OPINION OF ADVOCATE GENERAL LÉGER

delivered on 12 September 2002 [1]

1. By this appeal the Commission of the European Communities is asking the Court to set aside the judgment of the Court of First Instance of the European Communities of 10 February 2000 in *Nederlandse Antillen* v *Commission*, [2] by which it annulled Regulations (EC) Nos 2352/97 [3] and 2494/97 [4] on imports of rice originating in the overseas countries and territories. [5]

2. The Commission maintains that the Court of First Instance made an error of law in declaring the actions of the Government of the Netherlands Antilles admissible. According to the Commission, that authority is neither individually nor directly concerned by the regulations in question and, furthermore, has no sufficient interest to bring proceedings. In the alternative, it disputes having made an error of law in the adoption of the regulations in question.

3. This case can be compared with the judgment of 22 November 2001 in *Nederlandse Antillen* v *Council*. [6] In that case, I set out precisely the reasons why I consider that the Court of First Instance, in the contested judgment, made an error of law in declaring admissible the actions brought by the Government of the Netherlands Antilles against Commission Regulations Nos 2352/97 and 2494/97 on imports of rice originating in the OCTs. [7]

4. My Opinion was followed by the Court which, keeping to its settled construction of the expression 'natural or legal persons individually concerned', for the purposes of the fourth paragraph of Article 230 EC, [8] declared the action of the Netherlands Antilles Government inadmissible. Paragraphs 64, 67, and 70 to 77 of that judgment are worth citing in full.

1 — Original language: French.

2 — Joined Cases T-32/98 and T-41/98 [2000] ECR II-201 ('the contested judgment').

3 — Commission Regulation of 27 November 1997 introducing specific measures in respect of imports of rice originating in the overseas countries and territories (OJ 1997 L 326, p. 21).

4 — Commission Regulation of 12 December 1997 on the issuing of import licences for rice falling within CN code 1006 and originating in the overseas countries and territories under the specific measures introduced by Regulation (EC) No 2352/97 (OJ 1997 L 343, p. 17).

5 — Hereinafter 'the OCTs'.

6 — Case C-452/98 [2001] ECR I-8973.

7 — See my Opinion in *Nederlandse Antillen* v *Council*, cited above, paragraphs 99 to 113.

8 — See the judgment in *Nederlandse Antillen* v *Council*, cited above, paragraphs 60 to 77.

5. According to the Court:

'64 ... [T]he general interest which an OCT, as an entity responsible for economic and social affairs within its jurisdiction, may have in obtaining a result that is favourable for its economic prosperity is not sufficient on its own to enable it to be regarded as being concerned, or — *a fortiori* — individually concerned, for the purposes of the fourth paragraph of Article 173 of the Treaty, by the Regulation in question.

...

67 ... [T]he 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... .

...

70 However, it appears from *Piraiki-Patraiki and Others* v *Commission* [Case 11/82 [1985] ECR 207] 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.

71 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 the fourth paragraph of Article 173 of the Treaty... .

72 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 at the time when [the] Regulation [in question] was adopted of the negative effects which that Regulation might have on the economy of the OCTs concerned and on the undertakings concerned does not discharge the Netherlands Antilles from the burden of proving that they were affected by the Regulation by reason of a factual situation which differentiates them from all other persons.

73 The fact that the Netherlands Antilles exported by far the most rice originating in the OCTs to the Community is not such as to distinguish them from all other OCTs. Even if the assertion that the safeguard measures laid down by [the] Regulation [in question] were liable to have significant socio-economic consequences for the Netherlands Antilles proved to be well founded, the fact nevertheless remains that those measures will have similar consequences for the other OCTs.

74 The economic activity in question in the present case, namely, the processing of rice from third countries in the OCTs, is a commercial activity that may be carried out at any time by any economic operator in any OCT. Rice-processing factories also exist in other OCTs besides the Netherlands Antilles, namely Montserrat and the Turks and Caicos Islands. Such economic activity is not therefore such as to differentiate the Netherlands Antilles from all other OCTs.

75 In the light of the foregoing, the Netherlands Antilles have not established that their legal position has been affected 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.

76 Since they have not shown that they are individually concerned by [the] Regulation [in question], it is unnecessary to

examine whether they are directly affected by that Regulation.

77 In those circumstances the action must be dismissed as inadmissible.'

6. Since that reasoning is perfectly applicable to this case, I suggest that the Court should set aside the contested judgment and dispose of the case itself by declaring inadmissible the actions for annulment of Regulations Nos 2352/97 and 2494/97 brought by the Government of the Netherlands Antilles.

7. At the hearing, the Government of the Netherlands Antilles invited the Court to adopt the Court of First Instance's reasoning in *Jégo-Quéré* v *Commission*. [9] In that judgment, the Court of First Instance held that the strict construction of the expression 'natural or legal persons individually concerned' for the purposes of the fourth paragraph of Article 230 EC should be reconsidered. According to it, 'in order to ensure effective judicial protection for individuals a natural or legal person is to be regarded as individually concerned by a Community measure of general application that concerns him directly if the measure in question affects his legal position, in a manner which is both definite and immediate, by restricting his rights or by imposing his obligations on him. The number and position of other persons who are likewise affected by the measure or who may be so, are of no relevance in that regard.' [10]

8. However, that reasoning was rejected by the Court, in its plenary composition, in its judgment in *Unión de Pequeños Agricultores* v *Commission*, [11] which was delivered after the judgment of the Court of First Instance, cited above.

9 — Case T-177/01 [2002] ECR II-2365.

10 — Ibidem (paragraph 51).

11 — Case C-50/00 P, [2002] ECR I-6677.

Conclusion

9. In those circumstances, I suggest that the Court should:

— set aside the judgment of the Court of First Instance of 10 February 2000 in Joined Cases T-32/98 and T-41/98 *Nederlandse Antillen* v *Commission*;

— declare inadmissible the actions for annulment of Commission Regulation (EC) No 2352/97 of 27 November 1997 introducing specific measures in respect of imports of rice originating in the overseas countries and territories, and Commission Regulation (EC) No 2494/97 of 12 December 1997 on the issuing of import licences for rice falling within CN code 1006 and originating in the overseas countries and territories under the specific measures introduced by Regulation (EC) No 2352/97; and

— order the Netherlands Antilles to pay the costs of the proceedings, including those of the proceedings before the Court of First Instance.