JUDGMENT OF THE COURT (Sixth Chamber)
11 February 1999 *

In Case C-390/95 P,

Antillean Rice Mills NV, a company incorporated under the law of the Netherlands Antilles, established in Bonaire, Netherlands Antilles,

European Rice Brokers AVV, a company incorporated under the law of Aruba, established in Oranjestad, Aruba,

and

Guyana Investments AVV, a company incorporated under the law of Aruba, established in Oranjestad, Aruba,

represented by P. Glazener, of the Amsterdam Bar, W. Knibbeler, of the Rotterdam Bar, and J. Pel, of the Amsterdam Bar, with an address for service in Luxembourg at the Chambers of M. Loesch, 11 Rue Goethe,

appellants,

APPEAL against the judgment of the Court of First Instance of the European Communities (Fourth Chamber, Extended Composition) of 14 September 1995 in Joined Cases T-480/93 and T-483/93 *Antillean Rice Mills and Others* v *Commission* [1995] ECR II-2305, seeking to have that judgment set aside,

* Language of the case: Dutch.

the other parties to the proceedings being:

Commission of the European Communities, represented by E. Lasnet and T. van Rijn, Legal Advisers, acting as Agents, with an address for service in Luxembourg at the office of C. Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

defendant at first instance,

supported by

Council of the European Union, represented by J. Huber and G. Houttuin, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of A. Morbilli, Manager of the Legal Directorate of the European Investment Bank, 100 Boulevard Konrad Adenauer,

Italian Republic, represented by D. Del Gaizo, Avvocato dello Stato, with an address for service in Luxembourg at the Italian Embassy, 5 Rue Marie-Adélaïde,

French Republic,

interveners at first instance,

and

Trading & Shipping Co. Ter Beek BV, a company incorporated under Netherlands law, established in Amsterdam,

Alesie Curaçao NV, a company incorporated under the law of the Netherlands Antilles, established in Willemstad, Curaçao, Netherlands Antilles,

applicants at first instance,

THE COURT (Sixth Chamber),

composed of: P. J. G. Kapteyn, President of the Chamber, G. F. Mancini, J. L. Murray (Rapporteur), H. Ragnemalm and K. M. Ioannou, Judges,

Advocate General: S. Alber,
Registrar: H. von Holstein, Deputy Registrar,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 5 March 1998, at which Antillean Rice Mills NV, European Rice Brokers AVV and Guyana Investments AVV were represented by P. Glazener, W. Knibbeler and J. Pel, the Commission by E. Lasnet and T. van Rijn, the Council by J. Huber and G. Houttuin, the French Republic by C. Chavance, Foreign Affairs Adviser in the Legal Department of the Ministry of Foreign Affairs, acting as Agent, and the Italian Republic by D. Del Gaizo,

after hearing the Opinion of the Advocate General at the sitting on 28 April 1998,

gives the following

Judgment

1 By application lodged at the Court Registry on 13 December 1995, Antillean Rice Mills NV, European Rice Brokers AVV and Guyana Investments AVV (hereinafter 'the appellants') brought an appeal pursuant to Article 49 of the EC Statute of the Court of Justice against the judgment of 14 September 1995 in Joined Cases T-480/93 and T-483/93 *Antillean Rice Mills and Others* v *Commission* [1995] ECR II-2305 (hereinafter 'the contested judgment'), in which the Court of First Instance annulled Article 1(1) of Commission Decision 93/127/EEC of 25 February 1993 introducing safeguard measures in respect of rice originating in the Netherlands Antilles (OJ 1993 L 50, p. 27, hereinafter 'the contested decision') and dismissed the remainder of their applications.

2 As regards the legal background to the applications before it, the Court of First Instance found:

'1 The Netherlands Antilles form part of the overseas countries and territories ("OCTs") associated with the European Economic Community. The association of the OCTs with the Community is governed by Part Four of the EEC Treaty and by Council Decision 91/482/EEC of 25 July 1991 (OJ 1991 L 263, p. 1, "the OCT Decision"), which was adopted pursuant to the second paragraph of Article 136 of the Treaty.

2 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. Article 101(1) of the OCT Decision provides that products originating in the OCTs are to be imported into the Community free of customs duties and charges having equivalent effect. Article 101(2) stipulates, further, that products not originating in the OCTs but which are in free circulation in an OCT and are reexported as such to the Community are to be accepted for import into the Community free of customs duties and taxes having an equivalent effect providing that they have paid, in the OCT concerned, customs duties or taxes having equivalent effect of a level equal to,

or higher than, the customs duties applicable in the Community on import of those same products originating in third countries eligible for the most-favoured-nation clause, that they have not been the subject of an exemption from, or a refund of, in whole or in part, customs duties or taxes having an equivalent effect, and that they are accompanied by an export certificate.

3 The first indent of Article 108(1) of the OCT Decision refers to Annex II to that decision for the definition of the concept of originating products and the methods of administrative cooperation relating thereto.

4 Under Article 1 of that Annex II, a product is to be considered as originating in an OCT, in the Community or in an African, Caribbean or Pacific ("ACP") State if it has been either wholly obtained or sufficiently worked or processed there.

5 Under Article 2(1)(b) of Annex II, "vegetable products harvested" in an OCTs, the Community or an ACP State are deemed to be wholly obtained there.

6 According to Article 3(1) of Annex II, non-originating materials are considered to be sufficiently worked or processed when the product obtained is classified in a tariff heading which is different from those in which all the non-originating materials used in its manufacture are classified.

7 Finally, Article 6(2) of Annex II provides that when products wholly obtained in the Community or in the ACP States undergo working or processing in the OCTs, they are to be considered to have been wholly obtained in the OCTs.

8 Since 1967, there has been a common organisation of the market in rice, currently governed by Council Regulation (EEC) No 1418/76 of 21 June 1976 on

thecommon organisation of the market in rice (OJ 1976 L 166, p. 1), which includes intervention prices for paddy rice, export refunds and import levies. Those levies vary according to the country of origin. As regards the ACP States, a reduced levy rate is charged up to a tariff quota of 125 000 tonnes of husked rice and 20 000 tonnes of broken rice.

9 In addition, Council Regulation (EEC) No 3878/87 of 18 December 1987 on the production aid for certain varieties of rice (OJ 1987 L 365, p. 3) encourages the cultivation of Indica rice by Community producers. Council Regulation (EEC) No 3763/91 of 16 December 1991 introducing specific measures in respect of certain agricultural products for the French overseas departments (OJ 1991 L 356, p. 1) was adopted with the aim of promoting the cultivation of rice in French Guiana and supporting the disposal and marketing of that rice in Guadeloupe and Martinique, all three being French overseas departments. In that regard, it must be borne in mind that, under Article 227(2) of the Treaty, the rules relating to the free movement of goods and to the common agricultural policy, with the exception of Article 40(4) are applicable to the French overseas departments which — for those purposes — form an integral part of the Community.'

3 According to the contested judgment, on 25 February 1993, following complaints by the French and Italian Governments, the Commission, by the contested decision, imposed a minimum price for imports into the Community of rice originating in the Netherlands Antilles. On 14 January 1993 the Minister for Finance of the Netherlands Antilles fixed a minimum export price which corresponded to the relative minimum price imposed by the Commission in the contested decision.

4 By Decision 93/211/EEC of 13 April 1993 amending Decision 93/127 (OJ 1993 L 90, p. 36), however, the Commission reduced the minimum price per tonne of rice to take account of the improvement in market conditions. Both decisions were based on Article 109 of the OCT Decision, which was taken pursuant to the second paragraph of Article 136 of the Treaty. Finally, by Decision 93/356/EEC of 16 June 1993 (OJ 1993 L 147, p. 28), the Commission repealed the safeguard measures.

5 The appellants are three undertakings which engage in activities in the Netherlands Antilles in the sector of processing and marketing of rice, processing there brown rice from Surinam and Guyana. Since processing in the Netherlands Antilles confers Antillean origin on the rice, it could be imported into the Community free of duty in accordance with Article 101(1) of the OCT Decision.

6 Since the appellants considered that they had suffered serious damage as a result of the safeguard measures adopted by the Commission, they brought proceedings for the annulment of those measures and compensation for the damage they claimed to have suffered.

7 The appellants relied on six pleas in law before the Court of First Instance. The first plea alleged that Article 109 of the OCT Decision, on which the contested decision was based, was unlawful on the ground that it gave the Commission power to take safeguard measures under conditions not provided for by the EC Treaty. The second plea was that there had been an infringement of Article 109(1) of the OCT Decision, in that the Commission introduced safeguard measures when the conditions for their introduction were not met. The appellants' third plea alleged that Article 109(2) of the OCT Decision had been infringed in that the safeguard measures introduced went beyond what was necessary to dispose of the alleged threat of disturbance or deterioration in a sector of the Community's activity or in a region of the Community. Their fourth plea alleged an infringement of Articles 132(1) and 133(1) of the Treaty and Article 101(1) of the OCT Decision in that making exemption from customs duties on imports depend on the observance of minimum prices constituted a 'conditional' charge having equivalent effect. The fifth plea was that Article 131 of the Treaty had been infringed in that the Commission had not or not sufficiently taken account of the aims of the association of the OCTs. The appellants' sixth plea was that there had been a breach of the principle that Community measures must be drawn up with care, and an infringement of Article 190 of the Treaty in that the Commission had not or not sufficiently examined the situation in the market or stated reasons for the safeguard measures adopted.

The contested judgment

8 In paragraphs 63 to 78 of the contested judgment the Court of First Instance first addressed the question of admissibility raised by the Commission and held that a Commission decision taken pursuant to Article 109 of the OCT Decision, addressed to the Member States and imposing, as a safeguard measure, a minimum import price for a product originating in one of those territories, is of direct concern, within the meaning of the second paragraph of Article 173 of the EEC Treaty, to undertakings exporting that product from that territory, because it leaves the Member States no discretion as to the imposition or level of the minimum price at issue. Despite being legislative by nature, such a decision is also of individual concern, within the meaning of that provision, to undertakings whose identity was known to the Commission because of contacts established before the safeguard measure was adopted and which had consignments of goods affected by that decision in transit at the time when it was adopted.

9 The Court of First Instance then found, in paragraph 95, that on the basis of the second paragraph of Article 136 of the Treaty the Council was entitled, with a view to reconciling the principles of the association of the OCTs with the Community and those of the common agricultural policy, to insert into Article 109 of the OCT Decision a safeguard clause authorising *inter alia* restrictions on the freedom to import agricultural products originating in the OCTs if such imports give rise to serious disturbances in a sector of the economy of the Community or one or more of its Member States, or jeopardise their external financial stability, 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. In making that choice, which limits only exceptionally, partially and temporarily the freedom to import products from the OCTs into the Community, the Council did not exceed its discretion under the second paragraph of Article 136 of the Treaty.

10 In paragraphs 119 to 135 the Court of First Instance held that Article 109(1) of the OCT Decision gives the Commission a broad discretion, not merely as regards the existence of the conditions justifying the adoption of a safeguard measure but also as to whether a safeguard measure should be adopted or not, so that when exer-

cising its power of review the Community judicature must confine itself to considering whether the exercise of that discretion contains a manifest error or constitutes a misuse of powers or whether the Commission clearly exceeded the bounds of its discretion. That was not the case with the adoption of the contested decision and Decision 93/211. In view of the fall it had found in the price of rice in the Community and the simultaneous increase in imports from that overseas territory, the Commission was entitled to consider that difficulties had arisen which might cause a deterioration in the sector of rice production in the Community and jeopardise the application of the Poseidom programme to promote the marketing in Guadeloupe and Martinique of rice produced in French Guiana, and the conditions for the adoption of safeguard measures were consequently satisfied.

11 The Court of First Instance then found, in paragraphs 140 to 143, that the safeguard measures against imports of products originating in the OCTs authorised by Article 109 of the OCT Decision may be aimed solely at remedying difficulties encountered in a sector of the economy of the Community or at preventing such difficulties from arising, and, in accordance with Article 109(2), must be strictly necessary. Article 1(1) of the contested decision, by which the Commission introduced as a safeguard measure a minimum import price for rice originating in the Netherlands Antilles, therefore had to be annulled, since the level at which that price was set was such that that rice was more expensive on the Community market not only than Community rice but also than rice from non-member countries, including the ACP States, contrary to the order of preference which products from the associated countries and territories should benefit from and to the principle of proportionality expressed by Article 109(2).

12 In paragraphs 149 to 153 of the contested judgment the Court of First Instance, on the other hand, acknowledged the validity of Decision 93/211 which, with respect to the same safeguard measure, lowered the minimum price to a level such that the rice in question was placed in an unfavourable competitive position in relation only to the Community rice which the measure was intended to protect.

13 In paragraph 157 the Court of First Instance rejected the argument that there was a 'conditional' charge having equivalent effect, holding that a levy charged on the import of a product originating in an OCT at a price lower than the minimum price fixed in the context of a safeguard measure introduced under Article 109 of the OCT Decision cannot be regarded as a charge having equivalent effect and prohibited by Article 101 of that decision, as the origin of the obligation to pay such a levy lies not in the crossing of the frontier of the Community but in the failure to observe the minimum price.

14 The Court of First Instance then found, in paragraphs 189 to 194, that the introduction pursuant to Article 109 of the OCT Decision of safeguard measures against imports of products originating in an OCT constitutes a legislative measure involving choices of economic policy, so that an illegality on that occasion may give rise to liability on the part of the Community only if it may be characterised as a sufficiently serious breach of a superior rule of law for the protection of individuals. The unlawful act of the Commission in adopting, by the contested decision, a safeguard measure the terms of which were not necessary to protect the interests of the Community, as required by Article 109(2), constituted a breach of such a rule, in this case the principle of proportionality. That breach did not, however, cause the Community to incur liability, since it could not be regarded as sufficiently serious, in view of the fact that the Commission made use in good faith of data provided by the national authorities of the Netherlands Antilles which proved to be incorrect, without the appellants having drawn its attention to the mistake, of which they were aware.

15 In paragraph 200 the Court of First Instance further stated that even if such a breach had been capable of giving rise to Community liability, for a right to compensation to arise there would have had to be damage going beyond what it is acknowledged that an individual must accept without being able to obtain compensation from public funds, even if he has been the victim of an illegality.

16 Consequently, the Court of First Instance annulled Article 1(1) of the contested decision on the ground that it went beyond what was strictly necessary to remedy the difficulties for Community rice production caused by imports of rice from the Antilles and therefore infringed Article 109(2) of the OCT Decision, and dismissed the remainder of the applications.

The plea of inadmissibility of the application to the Court of First Instance

17 The Italian Government submits that the contested judgment should be set aside in so far as it rejected the plea of inadmissibility raised by the Commission, which argued that the appellants were not individually concerned. It submits that the Court of First Instance misapplied the principles defined in Case 11/82 *Piraiki-Patraiki* v *Commission* [1985] ECR 207 for identifying the persons who are individually concerned by legislative acts.

18 The appellants, however, doubt whether the Italian Government can raise such a plea. They consider that as the Italian Government was only an intervener in support of the Commission's position, it cannot rely before the Court of Justice on a plea of inadmissibility which is not put forward by the Commission itself in the context of an appeal.

19 It must therefore be examined, first, whether the Italian Government's plea concerning the inadmissibility of the application to the Court of First Instance is admissible before the Court of Justice, and then, if appropriate, whether it is well founded.

20 As regards the admissibility before this Court of the plea raised by the Italian Government, it must be borne in mind that under Article 49(2) of the EC Statute of the Court of Justice an appeal may be brought by any party which has been unsuccessful, in whole or in part, in its submissions before the Court of First Instance. It follows that interveners before the Court of First Instance are regarded as parties before that court. Article 115(1) of the Rules of Procedure of the Court of Justice, under which 'any party to the proceedings before the Court of First Instance may lodge a response within two months after service on him of notice of the appeal', therefore applies to them, so that they are dispensed from having to make a fresh application to intervene before the Court of Justice under Articles 93 and 123 of the Rules of Procedure (Case C-244/91 P *Pincherle* v *Commission* [1993] ECR I-6965, paragraph 16).

21 It follows that, as regards the pleas they may raise, there is no distinction between the parties who are entitled to lodge a response, since they are subject in the same way to the requirements of Articles 115 and 116 of the Rules of Procedure.

22 Consequently, an intervener who has the right to submit a response under Article 115 of the Rules of Procedure must, in the absence of any express limitation, be able to raise pleas relating to any point of law on which the contested judgment is based.

23 A Member State which has lodged a response in accordance with Article 115 of the Rules of Procedure may therefore in any event plead before the Court of Justice that the application was inadmissible, despite the fact that the party it supported before the Court of First Instance has not raised such a plea in its response to the appeal and raised it only in its submissions at first instance.

24 Accordingly, the plea raised by the Italian Government is admissible.

25 As to the substance of the plea of inadmissibility, it must be noted that the Court deduced from Article 130(3) of the Act concerning the conditions of accession of the Hellenic Republic and the adjustments to the Treaties (OJ 1979 L 291, p. 17) that when 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 that Member State as well as on the undertakings concerned, and concluded therefrom that those undertakings were to be considered as individually concerned by that decision (see *Piraiki-Patraiki*, paragraphs 28 and 31).

26 As the Court of First Instance rightly observed in paragraphs 68 and 70 of the contested judgment, the reasoning in *Piraiki-Patraiki* is also applicable in the present case, since the terms of Article 109(2) of the OCT Decision are substantially the same as those of Article 130(3) of the Act concerning the conditions of accession of the Hellenic Republic and the adjustments to the Treaties and the purpose of those provisions is similar, namely to define the level at which the Community may adopt safeguard measures.

27 Although that judgment concerned a decision which, unlike the OCT Decision which is addressed to all the Member States, was addressed to a single Member State, the Italian Government's argument that paragraph 32 of the judgment in Case C-209/94 P *Buralux and Others* v *Council* [1996] ECR I-615 rules out the application in the present case of the Court's reasoning in *Piraiki-Patraiki* cannot be accepted.

28 The judicial protection which an individual enjoys under the fourth paragraph of Article 173 of the Treaty cannot depend on whether the contested decision is addressed to one Member State or to several, but must be established on the basis of the specific situation of that individual compared to all other persons concerned. Unlike the *Buralux* case, which concerned only persons envisaged generally, the present case concerns clearly identifiable persons. The Court of First Instance was

therefore entitled to consider, in paragraph 77 of the contested judgment, that what matters for identifying the persons individually concerned by a decision introducing a safeguard measure is the protection enjoyed under Community law by the country or territory, and by the undertakings concerned, against which the safeguard measure is adopted.

29 As to the Italian Government's argument that the Court of First Instance erred in holding in paragraph 75 of the contested judgment that the evidence available to the Commission before the adoption of the contested decisions was specific and precise, given that at least two of the appellants had cargoes of rice in transit to the Community at the time when the first decision was adopted, that argument is based on questions of fact which are not amenable to review by this Court. The Court of First Instance has exclusive jurisdiction to find the facts, save where a substantive inaccuracy in its findings is attributable to the documents submitted to it, and to appraise those facts. That appraisal thus does not, save where the clear sense of the evidence has been distorted, constitute a point of law which is subject, as such, to review by the Court of Justice (Case C-30/96 P *Abello and Others* v *Commission* [1998] ECR I-377, paragraph 49).

30 It follows from the above that the plea raised by the Italian Government that the application to the Court of First Instance was inadmissible must be rejected.

Substance of the appeal

31 The appellants rely essentially on six pleas in law. They submit to begin with that the Court of First Instance erred in law in deciding that under the second paragraph of Article 136 of the Treaty the Council was entitled to insert into the OCT Decision a safeguard clause authorising restrictions on the freedom to import agricultural products originating in the OCTs. It also erred in law in deciding that the Commission was entitled to conclude that there were difficulties which might cause

a deterioration in the production of Indica rice in the Community. The appellants submit, next, that the minimum price fixed by the second decision went beyond what was strictly necessary. Moreover, the Court of First Instance was wrong, in their opinion, in concluding that the stricter rules on liability relating to legislative acts applied in the present case. In addition, it failed to consider whether there had been a serious breach of Community law, and in assessing the contested decisions wrongly attached decisive importance to a measure of the Netherlands Antilles Government. Finally, they submit that it attached exaggerated importance to the foreseeable nature of the damage.

The first plea

32 The appellants criticise the Court of First Instance, first, for finding that the Council was entitled under the second paragraph of Article 136 of the Treaty to insert into the OCT Decision a safeguard clause allowing restrictions to be imposed on the freedom to import agricultural products originating in the OCTs.

33 This plea is divided into two parts. In the first part, the appellants submit that the Court of First Instance's conclusion is based on an incorrect approach to the origin of Article 109 of the OCT Decision. In their view, the Court was wrong in stating in paragraph 94 of the contested judgment that that article had strengthened the system of association of the OCTs with the European Economic Community by giving agricultural products originating in the OCTs free access to the Community for the first time.

34 On this point, it must be stated that the Court of First Instance rightly considered in paragraph 94 of the contested judgment that a general safeguard clause already existed in the past and could be applied for the first time to agricultural products from the OCTs, formerly subject to special rules, once they had been placed on the same footing as all other products. It was therefore right in considering that

Article 109 of the contested decision is a general safeguard clause, applicable for the first time to agricultural products originating in the OCTs.

35 In the second part of their first plea, the appellants submit that the contested judgment is based on an incorrect assessment of the powers conferred by the second paragraph of Article 136 of the Treaty. In support of this argument, they assert, first, that the principles referred to in that provision concern only those referred to in Part Four of the Treaty, which does not cover all the principles in the Treaty, and, second, that the system of trade between the Member States and the OCTs cannot simply be equated with the existing arrangements with non-member countries not part of the Community; it must in any event be more favourable than those arrangements. The appellants further submit that the Council is not entitled to take implementing decisions under the second paragraph of Article 136 which derogate from the free movement of goods between the Community and the OCTs in the interests of the common agricultural policy, and that safeguard measures may be adopted only under the conditions set out in Article 134 of the Treaty. They also submit that it follows from Part Four of the Treaty and the protocols containing exceptions to the system of association of the OCTs that an exception to the free movement of goods between the Community and the OCTs requires a provision in the Treaty itself. Finally, a general safeguard clause is not compatible with Articles 132(1) and 133(1) of the Treaty.

36 Here it must be borne in mind first that, as the Court has already held, association of the OCTs with the Community is to be achieved by a dynamic and progressive process which may necessitate the adoption of a number of measures in order to attain all the objectives mentioned in Article 132 of the Treaty, having regard to the experience acquired through the Council's previous decisions (Case C-310/95 *Road Air* v *Inspecteur der Invoerrechten en Accijnzen* [1997] ECR I-2229, paragraph 40). It follows that although the OCTs are countries and territories which have special links with the Community, they do not, however, form part of the Community, and free movement of goods between the OCTs and the Community does not exist unrestrictedly at this stage, in accordance with Article 132 of the Treaty.

37 It must be pointed out, next, that the second paragraph of Article 136 authorises the Council to adopt decisions concerning the association on the basis of the principles set out in the Treaty. It follows that when the Council adopts OCT decisions under that article, it must take account not only of the principles in Part Four of the Treaty but also of the other principles of Community law, including those relating to the common agricultural policy.

38 That conclusion is, moreover, consistent with Article 3(r) and Article 131 of the Treaty, which provide that the Community is to promote the economic and social development of the OCTs, but without that promotion implying an obligation to give them privileged treatment.

39 Consequently, the Court of First Instance was entitled to conclude that a safeguard clause and its application to agricultural products originating in the OCTs are not excluded in the context of the second paragraph of Article 136 of the Treaty.

40 Moreover, since a safeguard clause does not in any way breach the principles of Part Four of the Treaty by its mere existence, the appellants' argument that such a safeguard clause requires an amendment to the Treaty is unfounded.

41 The argument that safeguard measures may be taken only under the conditions set out in Article 134 of the Treaty must also be rejected. While the Court has held that that provision is intended to apply from the entry into force of the Treaty until the creation of a common customs area (*Road Air*, paragraph 36), Article 134 and the second paragraph of Article 136 pursue different aims, and the interpretation of the latter provision by the Court of First Instance therefore does not call into question the scope of the former provision.

42 The argument based on Article 132(1) of the Treaty cannot be accepted either. As is apparent from its first sentence, that provision confines itself to fixing the objectives of the association of the OCTs by stating that trade with the OCTs is to be placed on the same footing as trade between the Member States (*Road Air*, paragraph 40).

43 With respect, finally, to the argument based on Article 133(1) of the Treaty, it suffices to reply that the abolition of customs duties on entry into the Community of products originating in the OCTs, which is the purpose of that provision, does not exclude the possibility of adopting, on the basis of the second paragraph of Article 136 of the Treaty, a safeguard clause which limits imports only exceptionally, partially and temporarily.

44 It follows that the appellants' first plea must be rejected.

The second plea

45 In their second plea the appellants submit that the Court of First Instance erred in law in holding that the Commission was entitled to conclude that there were difficulties liable to cause a deterioration in Indica rice production in the Community. They submit that, for the Commission to be able to conclude that the conditions for the application of Article 109(1) of the OCT Decision are met, a causal link must be established between imports of Antillean rice and the fall in the price of Community paddy rice, and that in the present case the Court of First Instance was wrong to accept that there was such a link.

46 In support of this complaint, the appellants submit that the Court of First Instance's statement, in paragraph 128 of the contested judgment, that the data on the price of Community paddy rice and on imports of Antillean semi-milled rice allowed the

Commission to conclude that the conditions for the implementation of safeguard measures were satisfied is incomprehensible in the light of the extensive data they supplied in this respect. They submit that the statement of the Court of First Instance in paragraph 131 of the contested judgment that the Commission rightly found that there was a considerable price difference, as regards Community rice, between September 1992 and January 1993 is also unfounded. Finally, they contend that the argument in paragraph 132 of the contested judgment concerning the Poseidom programme and the marketing of rice in Guadeloupe and Martinique cannot as such justify the safeguard measures adopted, as less radical measures would have sufficed.

47 On this point, it must be pointed out to begin with that, contrary to the appellants' submission, Article 109(1) of the OCT Decision does not necessarily require a causal link to be established in the second hypothesis referred to in that article, namely if difficulties arise which may result in a deterioration in a sector of the Community's activity or in a region of the Community. Admittedly, in the first hypothesis referred to in that article, namely if the application of the OCT Decision causes serious disturbances in a sector of the economy of the Community or one or more of its Member States or jeopardises their external financial stability, the existence of a causal link must be established because the purpose of the safeguard measures must be to iron out or reduce the difficulties which have arisen in the sector concerned. In the second hypothesis, on the other hand, it is not a requirement that the difficulties which justify the imposition of a safeguard measure result from the application of the OCT Decision.

48 Next, it must be borne in mind that the Commission has been given a wide discretion in the application of Article 109 of the OCT Decision. In cases involving such a discretion, the Court of First Instance must restrict itself to considering whether the exercise of that discretion contains a manifest error or constitutes a misuse of power or whether the Commission clearly exceeded the bounds of its discretion (*Piraiki-Patraiki*, paragraph 40).

49 In this respect, it follows from paragraphs 124 to 127 of the contested judgment that the Court of First Instance duly considered whether the Commission had made a manifest error of assessment in its examination of the relationship between the imports of Antillean semi-milled rice and the fall in the price of Community rice, and concluded in paragraph 128 that a relationship of concomitance had been established between the imports and the fall in the price of Community rice. The Court of First Instance was thus right in considering that the conditions for the application of Article 109(1) of the OCT Decision were satisfied.

50 The second plea must therefore be rejected.

The third plea

51 In third place, the appellants criticise the Court of First Instance for holding, in paragraph 151 of the contested judgment, that the minimum price fixed by Decision 93/211 did not exceed the limits of what was strictly necessary within the meaning of Article 109(2) of the OCT Decision. They submit that it was not necessary to place rice from the Netherlands Antilles in an unfavourable competitive position in relation to Community rice, which limited their export possibilities to the 8 400 tonnes referred to by the Court of First Instance in paragraph 150 of the contested judgment and forced them to store 16 000 tonnes of rice which could not be sold.

52 First, as regards the principle of proportionality, it must be pointed out that, in order to determine whether a provision of Community law is in conformity with that principle, it must be ascertained whether the means which the provision applies are suitable for attaining the objective pursued and do not go beyond what is necessary in order to do so.

53 Next, it must be noted that the objective of Decision 93/211, as appears from the third recital in its preamble, is to fix a threshold price for imports of Antillean rice which least disturbs the functioning of the association of the OCTs with the Community, while remedying the difficulties which have appeared in the Community market.

54 In that context, first, it cannot be maintained, as the appellants claim, that such a safeguard measure could not place rice from the Netherlands Antilles in an unfavourable competitive position in relation to Community rice. It follows from the very essence of a safeguard measure that some imported products will be subjected to rules which are unfavourable in comparison with Community products.

55 Second, the findings of fact made by the Court of First Instance with respect to the determination of rice prices cannot be examined on appeal. In those circumstances and having regard to the considerations set out above, the plea cannot be upheld.

The fourth plea

56 The appellants submit in their fourth plea that, in paragraphs 180 to 186 of the contested judgment, the Court of First Instance misdirected itself on the seriousness of the fault required for the non-contractual liability of the Community to be incurred. They submit, principally, that decisions cannot be of a legislative nature for the purposes of Article 215 of the EC Treaty as interpreted by the Court of Justice, and, in the alternative, that even if the contested decisions were of such a nature, that is of no importance with respect to them in that they are individually concerned. In the further alternative, they submit that, in any event, more rigorous criteria of liability should not be resorted to on the ground that decisions are contested by victims who are individually concerned by them.

57 It must be noted, first, that it is settled case-law that in a legislative context involving the exercise of a wide discretion, the Community cannot incur liability unless the institution concerned has manifestly and gravely disregarded the limits on the exercise of its powers (see, to that effect, Joined Cases 83/76, 94/76, 4/77, 15/77 and 40/77 *HNL and Others* v *Council and Commission* [1978] ECR 1209, paragraphs 4 and 6, and Case C-152/88 *Sofrimport* v *Commission* [1990] ECR I-2477, paragraph 25).

58 Second, as is clear from paragraphs 177 and 180 of the contested judgment, the Court of First Instance proceeded on the basis that the Commission enjoyed a wide discretion in the field of economic policy, which means that the stricter criterion of liability must be applied, namely the requirement of a sufficiently serious breach of a superior rule of law for the protection of the individual.

59 It follows that the Court of First Instance correctly applied the stricter criterion of liability.

60 The fact that the contested measure is in the form of a decision, and hence in principle capable of being the subject of an action for annulment, is not sufficient to preclude its being legislative in character. In the context of an action for damages, that character depends on the nature of the measure in question, not its form (see, to that effect, the *Sofrimport* judgment).

61 Consequently, the appellants' principal argument is unfounded.

62 As to the appellants' alternative arguments, it must be stated that the fact that they are individually concerned has no effect on the character of the measure in the

context of an action for damages, since that action is an independent remedy (see *Sofrimport*).

63 The fourth plea is therefore unfounded.

The fifth plea

64 The appellants' fifth plea concerns, first, the alleged failure of the Court of First Instance to consider whether there had been a sufficiently serious breach of Community law, and, second, the importance attached by that Court to a measure of the Netherlands Antilles Government. The plea thus falls into two parts.

65 First, the appellants submit that grave and manifest disregard by the Commission of the limits on the exercise of its powers and sufficiently serious breach of a superior rule of law are alternative, not cumulative, criteria of liability, whereas in paragraph 194 of the contested judgment the Court of First Instance wrongly omitted to consider those two points. They submit that if the Commission was in breach of Community law, that was necessarily a sufficiently serious breach in the sense contemplated in the special conditions under Article 215 of the Treaty, and the Court of First Instance therefore could not confine itself, as it did, to finding that the Commission had not gravely and manifestly disregarded the limits of its powers.

66 Second, the appellants submit that, contrary to what the Court of First Instance held in paragraph 194 of the contested judgment, the existence of the measure taken by the Minister for Finance of the Netherlands Antilles cannot release the Commission from its obligation to ensure that the principle of proportionality is complied with, since failure to comply with that principle entails manifest and grave disregard of the limits of its powers.

67 As regards the first part of this plea, contrary to the appellants' argument, a breach of Community law by an institution in a field in which it enjoys a wide discretion is not in itself sufficient for the non-contractual liability of the Community to be incurred, under the second paragraph of Article 215 of the Treaty, in respect of damage suffered by individuals (see, to that effect, *HNL and Others*, paragraphs 4 and 6). Such an approach would render meaningless the criterion for establishing non-contractual liability and have the effect in the present case of disregarding the autonomous nature of the two remedies available to individuals in the event of an infringement of Community law.

68 Moreover, this Court has consistently held that grave and manifest disregard by the Commission of the limits of its powers and sufficiently serious breach of a superior rule of law must, in the context of an action for damages, be regarded as cumulative criteria (see, to that effect, Case 20/88 *Roquette Frères* v *Commission* [1989] ECR 1553, paragraph 23).

69 As regards the second part of this plea, although the Commission made an error of assessment in a complex economic situation by referring in good faith, in the contested decision, to the price fixed by the competent authorities of the Netherlands Antilles, it does not appear, as the Court of First Instance rightly held in paragraph 194 of the contested judgment, that it manifestly and gravely disregarded the limits of its powers.

70 The fifth plea is accordingly unfounded.

The sixth plea

71 The appellants submit in their sixth plea that the Court of First Instance misinterpreted Community law by holding in paragraph 207 of the contested judgment that, notwithstanding the damage they suffered as a result of the first decision, the Community could not in any event incur liability, because that damage was foreseeable.

72 It must be pointed out that, as appears clearly from paragraph 207 itself, the Court of First Instance addressed the question of foreseeability of the damage only as a subsidiary point in support of the conclusion it had already reached, and that such a point therefore plays no decisive part in its reasoning.

73 The Court of First Instance found, in paragraphs 204 and 205 of the contested judgment, that it had not been shown that the damage alleged by the appellants was caused by the contested decision, and, in paragraph 206, that it was not even apparent that the appellants had suffered harmful effects on their economic interests, in view of the improvement of market conditions.

74 Since the appellants have not put forward any plea challenging the principal reasoning in paragraphs 204 to 206 of the contested judgment, there is no need to consider the plea in which they challenge the subsidiary reasoning in paragraph 207 of that judgment.

75 It follows from all the foregoing that the appeal brought by the appellants must be dismissed.

Costs

76 Under Article 69(2) of the Rules of Procedure, which apply to the appeal procedure by virtue of Article 118, the unsuccessful party is to be ordered to pay the costs, if they are applied for in the successful party's pleadings. Under the first subparagraph of Article 69(4), Member States which intervene in the proceedings are to bear their

own costs. Since the appellants have been unsuccessful and the Commission has applied for costs, they must be ordered to pay the costs. The French Republic and the Italian Republic must bear their own costs.

On those grounds,

THE COURT (Sixth Chamber),

hereby:

1. Dismisses the appeal;

2. Orders Antillean Rice Mills NV, European Rice Brokers AVV and Guyana Investments AVV to pay the costs;

3. Orders the French Republic and the Italian Republic to bear their own costs.

Kapteyn Mancini Murray

Ragnemalm Ioannou

Delivered in open court in Luxembourg on 11 February 1999.

R. Grass P. J. G. Kapteyn

Registrar President of the Sixth Chamber