JUDGMENT OF THE COURT
22 November 2001 *

In Case C-451/98,

Antillean Rice Mills NV, established in Bonaire (Netherlands Antilles), represented by W. Knibbeler and K.J. Defares, advocaten, with an address for service in Luxembourg,

applicant,

supported by

Kingdom of the Netherlands, represented by M.A. Fierstra, acting as Agent,

intervener,

* Language of the case: Dutch.

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

defendant,

supported by

Kingdom of Spain, represented by L. Pérez de Ayala Becerril, acting as Agent, with an address for service in Luxembourg,

French Republic, represented by K. Rispal-Bellanger and C. Chavance, acting as Agents, with an address for service in Luxembourg,

Italian Republic, represented by U. Leanza, acting as Agent, assisted by F. Quadri, avvocatessa dello Stato, with an address for service in Luxembourg,

and

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

interveners,

APPLICATION for the annulment of Council Regulation (EC) No 304/97 of 17 February 1997 introducing safeguard measures in respect of imports of rice originating in the overseas countries and territories (OJ 1997 L 51, p. 1),

THE COURT,

composed of: G.C. Rodríguez Iglesias, President, P. Jann and F. Macken (Rapporteur) (Presidents of Chambers), C. Gulmann, D.A.O. Edward, A. La Pergola, J.-P. Puissochet, L. Sevón, M. Wathelet, R. Schintgen and V. Skouris, Judges,

Advocate General: P. Léger,
Registrar: L. Hewlett, Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on on 7 November 2000, at which Antillean Rice Mills NV was represented by W. Knibbeler, the Kingdom of the Netherlands by M.A. Fierstra, the Council by G. Houttuin, the Kingdom of Spain by N. Díaz Abad, acting as Agent, the Italian Republic by F. Quadri and the Commission by T van Rijn,

after hearing the Opinion of the Advocate General at the sitting on 13 March 2001,

gives the following

Judgment

1 By application lodged at the Registry of the Court of First Instance on 27 February 1997 and registered under the number T-41/97, Antillean Rice Mills NV ('ARM') applied, under the fourth paragraph of Article 173 of the EC Treaty (now, after amendment, the fourth paragraph of Article 230 EC), for the annulment of Council Regulation (EC) No 304/97 of 17 February 1997 introducing safeguard measures in respect of imports of rice originating in the overseas countries and territories (OJ 1997 L 51, p. 1).

2 By order of 15 May 1997 the Kingdom of the Netherlands was granted leave to intervene in support of the forms of order sought by ARM. By orders of 15 May, 5 August and 5 September 1997, the Kingdom of Spain, the French Republic, the Italian Republic and the Commission of the European Communities were granted leave to intervene in support of the Council of the European Union.

3 By application lodged at the Registry of the Court of Justice on 17 March 1997, registered under the number C-110/97, the Kingdom of the Netherlands also applied for the annulment of Regulation No 304/97.

4 Since actions T-41/97 and C-110/97 both sought the annulment of Regulation No 304/97, the Court of First Instance decided, by order of 16 November 1998, pursuant to the third paragraph of Article 47 of the EC Statute of the Court of Justice and Article 80 of the Rules of Procedure of the Court of First Instance, to decline jurisdiction in Case T-41/97 in favour of the Court of Justice.

Legal background

EC Treaty

5 Under Article 3(r) of the EC Treaty (now, after amendment, Article 3(1)(s) EC), the activities of the Community are to include the association of the overseas countries and territories ('the OCTs') in order to increase trade and promote jointly economic and social development.

6 Under Article 227(3) of the EC Treaty (now, after amendment, Article 299(3) EC), the arrangements for association set out in Part Four of the Treaty are to apply to the OCTs included in Annex IV to the Treaty (now, after amendment, Annex II EC). The Netherlands Antilles are included in that annex.

7 Part Four of the EC Treaty, entitled 'Association of the overseas countries and territories' includes in particular, Article 131 (now, after amendment, Article 182 EC), Article 132 (now Article 183 EC), Article 133 (now, after amendment, Article 184 EC), Article 134 (now Article 185 EC) and Article 136 (now, after amendment, Article 187 EC).

8 Pursuant to the second and third paragraphs of Article 131 of the Treaty, the purpose of the association of the OCTs and the European Community is to promote the economic and social development of the OCTs and to establish close economic relations between them and the Community as a whole. In accordance with the principles set out in the Preamble to the EC Treaty, association is to serve primarily to further the interests and prosperity of the inhabitants of the OCTs in order to lead them to the economic, social and cultural development to which they aspire.

9 Article 132(1) of the Treaty provides that Member States are to apply to their trade with the OCTs the same treatment as they accord each other pursuant to the Treaty.

10 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.

11 According to Article 134 of the Treaty, if the level of the duties applicable to goods from a third country on entry into an OCT is liable, when the provisions of Article 133(1) have been applied, to cause deflections of trade to the detriment of any Member State, the latter may request the Commission to propose to the other Member States the measures needed to remedy the situation.

12 Article 136 of the Treaty provides that the Council, acting unanimously, on the basis of experience acquired under the association of the OCTs with the Community and of the principles set out in the Treaty, is to lay down provisions as regards the details of and procedure for the association of the OCTs with the Community.

Decision 91/482/EEC

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

14 Under Article 101(1) of the OCT Decision, products originating in the OCTs are to be imported into the Community free of customs duties and charges having equivalent effect.

15 Under Article 6(2) of Annex II to the OCT Decision, when products wholly obtained in the Community or in the ACP (African, Caribbean and Pacific) States undergo working or processing in the OCTs, they are to be considered to have been wholly obtained in the OCTs.

16 By way of derogation from the principle established in Article 101(1), Article 109(1) of the OCT Decision empowers the Commission to adopt safeguard measures '[i]f, as a result of the application of [that] decision, serious disturbances occur in a sector of the economy of the Community or one or more of its Member States, or their external financial stability is jeopardised, or if difficulties arise which may result in a deterioration in a sector of the Community's activity or in a region of the Community'.

17 Under Article 109(2), for the purpose of implementing paragraph 1, priority is to be given to such measures as would least disturb the functioning of the association and the Community. Those measures are not to exceed the limits of what is strictly necessary to remedy the difficulties that have arisen.

18 Pursuant to Article 1(5) and (7) of Annex IV to the OCT Decision, any Member State may refer the Commission's decision introducing safeguard measures to the Council within 10 working days of receiving notification of the decision. In such a case the Council, acting by a qualified majority, may adopt a different decision within 21 working days.

Regulation (EC) No 21/97

19 On 29 November and 10 December 1996, the Italian and Spanish Governments requested the Commission to introduce safeguard measures in respect of rice originating in the OCTs.

20 Pursuant to Article 109 of the OCT Decision the Commission adopted Regulation (EC) No 21/97 of 8 January 1997 introducing safeguard measures in respect of imports of rice originating in the overseas countries and territories (OJ 1997 L 5, p. 24).

21 Article 1(1) of Regulation No 21/97 introduced a tariff quota allowing the import into the Community of rice originating in the OCTs falling within CN code 1006 exempt from customs duties up to a limit of 4 594 tonnes for rice originating in Montserrat, 1 328 tonnes for rice originating in the Turks and Caicos Islands and 36 728 tonnes for rice originating in the other OCTs.

22 Pursuant to the second paragraph of Article 7, Regulation No 21/97 was to apply from 1 January to 30 April 1997.

23 Subsequently, pursuant to Article 1(5) of Annex IV to the OCT Decision, the United Kingdom Government referred Regulation No 21/97 to the Council and requested that it increase the quota allocated to Montserrat and the Turks and Caicos Islands.

24 By letter of 21 January 1997 the Netherlands Government also announced that it objected to Regulation No 21/97 and asked the Council to adopt another decision.

Regulation No 304/97

25 On 17 February 1997 the Council adopted Regulation No 304/97, Article 7(1) of which repeals Regulation No 21/97.

26 Essentially the Council Regulation differs from that of the Commission in one respect, namely the volume of the quota allocated to Montserrat and the Turks and Caicos Islands.

27 Article 1(1) of Regulation No 304/97 provides:

'Imports into the Community of rice originating in the OCTs falling within CN code 1006 and benefiting from exemption from customs duties shall be restricted during the period of 1 January to 30 April 1997 to the following quantities of husked rice equivalent:

(a) 8 000 tonnes for rice originating in Montserrat and in the Turks and Caicos Islands, made up of:

— 4 594 tonnes originating in Montserrat, and

— 3 406 tonnes originating in Montserrat or the Turks and Caicos Islands;

and

(b) 36 728 tonnes for rice originating in the other OCTs'.

28 According to the second paragraph of Article 8, Regulation No 304/97 was to apply from 1 January to 30 April 1997, except for the second indent of Article 1(1)(a), which was to apply from the date of entry into force of that Regulation, 21 February 1997, when it was published in the *Official Journal of the European Communities*.

The Community market in rice

29 A distinction is made between the Japonica and Indica varieties of rice.

30 The rice producing countries in the Community are essentially, France, Spain and Italy. About 80% of the rice produced in the Community is of the Japonica variety and 20% of the Indica variety. Japonica rice is primarily consumed in the southern Member States whilst Indica rice is primarily consumed in the northern Member States.

31 Since the Community produces surplus Japonica rice it is a net exporter of that variety. On the other hand it does not produce enough Indica rice to meet its own needs and is a net importer of that variety.

32 Rice must be processed before it can be consumed. After harvesting, it is husked and then polished in several stages.

33 It is possible to distinguish four stages of processing:

— paddy rice: this is the rice as harvested and is not yet fit for consumption

— husked rice (also called brown rice): this is rice from which the husk has, been removed. It is fit for consumption, but is also capable of further processing

— semi-milled rice (also called partly-polished rice): this is the rice after part of the pericarp has been removed. It is a semi-finished product, generally sold with a view to further processing rather than for consumption

— milled rice (also called polished rice): this is the fully-processed rice after both the husk and the pericarp have been removed.

34 The Community only produces milled rice, whilst the Netherlands Antilles only produce semi-milled rice. Semi-milled rice originating in the Netherlands Antilles must therefore undergo final processing before it is consumed in the Community.

35 About half-a-dozen undertakings established in the Netherlands Antilles, including ARM, process husked rice from Surinam and Guyana into semi-milled rice.

36 That processing operation is sufficient to confer on that rice the status of a product originating in the OCTs according to the rules contained in Annex II to the OCT Decision.

37 Since 1992 ARM has exported its semi-milled processed rice to the Community, selling it to rice-processing plants for processing into milled rice. That rice is of the Indica variety.

The action

38 ARM, supported by the Kingdom of the Netherlands, claims that the Court should annul Regulation No 304/97 and order the Council to pay the costs.

39 In support of its action, the applicant advances four pleas in law based on: (i) infringement of Article 133(1) of the Treaty and Article 101(1) of the OCT Decision; (ii) infringement of Article 109(1) of the OCT Decision; (iii) infringement of Article 109(2) of the OCT Decision; and (iv) disregard of the principle of the attention to be given to legislative measures and infringement of Article 190 of the EC Treaty (now Article 253 EC).

40 The Council contends that the Court should dismiss the action for annulment of Regulation No 304/97 as inadmissible or unfounded and order the applicant to pay the costs.

41 The Kingdom of Spain, the French Republic, the Italian Republic and the Commission contend that the Court should dismiss the action and order the applicant to pay the costs.

Admissibility of the action

42 In accordance with the fourth paragraph of Article 173 of the Treaty, any natural or legal person may institute proceedings against a decision addressed to that person or against a decision which, although in the form of a regulation or a decision addressed to another person, is of direct and individual concern to the former.

43 Since Regulation No 304/97 is not a decision addressed to the applicant within the meaning of the fourth paragraph of Article 173 of the Treaty, it is necessary to

consider whether it constitutes an act of general application, or if it should be considered as a decision in the form of a regulation. In order to determine whether an act is of general application or not, it is necessary to consider its nature and the legal effects which it is intended to, or does in fact produce (Case 307/81 *Alusuisse Italia* v *Council and Commission* [1982] ECR 3463, paragraph 8).

44 In the present case, in enacting Regulation No 304/97, the Council has adopted measures of general application, applicable without distinction to imports of rice originating in all OCTs.

45 Consequently, Regulation No 304/97 is, by its nature, of general application and does not constitute a decision within the meaning of Article 189 of the EC Treaty (now Article 249 EC).

46 It is, however, important to consider whether, notwithstanding the general application of that Regulation, the applicant may nevertheless be regarded as directly and individually concerned by it. The fact that an act is of general application does not prevent it from being of direct and individual concern to some of the traders concerned (Case C-309/89 *Codorniu* v *Council* [1994] ECR I-1853, paragraph 19).

47 As to whether ARM is individually concerned by Regulation No 304/97, the applicant and the Netherlands Government claim that ARM is concerned within the meaning of the judgment of the Court of First Instance in Joined Cases T-480/93 and T-483/93 *Antillean Rice Mills and Others* v *Commission* [1995] ECR II-2305 in that it belongs to a limited class of traders whose legal position is affected because of a factual situation which differentiates it from all other persons and distinguishes it individually in the same way as a person to whom a measure is addressed.

48 On the other hand the Council, the French Republic, the Italian Republic and the Commission dispute that ARM is individually concerned by Regulation No 304/97. As for the judgment in *Antillean Rice Mills* v *Commission*, cited above, the Council points out that the Court of First Instance did not expressly rule on the issue whether, in that case, ARM was individually concerned. That institution claims that the Court of First Instance did not find that ARM was in fact concerned within the particular meaning of paragraphs 73 and 74 of that judgment.

49 It must be pointed out, as the Court has stated on several occasions (see, in particular, the judgment in Case 25/62 *Plaumann* v *Commission* [1963] ECR 95, 107 and the order in Case C-276/93 *Chiquita Banana and Others* v *Council* [1993] ECR I-3345, paragraph 9) that, for natural and legal persons to be regarded as individually concerned by a measure, it must affect their legal position by reason of certain attributes peculiar to them, or by reason of a factual situation which differentiates them from all other persons and distinguishes them individually in the same way as the addressee.

50 First, as regards the attributes peculiar to it, ARM, supported by the Netherlands Government, claims that, as an exporter of rice from the Netherlands Antilles, its entire business is directed towards exporting rice to the Community. Consequently the safeguard measures laid down by Regulation No 304/97 inevitably imply the cessation of its operations.

51 In this respect it must be made clear that the applicant is affected by Regulation No 304/97 only as an exporter of rice to the Community. That is a commercial activity which may be carried out by any undertaking at any time. That Regulation concerns the applicant only by reason of its objective status as an economic operator active in the sector marketing rice originating in the OCTs, in the same way as any other Community economic operator in the same situation. Its status as an exporter, or even export-dealer of rice, from the OCTs to the Community is not therefore sufficient in itself to establish that the applicant is

individually concerned by Regulation No 304/97 (see, also, to that effect, the judgment in Case 11/82 *Piraiki-Patraiki and Others* v *Commission* [1985] ECR 207, paragraph 14, and the orders in *Chiquita Banana and Others* v *Council*, cited above, paragraph 12, and Case C-10/95 P *Asocarne* v *Council* [1995] ECR I-4149, paragraph 42).

52 Even if, in the present case, it is apparent from the file that only 6 or 7 undertakings operate in the market concerned by Regulation No 304/97, it must be borne in mind that the possibility of determining more or less precisely the number, or even the identity, of the persons to whom a measure applies by no means implies that it must be regarded as being of individual concern to them as long as it is established that, as in the present case, that application takes effect by virtue of an objective legal or factual situation defined by the measure in question (see, in particular, the orders in Case C-131/92 *Arnaud and Others* v *Council* [1993] ECR I-2573, paragraph 13, and *Chiquita Banana and Others* v *Council*, cited above, paragraph 8).

53 Furthermore, ARM cannot validly claim that the safeguard measures have brought about the complete cessation of its activities, which are entirely directed towards exporting rice to the Community. As the Court of First Instance has already held in its order in Case T-41/97 R *Antillean Rice Mills* v *Council* [1997] ECR II-447, paragraph 49, and as the Commission points out in its observations, the applicant exported, during the first three months of 1997, approximately 12 000 tonnes of rice to the Community. Compared to the 68 186 tonnes that ARM states that it exported during 1996, the exports for the first quarter of 1997 only show a reduction in export activity. Moreover that reduction cannot be wholly attributed to the safeguard measures because, as set out in paragraph 65 of the present judgment, for the purpose of performing the contracts pending ARM could have taken the necessary steps to obtain import licences before the safeguard measures took effect. Finally, ARM may not, without contradicting itself, maintain that it was forced by the safeguard measures to cease its operations and at the same time declare that 10% of its operations are exclusively in the local market.

54 In those circumstances, it is not established that Regulation No 304/97 had serious consequences for the applicant as distinct from every other economic operator active in the sector marketing rice originating in the OCTs, nor that it has been affected by the safeguard measures in question by reason of attributes distinguishing it from all other economic operators to whom that Regulation applies.

55 ARM has not therefore demonstrated that, by reason of certain attributes peculiar to it, it is individually concerned by Regulation No 304/97.

56 Second, as regards the question whether ARM is in a factual situation which differentiates it from all other persons and distinguishes it individually in the same way as a person to whom a measure is addressed, ARM and the Netherlands Government claim that, prior to the adoption of Regulation No 304/97, ARM had entered into various contracts for the sale of semi-milled rice with customers established in the Community. Those contracts could not be performed because of the safeguard measures introduced by Regulation No 304/97. Furthermore, the applicant claims that, in order to honour those contracts, it had bought husked rice in Surinam and chartered cargo space at standard rates in order to ship that rice to the Netherlands Antilles. It claims that the performance of those contracts was prevented and the charterparty disrupted by the safeguard measures contained in Regulation No 304/97. ARM and the Netherlands Government consider that in those circumstances the applicant's individual interests were affected by the Regulation. ARM and the Netherlands Government maintain, finally, that the Commission and the Council were aware of ARM's particular situation prior to the adoption of the safeguard measures.

57 It should be pointed out that the fact that the Council or the Commission are required, by specific provisions, to take account of the consequences for the situation of certain individuals of the act they are intending to adopt may be such as to distinguish them individually (see, to that effect, *Piraiki-Patraiki and Others* v *Commission*, paragraphs 28 and 31, and Case C-390/95 P *Antillean Rice Mills and Others* v *Commission* [1999] ECR I-769, paragraph 25).

58 In this regard, where the Commission intends to adopt safeguard measures on the basis of Article 109(1) of the OCT Decision it must, in so far as the circumstances of the case permit, inquire into the negative effects which its decision might have on the economy of the OCT concerned as well as on the undertakings concerned (see *Antillean Rice Mills and Others* v *Commission*, cited above, paragraph 25).

59 Since Regulation No 304/97 was adopted pursuant to Article 1(5) to 1(7) of Annex IV to the OCT Decision, the Council was also required to take account of the consequences that the intended safeguard measures might have for the OCTs concerned and the undertakings concerned.

60 However, it appears from *Piraiki-Patraiki and Others* v *Commission* that the finding of the existence of that obligation is not sufficient to establish that those OCTs and those undertakings are individually concerned by those measures within the meaning of the fourth paragraph of Article 173 of the Treaty.

61 At paragraph 28 of that judgment the Court, after finding that the Commission was required to inquire into the negative effects which its decision might have on the economy of the Member State concerned and on the undertakings concerned, did not conclude from that finding alone that all of the undertakings concerned were individually concerned within the meaning of the fourth paragraph of Article 173 of the Treaty. On the contrary, it considered that only those undertakings which had already entered into contracts which were due to be performed during the period of application of the contested decision but which had been prevented from being performed, in part or at all, were individually concerned within the meaning of paragraph 4 of Article 173 of the Treaty (see *Piraiki-Patraiki and Others* v *Commission*, paragraphs 28, 31 and 32).

62 It follows from the foregoing that the finding that the Council was required, in so far as the circumstances of the case so permitted, to take account of the negative effects which its decision might have on the economy of the OCTs concerned and on the undertakings concerned does not discharge the applicant from the burden of proving that it is affected by the Regulation by reason of a factual situation which differentiates it from all other persons.

63 To that end, the applicant and the Netherlands Government put forward certain information, set out at paragraph 56 of the present judgment. The applicant had entered into contracts with customers established in the Community prior to the entry into force of Regulation No 304/97. Those contracts were not able to be performed because of the safeguard measures introduced by Regulation No 304/97.

64 It is apparent from the documents produced by the applicant during the proceedings that two contracts were indeed entered into on 17 December 1996.

65 Regulation No 304/97 applied with effect from 1 January 1997. It appears however from Article 1(3) that applications for import licences submitted by 3 January 1997 were not subject to the safeguard measures. Thus, more than fifteen days elapsed between the date of signature of the contracts and safeguard measures taking effect. ARM, which was informed of the imminent adoption of those measures, was perfectly able, for the purposes of performing the contracts pending, to take the necessary steps to obtain import licences. The Commission stated at the hearing that, before the safeguard measures took effect, the grant of import licences had risen very sharply in December 1996.

66 ARM cannot therefore legitimately claim that, because of those contracts, it has been placed in a factual situation with regard to the safeguard measures which differentiates it from all other persons. Nor, for the same reasons, can it rely on the supply and shipping contracts entered into in August 1996, allegedly so as to enable it to perform the contracts of 17 December 1996, in that the performance of the former depended on the latter.

67 It follows from all of the foregoing that ARM has not shown that it is individually concerned by Regulation No 304/97. It is therefore unnecessary to examine whether the applicant is directly affected by that Regulation.

68 It follows that the action must be dismissed as inadmissible.

Costs

69 Under Article 69(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 Council has applied for costs against ARM, and that undertaking has been unsuccessful in its action, it must be ordered to pay the costs. Pursuant to Article 69(4) of the Rules of Procedure, the Kingdom of Spain, the French Republic, the Italian Republic, the Kingdom of the Netherlands and the Commission of the European Communities, as interveners, shall bear their own costs.

On those grounds,

THE COURT

hereby:

1. **Dismisses the action as inadmissible.**

2. **Orders Antillean Rice Mills NV to pay the costs.**

3. **Orders the Kingdom of Spain, the French Republic, the Italian Republic, the Kingdom of the Netherlands and the Commission of the European Communities to bear their own costs.**

Rodríguez Iglesias Jann Macken

Gulmann Edward La Pergola

Puissochet Sevón Wathelet

Schintgen Skouris

Delivered in open court in Luxembourg on 22 November 2001.

R. Grass G.C. Rodríguez Iglesias

Registrar President