quotas but only overall figures, while at paragraph 44 it admits that there were production figures for each sugar-producing undertaking.

36 The Council and the Commission consider that the appeal is not well founded.

37 First of all they contend, as regards the first ground of appeal, that the Court of First Instance rightly took into consideration the indeterminate number of transactions among other assessment criteria and that it thus undertook a qualitative analysis of the situations to which Article 1(f) of Regulation No 1534/95 applies.

38 Next the Council maintains that the ground of appeal according to which that provision can be analysed as 'a bundle of decisions' addressed to each operator concerned is unfounded. Further, in particular, to Case C-73/97 P *France* v *Comafrica and Others* [1999] ECR I-185, paragraphs 33 to 38, such a description would require the appellants to have obtained certain individual rights before the adoption of the regulation in question, which was not the case here.

39 Lastly, the Council and the Commission also contest the complaint of the appellants to the effect that they were distinguished individually because they had communicated figures concerning their production to the Community institutions.

Findings of the Court

40 Under Article 119 of its Rules of Procedure, where the appeal is clearly inadmissible or clearly unfounded, the Court may, at any time, dismiss it by reasoned order without opening the oral procedure.

41 Under the fourth paragraph of Article 173 of the Treaty, any natural or legal person may institute proceedings against a decision which, although in the form of a regulation, is of direct and individual concern to that person.

Plea alleging that only the number of transactions was taken into account

42 In accordance with the Court's case-law, the criterion for distinguishing between a legislative act and a decision has to be sought in the general application or otherwise of the measure in question (see orders in Case C-10/95 P *Asocarne* v *Council* [1995] ECR I-4149, paragraph 28, and Case C-87/95 P *CNPAAP* v *Council* [1996] ECR I-2003, paragraph 33). An act is of general application if it applies to objectively defined situations and produces legal effects for categories of persons regarded generally and in the abstract (see order in Case C-447/98 P *Molkerei Großbraunshain and Bene Nahrungsmittel* v *Commission* [2000] ECR I-9097, paragraph 67, and judgment in Case C-229/88 *Cargill and Others* v *Commission* [1990] ECR I-1303, paragraph 18).

43 In so far as, in their first ground of appeal, the appellants complain that the Court of First Instance accepted that Article 1(f) of Regulation No 1534/95 was of a normative character on the basis only of the number of transactions likely to be affected by that provision, it must be noted that, at paragraph 38 of the judgment under appeal, the Court of First Instance sought to determine the nature of the provision on the basis of the two conditions to which the case-law cited in the previous paragraph refers.

44 To that end, in paragraph 39 of the judgment under appeal, the Court of First Instance examined the means for determining the derived intervention price for white sugar. It rightly considered that the fixing of that price did not concern only the total quantity of white sugar offered to the intervention agency by Italian sugar manufacturers, provided that the conditions laid down for that purpose were met, but was also passed on directly in the purchase prices which the Italian sugar manufacturers were required to pay to Italian beet growers.

45 Accordingly it is clear that the Court of First Instance did not base itself solely on the indeterminate number of transactions, but took into account, in addition to

the economic operators concerned, the circumstances in which Article 1(f) of Regulation No 1534/95 is applicable. Contrary to the appellants' argument, it was in the light of the features characterising the rules in question that the Court of First Instance rightly drew the conclusion that that provision applies to objectively defined situations and produces legal effects for categories of persons regarded generally and in the abstract.

46 Consequently the Court of First Instance did not commit any error of law when it found that Article 1(f) of Regulation No 1534/95 was normative in character. The appellants' complaint that only the number of transactions to be carried out during the marketing year concerned was taken into account clearly cannot be upheld.

Complaint that the Court of First Instance examined the nature of the system of regionalisation 'as a whole'

47 In accordance with settled case-law, it cannot be excluded that a provision which, by its nature and application, is general in character, may individually concern natural or legal persons where it adversely affects them by reason of certain attributes which are peculiar to them or by reason of circumstances which differentiate them from all other persons and thereby distinguish them individually in the same way as the person to whom a measure is addressed (see, in particular, Case C-209/94 P *Buralux and Others* v *Council* [1996] ECR I-615, paragraph 25, and the order in Case C-10/95 P *Asocarne* v *Council*, cited above, paragraph 39).

48 In order to examine, on the basis of that case-law, whether Article 1(f) of Regulation No 1534/95 might individually concern the applicants, the Court of

First Instance recalled, at paragraph 41 of the judgment under appeal, the way that provision works. At paragraphs 42 and 43 it set the provision in the context of the system of regionalisation.

49 While the Court of First Instance noted in particular that the system of regionalisation fixes derived intervention prices on a basis that is as close as possible to economic realities, its analysis leads convincingly to the conclusion that the system of regionalisation applies objectively to all sugar manufacturers and beet growers and is not aimed at the applicants individually.

50 In so far as, in their second ground of appeal, the appellants criticise that approach on the part of the Court of First Instance, considering it fundamentally flawed, it need merely be pointed out that, in accordance with the case-law referred to in paragraph 47 of this order, in order to examine whether Article 1(f) of Regulation No 1534/95 was in the nature of a decision, the Court of First Instance could not omit to assess either the way the derived intervention price for white sugar was formed nor the effects thereof in the context of regionalisation.

The claim that the appellants were distinguished individually by reason of the obligation to pay a specific increased minimum price

51 In this plea the appellants allege that, contrary to the finding of the Court of First Instance at paragraph 43 of the judgment under appeal, Article 1(f) of Regulation No 1534/95 in reality constitutes a bundle of decisions concerning them individually. In order to justify such an interpretation of that provision, they claim that they are bound to pay to beet growers, with the increased minimum

prices, a fixed price which distinguishes them from other manufacturers of white sugar.

52 In that connection it must be pointed out that, under Article 118 of the Rules of Procedure of the Court of Justice, Article 42(2) of those Rules, which prohibits in principle the introduction of new pleas in law in the course of proceedings, applies to the procedure before the Court of Justice on appeal from a decision of the Court of First Instance.

53 To allow a party to put forward for the first time before the Court of Justice a plea in law which it has not raised before the Court of First Instance would be to allow it to bring before the Court, whose jurisdiction in appeals is limited, a case of wider ambit than that which came before the Court of First Instance. In an appeal the Court's jurisdiction is thus confined to review of the findings of law on the pleas argued before the Court of First Instance (see judgment in Case C-136/92 P *Commission* v *Brazzelli Lualdi and Others* [1994] ECR I-1981, paragraph 59; orders in Case C-442/97 P *Sateba* v *Commission* [1998] ECR I-4913, paragraph 30, and Case C-437/98 P *Infrisa* v *Commission* [1999] ECR I-7145, paragraph 29).

54 It must be noted that the appellants did not argue, before the Court of First Instance, that they were distinguished individually by reason of the fact that they were bound to pay to beet producers a specific price which differentiated them from all other producers in the Community.

55 Accordingly that ground of appeal must be dismissed as clearly inadmissible.

The complaint that the Court of First Instance wrongly took into consideration the consequences of the action being held admissible

56 The Court of First Instance completed its examination of the allegedly decisional nature of Article 1(f) of Regulation No 1534/95 by finding, at paragraph 45 of the judgment under appeal, that, if the applicants' argument were upheld, all economic operators belonging to the common organisation of the market in sugar who considered that they were adversely affected by the classification of their area would be able to call in question the entire system of differentiated prices as a whole.

57 On that point it should be noted that, in reaching that finding, the Court of First Instance confined itself to an examination that was general in nature, intended to describe the consequences, at Community level, were the action in question to be held admissible. In no way does that finding alone enable an action for annulment brought by a natural or legal person to be held inadmissible. Only the conditions laid down in the fourth paragraph of Article 173 of the Treaty are such as will enable an action to be held inadmissible when it does not meet those conditions (see, to that effect, the order in Case C-300/00 P(R) *Federación de Cofradías de Pescadores de Guipúzcoa and Others* v *Council* [2000] ECR I-8797, paragraph 37).

58 It follows, clearly, that in so far as the appellants are challenging paragraph 45 of the judgment under appeal in the final part of their second ground of appeal — on the ground that if their action were held admissible that could also call into question the contractual relationships between sugar manufacturers and beet growers — that argument is irrelevant and must therefore be rejected.

The arguments based on the existence of 'a limited class'

59 With regard to the appellants' argument that they belong to 'a limited class' or restricted class, the Court of First Instance rightly based itself, at paragraphs 46 to 48 of the judgment under appeal, on the Court's case-law according to which the fact that it is possible to define more or less precisely the number or even the identity of the persons to whom a measure such as Article 1(f) of Regulation No 1534/95 applies does not imply that the latter must be regarded as being individually concerned by that measure as long as it is established that such application takes effect by virtue of an objective situation of fact or of law defined by the measure in question (judgment in Case C-209/94 P *Buralux and Others* v *Council*, paragraph 24, and order in Case C-409/96 P *Sveriges Betodlares and Henrikson* v *Commission*, paragraph 37).

60 The Court of First Instance stated convincingly, at paragraph 47 of the judgment under appeal, that it was only because of the information mechanism introduced by the common organisation of the market in sugar that the Community institutions are able to know, when intervention prices are fixed, the identity of the sugar manufacturers established in each production area. With regard to that information mechanism, the Court of First Instance had already noted, in paragraph 44 of the judgment under appeal, that the various production areas are classified by the Council as deficit or non-deficit on the basis of the information on current and/or foreseeable production and consumption provided to it which includes, in particular, certain data for each sugar manufacturing undertaking in the area concerned.

61 Contrary to the appellants' contention in their fourth ground of appeal, concerning particular information from Italian undertakings, that finding does not conflict with paragraph 48 of the judgment under appeal.

62 It is clear from that paragraph that the Council fixed the intervention prices for sugar not on the basis of the individual data from each of the Italian manufacturers holding production quotas or by taking account of their specific situation, but on the basis of overall Italian sugar production data. It must be added that the classification of a given area as a deficit or surplus area is based ultimately on a comparison of the production and consumption forecast for the marketing year concerned.

63 It follows that the information provided by the various Italian sugar manufacturers is only one factor in the overall data available to the Council and that the derived intervention price for white sugar is fixed in a general and abstract manner rather than on the basis of or taking into consideration the individual situation of each manufacturer.

64 In so far as, in order to establish that they belong to a 'limited class' made up of Italian sugar manufacturers holding production quotas, the appellants reiterate their argument that as such they are obliged to pay, with the increased minimum price, a specific price to beet growers which distinguishes them from other Community manufacturers, reference need merely be made to paragraphs 53 to 55 of this order.

65 Consequently the Court of First Instance committed no error of law when it held that the appellants were not individually concerned by Article 1(f) of Regulation No 1534/95 as members of 'a limited class' made up of Italian sugar manufacturers holding production quotas.

The right to sell to an intervention agency at a derived intervention price

66 Lastly, as regards the appellants' complaint in the second ground of appeal that the Court of First Instance disregarded their right to sell to the intervention agency at the derived intervention price, it need merely be held that that right constitutes only the primary function of an intervention price.

67 In that respect the appellants' situation cannot be treated in the same way as the situations which gave rise to the judgments on which they relied before the Court of First Instance, which the latter rightly considered to be irrelevant to the case. The specific situations referred to in Joined Cases 106/63 and 107/63 *Toepfer and Getriede-Import* v *Commission* [1965] ECR 405 and Case C-354/87 *Weddel* v *Commission* [1990] ECR I-3847 are characterised by the fact that an economic operator has been granted, by the competent authorities, on an individual basis and with an effect limited in time, a right such as that conferred by an import licence.

68 The Court of First Instance also refused, in paragraphs 50 and 51 of the judgment under appeal, to apply the principle resulting from *Codorniu* v *Council.* In that connection it considered, rightly, that the allocation to the appellants of production quotas was not, before the contested regulation was adopted, accompanied by an established right that a specific intervention price would be fixed and that the appellants' legal situation was therefore no different from that of other holders of production quotas, all of whom had to adjust to the intervention prices fixed by the Council in accordance with the supply situation foreseeable for the various production areas.

69 The appellants' arguments, as these appear in their pleadings to the Court in the appeal, reveal no new factor that could undermine the conclusion reached by the Court of First Instance at paragraph 51 of the contested judgment.

70 Accordingly the plea based on the right to sell sugar to the intervention agency at the derived intervention price must be dismissed as clearly unfounded.

71 It follows from all the foregoing considerations that the appeal must be dismissed as clearly inadmissible or as clearly unfounded.

Costs

72 Under Article 69(2) of the Rules of Procedure, which applies to the appeal procedure 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. Since the Council applied for costs and the appellants have been unsuccessful, they must be ordered to pay the costs jointly and severally. Under Article 69(4) of the Rules of Procedure, the Commission must bear its own costs.

On those grounds,

THE COURT (Second Chamber)

hereby orders:

1. The appeal is dismissed.

2. Eridania SpA, Industria Saccarifera Italiana Agroindustriale SpA (ISI), Sadam Zuccherifici, divisione della SECI — Società Esercizi Commerciali Industriali SpA, Sadam Castiglionese SpA, Sadam Abruzzo SpA, Zuccherificio del Molise SpA and Società Fondiaria Industriale Romagnola SpA (SFIR) are ordered to pay the costs jointly and severally.

3. The Commission is ordered to bear its own costs.

Luxembourg, 28 June 2001.

R. Grass

Registrar

V. Skouris

President of the Second Chamber