ORDER OF THE COURT OF FIRST INSTANCE (Third Chamber)
8 July 1999 *

In Case T-12/96,

Area Cova SA, a company incorporated under Spanish law, established in Vigo, Spain,

Armadora José Pereira SA, a company incorporated under Spanish law, established in Vigo,

Armadores Pesqueros de Aldán SA, a company incorporated under Spanish law, established in Vigo,

Centropesca SA, a company incorporated under Spanish law, established in Vigo,

Chymar SA, a company incorporated under Spanish law, established in Vigo,

Eloymar SA, a company incorporated under Spanish law, established in Estribela, Spain,

Exfaumar SA, a company incorporated under Spanish law, established in Bueu, Spain,

Farpespan SA, a company incorporated under Spanish law, established in Moaña, Spain,

Freiremar SA, a company incorporated under Spanish law, established in Vigo,

Hermanos Gandón SA, a company incorporated under Spanish law, established in Cangas, Spain,

Heroya SA, a company incorporated under Spanish law, established in Vigo,

Hiopesca SA, a company incorporated under Spanish law, established in Vigo,

José Pereira e Hijos SA, a company incorporated under Spanish law, established in Vigo,

Juana Oya Pérez, resident in Marín, Spain,

Manuel Nores González, resident in Marín,

Moradiña SA, a company incorporated under Spanish law, established in Cangas,

Navales Cerdeiras SL, a company incorporated under Spanish law, established in Camariñas, Spain,

Nugago Pesca SA, a company incorporated under Spanish law, established in Bueu,

Pesquera Austral SA, a company incorporated under Spanish law, established in Vigo,

* Language of the case: Spanish.

Pescaberbés SA, a company incorporated under Spanish law, established in Vigo,

Pesquerías Bígaro Narval SA, a company incorporated under Spanish law, established in Vigo,

Pesquera Cíes SA, a company incorporated under Spanish law, established in Vigo,

Pesca Herculina SA, a company incorporated under Spanish law, established in Vigo,

Pesquera Inter SA, a company incorporated under Spanish law, established in Cangas,

Pesquerías Marinenses SA, a company incorporated under Spanish law, established in Marín,

Pesquerías Tara SA, a company incorporated under Spanish law, established in Cangas,

Pesquera Vaqueiro SA, a company incorporated under Spanish law, established in Vigo,

Sotelo Dios SA, a company incorporated under Spanish law, established in Vigo,

Asociación Nacional de Armadores de Buques Congeladores de Pesca de Merluza (Anamer), an association constituted under Spanish law, established in Vigo,

Asociación Nacional de Armadores de Buques Congeladores de Pesquerías Varias (Anavar), an association constituted under Spanish law, established in Vigo,

Asociación de Sociedades Pesqueras Españolas (ASPE), an association constituted under Spanish law, established in Vigo,

represented by Antonio Creus Carreras, of the Barcelona Bar, Eva Contreras Ynzenga, of the Madrid Bar, and Marta Ventura Arasanz, of the Barcelona Bar, Cabinet Cuatrecasas, 78 Avenue d'Auderghem, Brussels,

applicants,

v

Council of the European Union, represented by John Carbery, Legal Adviser, Germán-Luis Ramos Ruano, of its Legal Service, and Ramón Torrent, Director in the same Service, acting as Agents, with an address for service in Luxembourg at the office of Alessandro Morbilli, Director-General of the Legal Affairs Directorate of the European Investment Bank, Kirchberg,

and

Commission of the European Communities, represented by Thomas Van Rijn, Legal Adviser, and Juan Guerra Fernandez, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

defendants,

APPLICATION for the annulment of Commission Regulation (EC) No 2565/95 of 30 October 1995 concerning the stopping of fishing for Greenland halibut by vessels flying the flag of a Member State (OJ 1995 L 262, p. 27),

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

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

Registrar: H. Jung,

makes the following

Order

Facts

1 The Convention on Future Multilateral Cooperation in the North-West Atlantic Fisheries ('the NAFO Convention'), approved by Council Regulation (EEC)

No 3179/78 of 28 December 1978 concerning the conclusion by the European Economic Community of the Convention on Future Multilateral Cooperation in the North-West Atlantic Fisheries (OJ 1978 L 378, p. 1), is designed in particular to promote the conservation, optimum utilisation and rational management of the fishery resources of the North-West Atlantic area as defined in Article I.1 of the Convention.

2 The parties to the NAFO Convention, which include the Community, may, in particular, limit catches of certain species in certain parts of the Regulatory Area. For that purpose, the parties set a total allowable catch ('TAC') and then determine the share of the catch available to each of them, including the Community. Finally, the Council allocates the share available to the Community — the Community quota — among the Member States in accordance with Article 8(4) of Council Regulation (EEC) No 3760/92 of 20 December 1992 establishing a Community system for fisheries and aquaculture (OJ 1992 L 389, p. 1).

3 In September 1994 the Fisheries Commission of the North-West Atlantic Fisheries Organisation ('NAFO') set a TAC for Greenland halibut for the first time. It amounted to 27 000 tonnes and applied in 1995 in NAFO sub-areas 2 and 3.

4 Council Regulation (EC) No 3366/94 of 20 December 1994 laying down for 1995 certain conservation and management measures for fishery resources in the Regulatory Area as defined in the Convention on Future Multilateral Cooperation in the North-West Atlantic Fisheries (OJ 1994 L 363, p. 60) recorded, in the seventh recital in its preamble, that the maximum catch level for Greenland halibut in NAFO sub-areas 2 and 3 in 1995 was as yet unallocated among NAFO Contracting Parties, that the NAFO Fisheries Commission was to convene a

meeting to decide the allocation and that catches of Greenland halibut would be authorised in 1995 and counted against the quotas decided for Member States.

5 At a special meeting held from 30 January to 1 February 1995, the NAFO Fisheries Commission decided to make available to the Community a share of the TAC for Greenland halibut for 1995 amounting to 3 400 tonnes.

6 The Community considered that allocation to be insufficient and, through the Council, raised an objection on 3 March 1995 pursuant to Article XII.1 of the NAFO Convention.

7 On the same day, apparently in reaction to the submission of that objection by the Council, Canada amended its legislation in order to be able to inspect vessels beyond its exclusive economic zone and on 9 March 1995 the Canadian authorities, on the basis of that freshly amended legislation, boarded the vessel *Estai* belonging to the applicant José Pereira e Hijos SA, which was fishing in the NAFO Regulatory Area.

8 By Regulation (EC) No 850/95 of 6 April 1995 amending Regulation No 3366/94 (OJ 1995 L 86, p. 1), the Council established an autonomous Community quota limiting Community catches of Greenland halibut in NAFO sub-areas 2 and 3 for 1995 to 18 630 tonnes. The regulation made it clear that '... [the] autonomous quota should respect the conservation measure established for this resource, namely, the TAC of 27 000 tonnes... [and that] it [was] necessary to provide for the possibility of stopping the fishery once the TAC [had] been reached, even before the autonomous quota [was] exhausted'.

9 In order to end the diplomatic dispute between the Community and the Canadian Government arising from the matters described in paragraphs 6 and 7 above, on 20 April 1995 those parties signed an agreement, constituted in the form of an agreed minute, an exchange of letters, an exchange of notes and the annexes thereto, on fisheries in the context of the NAFO Convention, approved by

Council Decision 95/586/EEC of 22 December 1995 (OJ 1995 L 327, p. 35; 'the bilateral fisheries agreement').

10 In accordance with the bilateral fisheries agreement, the Council adopted Regulation (EC) No 1761/95 of 29 June 1995 amending, for the second time, Regulation No 3366/94 (OJ 1995 L 171, p. 1), which established for 1995, with effect from 16 April 1995, a Community quota of 5 013 tonnes for catches of Greenland halibut in NAFO sub-areas 2 and 3.

11 By Regulation (EC) No 2565/95 of 30 October 1995 concerning the stopping of fishing for Greenland halibut by vessels flying the flag of a Member State (OJ 1995 L 262, p. 27; 'Regulation No 2565/95' or 'the contested regulation'), the Commission recorded that the Community quota for 1995 established by Regulation No 1761/95 was exhausted and therefore, in accordance with Article 21(3) of Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy (OJ 1993 L 261, p. 1), declared a halt to fishing for Greenland halibut in NAFO sub-areas 2 and 3.

Procedure

12 It was in those circumstances that, by application lodged at the Registry of the Court of First Instance on 25 January 1996, the applicants brought an action for annulment of Regulation No 2565/95, in which they pleaded that Regulation No 1761/95 and the bilateral fisheries agreement were unlawful.

13 By separate documents, lodged at the Court Registry on 26 February 1996 and 1 March 1996 respectively, the Council and the Commission raised objections of inadmissibility in accordance with Article 114 of the Rules of Procedure.

14 By order of the Court of First Instance of 29 May 1997, the decision on the objections of inadmissibility raised by the Council and the Commission was reserved for final judgment.

15 In the course of the written procedure, the applicants, by document lodged at the Registry on 27 October 1997, proposed the adoption of 27 measures of organisation of procedure, comprising 13 questions to be put to the Commission, nine to the Council and one to the Office for Official Publications of the European Communities, the hearing of one witness and the commissioning of three experts' reports.

16 By decision of 21 September 1998 the Judge-Rapporteur was attached to the Third Chamber, to which the case was consequently assigned.

17 By letter lodged at the Court Registry on 18 December 1998, the applicants withdrew their request for 19 of the proposed measures of organisation of procedure.

Forms of order sought

18 The applicants claim that the Court should:

— annul Regulation No 2565/95;

— declare Regulation No 1761/95 inapplicable in so far as it set, for 1995, the Community quota for catches of Greenland halibut in NAFO sub-areas 2 and 3 at 5 013 tonnes, thus altering the autonomous Community quota of 18 630

tonnes for catches of Greenland halibut which had been established by Regulation No 850/95;

— declare the bilateral fisheries agreement between the Community and the Canadian Government inapplicable in so far as it refers to the establishment of a Community quota for catches of Greenland halibut of 5 013 tonnes from 16 April 1995, which is lower than the autonomous Community quota for catches of Greenland halibut of 18 630 tonnes which had been established by Regulation No 850/95;

— adopt the measures of organisation of procedure which they have proposed;

— order the Council to pay the costs.

19 The Council contends that the Court should:

— declare the action inadmissible;

— in the alternative, dismiss the action;

— order the applicants to pay the costs.

20 The Commission contends that the Court should:

— declare the action inadmissible;

— in the alternative, dismiss the action;

— order the applicants to pay the costs.

Admissibility

21 Under Article 113 of the Rules of Procedure, the Court, giving its decision in accordance with Article 114(3) and (4), may at any time, even of its own motion, consider whether there exists any absolute bar to proceeding with an action, including, in accordance with settled case-law, the conditions governing the admissibility of an action which are laid down in the fourth paragraph of Article 173 of the EC Treaty (now, after amendment, the fourth paragraph of Article 230 EC) (judgments in Case C-313/90 *CIRFS and Others* v *Commission* [1993] ECR I-1125, paragraph 23, and in Case T-239/94 *EISA* v *Commission* [1997] ECR II-1839, paragraph 26; orders in Case T-100/94 *Michailidis and Others* v *Commission* [1998] ECR II-3115, paragraph 49, and in Case T-114/96 *Biscuiterie-Confiserie LOR and Confiserie du Tech* v *Commission* [1999] ECR II-913, paragraph 24).

22 In the present case, the Court considers that it has sufficient information from the documents produced and the explanations provided by the parties during the written procedure. Since the file contains all the information necessary for a decision, there is no need to open the oral procedure or to adopt the measures of inquiry sought, which in any event essentially relate to the substance of the case.

23 The action has been brought by 28 boat-owners and three associations representing the collective interests of boat-owners. The Court will consider in turn the admissibility of the action with regard to each of those two groups of applicants.

Admissibility of the action in so far as it is brought by the 28 boat-owners

24 The fourth paragraph of Article 173 of the Treaty gives individuals the right to challenge, *inter alia*, any decision which, although in the form of a regulation, is of direct and individual concern to them. The particular objective of that provision is to prevent the Community institutions from being able, merely by choosing the form of a regulation, to preclude an individual from bringing an action against a decision which concerns him directly and individually and thus to make it clear that the nature of a measure cannot be changed by the form chosen (see the judgment in Joined Cases 789/79 and 790/79 *Calpak and Società Emiliana Lavorazione Frutta* v *Commission* [1980] ECR 1949, paragraph 7, and the order in Case T-298/94 *Roquette Frères* v *Council* [1996] ECR II-1531, paragraph 35).

25 The test for distinguishing between a regulation and a decision is whether or not the measure in question is of general application, and it is applied by assessing the nature of the contested measure and in particular the legal effects which it is intended to produce or actually produces (see the judgment in Case 26/86 *Deutz und Geldermann* v *Council* [1987] ECR 941, paragraph 7, and the orders in Case C-10/95 P *Asocarne* v *Council* [1995] ECR I-4149, paragraph 28, and in Case C-87/95 P *CNPAAP* v *Council* [1996] ECR I-2003, paragraph 33).

26 The applicants submit that the contested regulation should be regarded as a bundle of individual decisions addressed to them as members of a closed and limited class of concerned economic operators.

27 The Court notes that the contested regulation records the exhaustion of the Community quota limiting the catches of Greenland halibut in NAFO sub-areas 2 and 3 available to the Member States for 1995. It thus applies without distinction to every vessel flying the flag of a Member State or registered in a Member State which fishes, or might fish, for Greenland halibut in those defined areas.

28 The applicants argue that it was in practice impossible for boat-owners other than those who, like the applicants, fished for Greenland halibut in those areas before the contested regulation entered into force to join them in 1995. First, that activity requires specially fitted-out vessels. Secondly, before boat-owners can engage in it they must comply with administrative formalities and hold authorisations and licences.

29 However, the facts relied on by the applicants cannot be regarded as factors which absolutely and definitively restrict the application of the contested regulation solely to boat-owners who fished for Greenland halibut in the areas at issue before its entry into force. The existence of technical requirements and administrative formalities does not mean that boat-owners who had not yet engaged in that activity could not have contemplated engaging in it during the 1995 fishing year and thus have been affected by the contested regulation.

30 Nor can the applicants establish that they form part of a closed class of persons to whom the contested regulation was addressed by relying on the fact that at the beginning of the 1990s they discovered a shoal of Greenland halibut localised in those areas and that since then they have constituted the sole Community fleet pursuing its activity there. It is clear from the documents before the Court that, apart from the applicants, an undetermined number of boat-owners of Portuguese nationality also took part in that fishing, albeit to a lesser extent, during the 1995 fishing year.

31 Finally, it cannot be ruled out that the class of persons concerned by the contested regulation is even more extensive. The potential interest, at the time of the adoption of the contested regulation, of boat-owners other than those within the Spanish and Portuguese fleets in fishing for Greenland halibut in the NAFO Regulatory Area is demonstrated by the fact that, shortly after that regulation was adopted, Council Regulation (EC) No 3090/95 of 22 December 1995 laying down for 1996 certain conservation and management measures for fishery resources in the Regulatory Area as defined in the Convention on Future Multilateral Cooperation in the North West Atlantic Fisheries (OJ 1995 L 330,

p. 108) reserved a catch quota of Greenland halibut in the NAFO Regulatory Area for 1996 not only for the Spanish and Portuguese fleets but also for the German fleet.

32 In any event, the general application and, therefore, the legislative nature of a measure are not called into question by the possibility of determining more or less precisely the number or even the identity of the persons to whom it applies at a given time, as long as it is established that it applies to them by virtue of an objective legal or factual situation defined by the measure in question (see, for example, Case C-264/91 *Abertal and Others* v *Council* [1993] ECR I-3265, paragraph 16, and Case C-209/94 P *Buralux and Others* v *Council* [1996] ECR I-615, paragraph 24).

33 In the present case, the applicants are affected by the contested regulation by virtue of a situation which the regulation determines objectively, that is to say as operators of vessels flying the flag of a Member State who are liable to fish for Greenland halibut in NAFO sub-areas 2 and 3.

34 That conclusion is not called into question by the applicants' objection that the contested regulation was adopted for reasons of commercial policy and diplomacy and not because of the need to ensure that fishery resources are conserved and managed rationally. The question whether a measure is legislative in character is not determined by the scientific or political nature of the grounds which led to its adoption: it is legislative if, as in the present case, its sphere of application is defined in a general and abstract, and therefore objective, manner.

35 It follows that the contested measure is of general application and constitutes a regulation within the meaning of Article 189 of the EC Treaty (now Article 249 EC).

36 However, it has been held that in certain circumstances a provision of a measure of general application may be of individual concern to certain of the economic

operators concerned (Case C-358/89 *Extramet Industrie* v *Council* [1991] ECR I-2501, paragraph 13, and Case C-309/89 *Codorniu* v *Council* [1994] ECR I-1853, paragraph 19). In those circumstances, a Community measure could be of a legislative nature and at the same time, *vis-à-vis* some of the economic operators concerned, in the nature of a decision (Joined Cases T-481/93 and T-484/93 *Exporteurs in Levende Varkens and Others* v *Commission* [1995] ECR II-2941, paragraph 50). That is the case where the provision at issue affects a natural or legal person by reason of certain attributes which are peculiar to him or by reason of circumstances in which he is differentiated from all other persons (*Codorniu*, cited above, paragraph 20).

37 In the light of that case-law, it is necessary to establish whether, in the present case, the contested regulation is of concern to the applicants by reason of certain attributes which are peculiar to them or whether there are circumstances which differentiate them, having regard to that regulation, from all the other operators to whom it may apply.

38 The applicants put forward six arguments.

39 They submit, first, that when the Community authorities adopted the contested measure they were obliged to take account of their particular circumstances.

40 It is true that the Court of Justice and the Court of First Instance have declared actions for annulment of a measure of a legislative nature to be admissible where an overriding provision of law required the author of the measure to take into account the applicant's particular circumstances (see Case 11/82 *Piraiki-Patraiki and Others* v *Commission* [1985] ECR 207, paragraphs 11 to 32, Case C-152/88 *Sofrimport* v *Commission* [1990] ECR I-2477, paragraphs 11, 12 and 13, Joined

Cases T-480/93 and T-483/93 *Antillean Rice Mills and Others* v *Commission* [1995] ECR II-2305, paragraphs 67 to 78, and Case T-135/96 *UEAPME* v *Council* [1998] ECR II-2335, paragraph 90).

41 In the present case, the applicants contend that Article 39 of the EC Treaty (now Article 33 EC) and also Articles 2(1) and 11 of Regulation No 3760/92 give rise to that obligation.

42 Article 39 of the Treaty defines the objectives of the common agricultural policy. Article 2(1) of Regulation No 3760/92 sets out the general objectives of the common fisheries policy. It refers to the need to take into account, in addition to the needs of consumers, those of producers. Article 11 of that regulation establishes the procedure under which the Council is to set the objectives and detailed rules for restructuring the Community fisheries sector with a view to achieving a balance on a sustainable basis between resources and their exploitation. This provision also states that such restructuring is to take account on a case-by-case basis of possible economic and social consequences and of the specific nature of the various fisheries regions.

43 The Court finds, first of all, that this last provision is irrelevant here since the contested regulation does not contain objectives and detailed rules for restructuring the Community fisheries sector set by the Council on a multiannual basis, but halts fishing for Greenland halibut in NAFO sub-areas 2 and 3 for 1995 as a result of the exhaustion of the volume of catches available to the Community.

44 Nor, given their very general nature, are the three provisions cited by the applicants capable of establishing a specific obligation on the authors of the contested regulation to take account in a particular way of their circumstances, as opposed to those of any other person concerned by that measure.

45 The applicants also maintain that traditional fishing rights and the principle of relative stability oblige the Community authorities to take account of their particular circumstances.

46 They refer first to the existence of traditional fishing rights of a customary nature, resulting from the development by Spanish boat-owners of fishing for Greenland halibut in the NAFO Regulatory Area from the beginning of the 1990s. They rely in particular on Article XI.4 of the NAFO Convention, which provides:

'Proposals adopted by the [NAFO Fisheries] Commission for the allocation of catches in the Regulatory Area shall take into account the interests of Commission members whose vessels have traditionally fished within that Area, and, in the allocation of catches from the Grand Banks and Flemish Cap, Commission members shall give special consideration to the Contracting Party whose coastal communities are primarily dependent on fishing for stocks related to these fishing banks and which has undertaken extensive efforts to ensure the conservation of such stocks...'.

47 Regardless of whether, first, a consistent practice over only a few years can give rise to traditional fishing rights, second, those rights can specifically cover the catch of a given species, and third, the practice giving rise to those customary rights has been engaged in by each of the applicants considered separately, it is sufficient to state that those rights would, in any event, have been acquired only for the benefit of States and, so far as concerns Article XI.4 of the NAFO Convention, for the benefit of the Community, to the exclusion of individual boat-owners. Furthermore, the reference to the '[NAFO Fisheries] Commission members whose vessels have traditionally fished' in the NAFO Regulatory Area does not amount to acknowledgment of traditional fishing rights for the benefit

of the members of that commission, including the Community, but a criterion to take into account when allocating catches.

48 The applicants then rely on the principle of relative stability.

49 The Court notes that this principle, laid down in Article 8(4) of Regulation No 3760/92, is intended to ensure for each Member State a share of the Community's TACs, determined essentially on the basis of the catches from which traditional fishing activities, the local populations dependent on fisheries and related industries of that Member State benefited before the quota system was established (Case C-4/96 *NIFPO and Northern Ireland Fishermen's Federation* v *Department of Agriculture for Northern Ireland* [1998] ECR I-681, paragraph 47).

50 It follows that individual boat-owners cannot plead a right deriving from the application of that principle. Moreover, the principle relates only to the allocation among the various Member States of the volume of catches available to the Community, for each of the stocks of fish considered (Case C-405/92 *Mondiet* v *Armements Islais* [1993] ECR I-6133, paragraph 50). The contested regulation does not allocate the volume of catches available to the Community among the Member States but halts fishing following the exhaustion of that volume.

51 Accordingly, the first argument must be rejected in its entirety.

52 The applicants submit, second, that they are individually concerned because, when the contested regulation was adopted, the Community authorities had some knowledge of their particular circumstances.

53 This argument is without merit. The fact that the institution which is the author of a measure is acquainted with the persons concerned by it may admittedly, in some cases, be the consequence of the institution's obligation to take account of their particular circumstances, but it is not in itself the source of that obligation. It therefore cannot be, in itself, regardless of whether there is a concomitant obligation of that kind, a factor which distinguishes a person individually. It has been found above that, in the present case, the applicants could not invoke any obligation on the author of the contested regulation to take account of their particular circumstances.

54 The second argument must therefore be rejected.

55 The applicants submit, third, that the contested regulation is the fruit of a diplomatic dispute between Canada and the Community, caused indirectly by the fishing for Greenland halibut undertaken by the applicants in the NAFO Regulatory Area and directly by the boarding of the vessel *Estai*, owned by one of the applicants, and the harassment of other vessels of the applicants by the Canadian authorities.

56 Those past events, which, moreover, affect only some of the applicants, are not capable of distinguishing their circumstances, so far as concerns the effects of the contested regulation, from those of any other person concerned by the regulation.

57 The third argument must therefore be rejected.

58 Fourth, the applicants plead their participation in 1994, as advisers of the Commission, in the negotiations preceding the adoption by the NAFO Fisheries Commission of a TAC for Greenland halibut.

59 It is clear from the case-law that the fact that a person is involved in some way or other in the procedure leading to the adoption of a Community measure is capable of distinguishing that person individually in relation to the measure in question only if the applicable Community legislation grants him certain procedural guarantees (order in Case T-585/93 *Greenpeace and Others* v *Commission* [1995] ECR II-2205, paragraphs 56 and 63, and judgments in *Exporteurs in Levende Varkens and Others*, cited above, paragraph 55, and in Case T-398/94 *Kahn Scheepvaart* v *Commission* [1996] ECR II-477, paragraphs 48 and 49, and the case-law cited).

60 None of the provisions of the applicable Community legislation requires the Commission, before it finds that the quota is exhausted and declares a halt to fishing in accordance with Article 21(3) of Regulation No 2847/93, to follow a procedure in which persons of the category to which the applicants belong would be entitled to claim possible rights or even to be heard.

61 The fourth argument must therefore be rejected.

62 Fifth, relying on *Extramet Industrie*, cited above, the applicants plead the economic effect of the contested regulation on their interests and, in particular, serious financial losses and the excessive laying-up of their vessels in port.

63 The Court notes that the applicant in *Extramet Industrie* was held to be individually concerned by the regulation imposing an anti-dumping duty because it was the main importer of the product subject to the measure, the end-user of that product and the principal competitor of the Community producer for the processed product.

64 The applicants have not proved that they were in circumstances analogous to those very particular circumstances of the undertaking Extramet Industrie. The effects of an economic nature upon which they rely, namely financial losses and the laying-up of their fleet in port, do not differentiate them appreciably from any other economic operator concerned by the contested regulation.

65 The fifth argument must therefore be rejected.

66 Sixth, referring to the judgment in *Codorniu*, cited above, the applicants plead the prejudice caused by the contested regulation to private rights deserving protection under Community law. In particular, they again refer to the existence of traditional fishing rights and to the Community principle of relative stability.

67 However, the Court has found above (see paragraphs 45 to 50) that the applicants cannot rely in the present case on those rights or on that principle.

68 The present situation therefore differs from that in *Codorniu*, where an undertaking was prevented by the provision at issue from using a trade mark which it had employed for many years and which distinguished it from other

traders. Here the applicants are not in such a situation as regards the contested regulation because it did not adversely affect specific rights held by them (orders in *Asocarne*, cited above, paragraph 43, and in Case C-409/96 P *Sveriges Betodlares and Henrikson* v *Commission* [1997] ECR I-7531, paragraph 41, and in Case T-18/95 *Atlanta and Internationale Fruchtimport Gesellschaft Weichert* v *Commission* [1996] ECR II-1669, paragraph 49).

69 The sixth argument must therefore also be rejected.

70 It follows from all of those considerations that the 28 applicants who are boat-owners cannot be regarded as individually concerned by the contested regulation.

Admissibility of the action in so far as it is brought by the three associations of boat-owners

71 It is settled case-law that an association formed to promote the collective interests of a category of persons cannot be considered to be individually concerned, for the purposes of the fourth paragraph of Article 173 of the Treaty, by a measure affecting the general interests of that category and is therefore not entitled to bring an action for annulment on behalf of its members where they cannot do so individually (Joined Cases 19/62, 20/62, 21/62 and 22/62 *Fédération Nationale de la Boucherie en Gros et du Commerce en Gros des Viandes and Others* v *Council* [1962] ECR 491 and Case C-321/95 P *Greenpeace Council and Others* v *Commission* [1998] ECR I-1651, paragraphs 14 and 29). Since, as has just been found, the applicants who are boat-owners cannot be regarded as individually concerned by the contested regulation, the associations, as representatives of their collective interests, cannot be so concerned either.

72 However, it is apparent from the file that two of the three applicant associations, namely Anamer and Anavar, were present as advisers of the Commission at the meeting of the NAFO Fisheries Commission in Halifax (Canada) in September 1994 at which a TAC was set for Greenland halibut.

73 The presence of particular circumstances, such as the role played by an association in a procedure which has led to the adoption of an act within the meaning of Article 173 of the Treaty, may establish the admissibility of an action brought by an association whose members are not directly and individually concerned by that act, in particular where its position as negotiator has been affected by the act (Joined Cases 67/85, 68/85 and 70/85 *Van der Kooy and Others* v *Commission* [1988] ECR 219, paragraphs 19 to 25, and *CIRFS and Others*, cited above, paragraphs 29 and 30). However, while those two associations, together with associations representing the interests of boat-owners of other Member States, advised the Commission within the framework of the meeting of the NAFO Fisheries Commission which set a TAC for Greenland halibut in the NAFO Regulatory Area, they did not take on the role of negotiator, which is reserved for the NAFO Contracting Parties. Nor does the relevant legislation grant them any right of a procedural nature. Finally, and above all, it does not appear from the material in the file that they participated in any particular capacity, or that they should have done so when the contested regulation was adopted recording the exhaustion of the volume of catches available to the Community out of the TAC applicable to all the NAFO Contracting Parties.

74 It follows from the foregoing considerations that the applicant associations are not individually concerned by the contested measure.

75 Accordingly, none of the applicants satisfies the conditions of admissibility laid down by the fourth paragraph of Article 173 of the Treaty.

76 The applicants also ask the Court, pursuant to Article 184 of the EC Treaty (now Article 241 EC), to declare that Regulation No 1761/95 and the bilateral fisheries agreement between the Community and the Canadian Government are inapplicable.

77 As to that, the possibility afforded by Article 184 of the Treaty of pleading the inapplicability of a regulation or a measure of general application forming the legal basis of the contested implementing measure does not constitute an independent right of action and recourse may be had to it only as an incidental plea. Article 184 may not be invoked in the absence of an independent right of action (Case 33/80 *Albini* v *Council and Commission* [1981] ECR 2141, paragraph 17, Joined Cases 87/77, 130/77, 22/83, 9/84 and 10/84 *Salerno and Others* v *Commission and Council* [1985] ECR 2523, paragraph 36, and Case T-154/94 *CSF and CSME* v *Commission* [1996] ECR II-1377, paragraph 16).

78 In this instance, and assuming that Regulation No 1761/95 and the bilateral fisheries agreement constitute the legal basis for the contested regulation, the action for annulment of that regulation is inadmissible and thus the plea of illegality is inadmissible.

79 The applicants argue, finally, that if the action is inadmissible, the fundamental right of access to justice, laid down in Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, is undermined. They state that, since the contested regulation does not provide for the adoption of any implementing measure by the Member States, there is no remedy available to them for challenging the legality of that regulation before the national courts. Since it was impossible for them to bring the matter before any court at all in

Spain, refusal to grant them standing to bring proceedings before the Court of First Instance would deny them the means of defending themselves against the regulation.

80 It is apparent from the file, first, that a temporary fishing permit must be obtained before boats flying the Spanish flag can fish in the areas of the high sea which are not subject to the national jurisdiction of the Kingdom of Spain, whether or not that activity is regulated by international fishery organisations. Such a permit is valid only for fishing in the area or areas specified on it and during the period authorised. The applicants produced to the Court a copy of a provisional fishing permit for the 1995 fishing year, drawn up on 21 April 1995 in favour of the applicant company José Pereira e Hijos, operating the vessel *Estai*. The permit authorised fishing for Greenland halibut in the NAFO area until the quota was exhausted.

81 It follows that that permit lapsed from the entry into force of the contested regulation recording the exhaustion of the Community quota established by Regulation No 1761/95 and consequently declaring a halt to fishing for Greenland halibut.

82 Even if the other applicants, as is asserted by them, held provisional fishing permits granted not for the period until the quota was exhausted but for the entire year in question, the fact remains that, if not under the Spanish legislation, then in any event by virtue of the primacy of Community law, those permits necessarily lapsed from the entry into force of the contested regulation declaring a halt to fishing.

83 It is also apparent from the file that the provisional fishing permits are granted only on application by the persons concerned and that proceedings can be brought to challenge their refusal in accordance with Spanish administrative law.

84 It follows that, from the moment when their permits lapsed, it was open to the applicants to apply to the Spanish authorities for the issue of new permits authorising them to continue fishing for Greenland halibut in 1995 in the areas concerned notwithstanding the exhaustion of the quota, and if appropriate to bring the matter before the national courts in order to challenge the validity of any decisions made refusing those applications and to obtain the suspension of their operation (Joined Cases C-143/88 and C-92/89 *Zuckerfabrik Süderdithmarschen and Zuckerfabrik Soest* [1991] ECR I-415, paragraphs 16 to 21, and Case C-456/93 *Atlanta Fruchthandelsgesellschaft and Others* v *Bundesamt für Ernährung und Forstwirtschaft* [1995] ECR I-3761). In the course of those proceedings, there would have been nothing to prevent the applicants from putting in issue the validity of the Community legislation on the basis of which any decisions refusing applications would have been adopted and from thus requiring the national court to adjudicate on all the grounds of challenge formulated for that purpose, if necessary after a reference to the Court of Justice for a preliminary ruling as to the validity of the Community legislation (Case C-321/95 P *Greenpeace Council and Others* v *Commission*, cited above, paragraphs 32 and 33, and Case C-73/97 P *France* v *Comafrica and Others* [1999] ECR I-185, paragraph 40).

85 Accordingly, the action must be dismissed as inadmissible.

Costs

86 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 applicants have been unsuccessful and the Council and the

Commission have applied for costs, the applicants must be ordered to bear their own costs and pay those incurred by the Council and the Commission.

On those grounds,

THE COURT OF FIRST INSTANCE (Third Chamber)

hereby orders:

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

2. **The applicants are to bear their own costs and pay those incurred by the Council and the Commission.**

Luxembourg, 8 July 1999.

H. Jung — Registrar

M. Jaeger — President