ries of traders defined according to objective criteria, of the tariff quota which it introduces applies to situations which have been determined objectively and has legal effects as regards categories of persons viewed in a general and abstract manner. It is of concern to traders coming within those different categories only in their objective capacity as traders engaged in the marketing of bananas from third countries in the same way as any other trader in an identical position.

ORDER OF THE COURT
21 June 1993 *

In Case C-276/93,

1. **Chiquita Banana Company BV**, a company established under the laws of the Netherlands, with its registered office in Zwijndrecht (Netherlands),

2. **Chiquita International Limited**, a company established under the laws of Bermuda, with its registered office in Hamilton (Bermuda),

3. **Chiquita Italia SpA**, a company established under Italian law, with its registered office in Rome,

4. **Spiers NV**, a company established under Belgian law, with its registered office in Antwerp (Belgium),

5. **Bruigom & Visser BV**, a company established under the laws of the Netherlands, having its registered office in Gorinchem (Netherlands),

6. **August Lehmann GmbH&Co KG**, a company established under German law, with its registered office in Duisburg (Germany),

represented by N. M. G. Bromfield and J. E. Pheasant, Solicitors, with an address for service in Luxembourg at the Chambers of J. Loesch, 8 Rue Zithe,

applicants,

* Language of the case: English.

v

Council of the European Communities,

defendant,

APPLICATION under the second paragraph of Article 173 of the EEC Treaty for the annulment of certain provisions of Council Regulation (EEC) No 404/93 of 13 February 1993 on the common organization of the market in bananas (OJ 1993 L 47, p. 1),

THE COURT,

composed of: O. Due, President, C. N. Kakouris, G. C. Rodríguez Iglesias and M. Zuleeg (Presidents of Chambers), R. Joliet, F. A. Schockweiler, J. C. Moitinho de Almeida, F. Grévisse and P. J. G. Kapteyn, Judges,

Advocate General: C. Gulmann,
Registrar: J.-G. Giraud,

after hearing the Opinion of the Advocate General,

makes the following

Order

1 By application lodged at the Court Registry on 13 May 1993, Chiquita Banana Company BV and five other banana companies brought an action under the second paragraph of Article 173 of the EEC Treaty for the annulment of certain provisions of Council Regulation (EEC) No 404/93 of 13 February 1993 on the common organization of the market in bananas (OJ 1993 L 47, p. 1).

2 Title IV of Regulation No 404/93 sets out the arrangements for trade with third countries. It provides, in that connection, that traditional imports of bananas from ACP States, the quantities of which are specified in the annex to the regulation, may continue to enter the Community exempt from customs duties.

Article 18(1) and (2) of the regulation provides as follows:

'A tariff quota of two million tonnes (net weight) shall be opened each year for imports of third-country bananas and non-traditional ACP bananas.

Within the framework of the tariff quota, imports of third-country bananas shall be subject to a levy of ECU 100 per tonne and imports of non-traditional ACP bananas shall be subject to a zero duty.

...

Apart from the quota referred to in paragraph 1,

— imports of non-traditional ACP bananas shall be subject to a levy of ECU 750 per tonne,

— imports of third-country bananas shall be subject to a levy of ECU 850 per tonne.'

Article 19(1) provides that:

'The tariff quota shall be opened from 1 July 1993 for:

(a) 66.5% to the category of operators who marketed third-country and/or non-traditional ACP bananas;

(b) 30% to the category of operators who marketed Community and/or traditional ACP bananas;

(c) 3.5% to the category of operators established in the Community who started marketing bananas other than Community and/or traditional ACP bananas from 1992. ...'

3 The applicants argue that the provisions of Regulation No 404/93 dealing with the introduction of a tariff quota for imports of third-country bananas and with the allocation of that quota between operators who marketed third-country bananas and/or non-traditional ACP bananas and those who marketed Community and/or traditional ACP bananas are of direct and individual concern to the applicants and that those provisions are unlawful.

4 Article 92(2) of the Rules of Procedure provides that the Court may at any time of its own motion consider whether there exists any absolute bar to proceeding with a case and that it may give its decision in accordance with Article 91(3) and (4) without opening the oral procedure.

5 In view of the fact that the documents before the Court contain all the information necessary to enable it to reach a decision, the Court has decided to give its decision without hearing oral argument from the parties.

6 The second paragraph of Article 173 of the EEC Treaty allows natural or legal persons to challenge a decision addressed to them or 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.

7 In view of the fact that the present application seeks the annulment of provisions of a regulation, it is necessary to determine whether the contested provisions are of direct and individual concern to the applicants.

8 With regard to the question whether the applicants are individually concerned, it must be pointed out that the Court has consistently held 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, so long as it is established that such application takes effect by virtue of an objective legal or factual situation defined by the measure in question (see, for example, the order of the Court in Case C-131/92 *Arnaud and Others* v *Council* [1993] ECR I-2573).

9 In order for a measure to be of individual concern to the persons to whom it applies, it must affect their legal position because of a factual situation which differentiates them from all other persons and distinguishes them individually in the same way as a person to whom it is addressed (see, for instance, the order of the Court in *Arnaud and Others* v *Council*, cited above, and the judgment of the Court in Case 26/86 *Deutz und Geldermann* v *Council* [1987] ECR 941).

10 The purpose of the contested provisions is to establish arrangements for trade in bananas with third countries and a mechanism for the allocation of the tariff quota between categories of traders defined according to objective criteria.

11 Those provisions accordingly apply to situations which have been determined objectively and have legal effects as regards categories of persons viewed in a general and abstract manner.

12 It follows that the contested measure is of concern to the applicants only in their objective capacity as traders engaged in the marketing of bananas from third countries in the same way as any other trader in an identical position.

13 The application must in those circumstances be dismissed as inadmissible.

Costs

14 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the applicants have been unsuccessful in their application, they must be ordered to pay the costs.

On those grounds,

THE COURT

hereby orders:

1. The application is dismissed as inadmissible.

2. The applicants are ordered to pay the costs.

Luxembourg, 21 June 1993.

J.-G. Giraud

Registrar

O. Due

President