JUDGMENT OF THE COURT OF FIRST INSTANCE (Third Chamber)
10 February 2000 *

In Joined Cases T-32/98 and T-41/98,

Government of the Netherlands Antilles, represented by M.M. Slotboom and P.V.F. Bos, of the Rotterdam Bar, with an address for service in Luxembourg at the Chambers of M. Loesch, 11 Rue Goethe,

applicant,

v

Commission of the European Communities, represented by T. van Rijn and P.J. Kuijper, 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,

supported by

* Language of the case: Dutch.

Kingdom of Spain, represented by N. Díaz Abad, Abogado del Estado, acting as Agent, with an address for service in Luxembourg at the Spanish Embassy, 4-6 Boulevard Emmanuel Servais,

intervener,

APPLICATION, in Case T-32/98, for the 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 (OJ 1997 L 326, p. 21) and, in Case T-41/98, for the annulment of 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 (OJ 1997 L 343, p. 17),

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

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

Registrar: A. Mair, Administrator,

having regard to the written procedure and further to the hearing on 21 September 1999,

gives the following

Judgment

Legal background

1 The Netherlands comprises, in addition to its European territory, the Netherlands Antilles and the Island of Aruba. Both of the latter form part of the overseas countries and territories ('OCTs') listed in Annex IV to the EC Treaty (now, after amendment, Annex II), the association of which with the Community is governed by Part Four of that Treaty.

Relevant provisions of the Treaty

2 The second paragraph of Article 131 of the EC Treaty (now, after amendment, Article 182 EC) states that '[t]he purpose of association shall be to promote the economic and social development of the [OCTs] and to establish close economic relations between them and the Community as a whole'.

3 Pursuant to Article 132(1) of the EC Treaty (now Article 183(1) EC), 'Member States shall apply to their trade with the countries and territories the same treatment as they accord each other pursuant to this Treaty'.

4 Article 133(1) of the EC Treaty (now, after amendment, Article 184(1) (EC) provides that '[c]ustoms duties on imports into the Member States of goods originating in the [OCTs] shall be completely abolished in conformity with the progressive abolition of customs duties between Member States in accordance with the provisions of this Treaty'.

5 Article 134 of the EC Treaty (now Article 185 EC), for its part, provides that '[i]f 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'.

6 Under Article 136 of the EC Treaty (now, after amendment, Article 187 EC), the Council is to determine the details of and procedure for the association of the OCTs with the Community.

The OCT Decision, the decision amending it at mid-term and various measures adopted in 1997

7 Under Article 136 of the Treaty, on 25 July 1991 the Council adopted Decision 91/482/EEC on the association of the OCTs with the European Economic Community (OJ 1991 L 263, p. 1, hereinafter 'the OCT Decision').

8 Articles 101(1) and 102 of the OCT Decision provided, respectively, until amended on 30 November 1997: 'Products originating in the OCT shall be imported into the Community free of customs duties and charges having equivalent effect.

...

The Community shall not apply to imports of products originating in the OCT any quantitative restrictions or measures having equivalent effect.'

9 Article 109(1) of the OCT Decision provides that the Commission may, in accordance with the procedure specified in Annex IV to that decision, take special measures in the form of safeguard measures in relation to imports of products originating in the OCTs. Articles 109(2) and 110 of the OCT Decision deal with the conditions which such measures must satisfy.

10 Pursuant to Article 240 thereof, the OCT Decision is to be applicable for a period of ten years from 1 March 1990. That article also provides, in paragraph 3, that, before the end of the first five years, the Council, acting unanimously on a proposal from the Commission, is to establish, in addition to the financial assistance from the Community for the second five-year period, where necessary any amendments to provisions of the OCT Decision desired by the competent authorities of the OCTs or proposed by the Commission on the basis of its own experience or as a result of amendments under negotiation between the Community and the ACP (African, Caribbean and Pacific) States. Any amendments thus made are to take the form of a 'mid-term amendment decision'.

11 On 24 November 1997, the Council adopted, pursuant to Article 240(3), cited above, Decision 97/803/EC amending the OCT Decision at mid-term (OJ 1997 L 329, p. 50, hereinafter 'the mid-term amendment decision'). That decision limits imports of rice and sugar from the OCTs into the Community.

12 The applicant brought proceedings for annulment of the mid-term amendment decision before the Court of First Instance (Case T-310/97). The President of the Arrondissementsrechtbank (District Court), The Hague sought a preliminary ruling from the Court of Justice under Article 177 of the EC Treaty (now Article 234 EC) on the validity of that decision (Case C-17/98). By order of 16 November 1998 in Case T-310/97 *Netherlands Antilles* v *Council* [1998] ECR II-4131, the Court of First Instance stayed proceedings in Case T-310/97 until such time as the Court of Justice delivers judgment in Case C-17/98.

13 In the course of 1997, the application of the OCT Decision prompted the Commission to take certain measures under Article 109 of the OCT Decision, in particular in relation to imports of rice.

14 Thus, by Council Regulation (EC) No 304/97 of 17 February 1997 introducing safeguard measures in respect of imports of rice originating in the OCTs (OJ 1997 L 51, p. 1), the Council adopted the first safeguard measures limiting imports into the Community of rice originating in the OCTs between 1 January 1997 and 30 April 1997. The Kingdom of the Netherlands and the company Antillean Rice Mills brought proceedings for the annulment of that regulation respectively before the Court of Justice (Case C-110/97) and before the Court of First Instance (Case T-41/97). By order of 16 November 1998 in Case T-41/97 *Antillean Rice Mills* v *Council* [1998] ECR II-4117, the Court of First Instance declined jurisdiction in Case T-41/97 in favour of the Court of Justice in order to enable the latter to rule on the applications for annulment.

15 By its Regulation (EC) No 1036/97 of 2 June 1997 introducing safeguard measures in respect of imports of rice originating in the OCTs (OJ 1997 L 151, p. 8), the Council adopted fresh safeguard measures limiting imports into the Community of rice originating in the OCTs between 1 May 1997 and 30 November 1997. The applicant and the Kingdom of the Netherlands instituted proceedings for annulment of that regulation respectively before the Court of First Instance (T-179/97) and before the Court of Justice (Case C-301/97). By order of 16 November 1998 in Joined Cases T-163/97 and T-179/97 *Netherlands Antilles* v *Council and Commission* [1998] ECR II-4123, the Court of First Instance also declined jurisdiction in Case T-179/97 in favour of the Court of Justice.

16 By its Regulation No 2352/97 of 27 November 1997 introducing specific measures in respect of imports of rice originating in the OCTs (OJ 1997 L 326, p. 21), the Commission adopted a third series of safeguard measures requiring the issue of import licences for rice originating in the OCTs and the provision of a bank guarantee corresponding to 50% of the customs duties normally applicable to the volume of rice for which the import licences are required. That regulation also provided that, if a monthly volume of applications for certificates equivalent to 13 300 tonnes of rice were exceeded and there was a risk of serious disturbances of the Community market, the Commission would adopt certain measures in respect of applications in excess of that threshold of 13 300 tonnes. It entered into force on 1 December 1997.

17 On 12 December 1997, the Commission adopted Regulation (EC) No 2494/97 on the issuing of import licences for rice falling within CN Code 1006 and originating in the OCTs under the specific measures introduced by Regulation No 2352/97 (OJ 1997 L 343, p. 17). In particular, it provided that the issue of import licences was to cease as from 3 December 1997 and suspended the submission of import licence applications until 31 December 1997.

18 Regulation No 2352/97 was repealed by Article 14 of Commission Regulation (EC) No 2603/97 of 16 December 1997 laying down the detailed implementing rules for imports of rice originating in the ACP countries or the OCTs (OJ 1997 L 351, p. 22), in implementation of Article 108a of the OCT Decision, as amended. The applicant also instituted proceedings for the annulment of that regulation before the Court of First Instance (Case T-52/98). By order of 11 February 1999 in Case T-52/98 *Netherlands Antilles* v *Commission*, not published in the ECR, the Court of First Instance stayed proceedings in Case T-52/98 until such time as the Court of Justice delivers judgment in Case C-17/98.

Procedure

19 By application lodged at the Registry of the Court of First Instance on 24 February 1998 the applicant brought proceedings for the annulment of Regulation No 2352/97 (Case T-32/98).

20 By application lodged at the Registry of the Court of First Instance on 6 March 1988 the applicant brought proceedings for the annulment of Regulation No 2494/97 (Case T-41/98).

21 By documents lodged at the Registry of the Court of First Instance on 28 May and 11 June 1998 the Kingdom of Spain sought leave under Article 115 of the Rules of Procedure to intervene in support of the Commission in Cases T-32/98 and T-41/98. By orders of the President of the Fourth Chamber of the Court of First Instance of 1 and 10 July 1998, leave was granted in both cases. On 31 July and 6 August 1998 the Kingdom of Spain lodged its statements in intervention in the two cases, on which the parties had an opportunity to submit their observations.

22 On hearing the Report of the Judge-Rapporteur, the Court of First Instance (Third Chamber) decided to open the oral procedure without any preparatory inquiries. By way of measures of organisation of procedure, provided for in Article 64 of the Rules of Procedure, certain written questions were addressed to the parties, and they replied within the time allowed.

23 The parties presented oral argument and answered questions put to them by the Court at the hearing in open court held, in both cases, on 21 September 1999.

24 After hearing the views of the parties on this point, the Court of First Instance decided to join the two cases for the purposes of the judgment.

Forms of order sought

25 In Case T-32/98, the applicant claims that the Court of First Instance should:

— annul Regulation No 2352/97;

— order the Commission to pay the costs.

26 In Case T-41/98, the applicant claims that the Court of First Instance should:

— annul Regulation No 2494/97;

— order the Commission to pay the costs.

27 The Commission contends in Cases T-32/98 and T-41/98 that the Court of First Instance should:

— declare the application inadmissible or, at least, unfounded;

— order the applicant to pay the costs.

28 The intervener contends in Cases T-32/98 and T-41/98 that the Court of First Instance should:

— declare the application inadmissible for lack of *locus standi*;

— in the alternative, dismiss the application as unfounded;

— order the applicant to pay the costs.

The admissibility of the intervention

29 The applicant submits that the Court of First Instance cannot take account of the observations made by the Kingdom of Spain in its statements in intervention. It claims that, as far as Community law is concerned, there is no link between the

Netherlands Antilles and that Member State. The Kingdom of the Netherlands ratified the Treaty of Accession of the Kingdom of Spain only in respect of its European territory.

30 The Court accepts that the orders of 1 and 10 July 1998, by which the Kingdom of Spain was granted leave to intervene in support of the Commission in Cases T-32/98 and T-41/98, do not preclude re-examination of the admissibility of its intervention in the judgment bringing the proceedings to a conclusion (judgment of the Court of Justice in Case C-234/92 P *Shell* v *Commission* [1999] ECR I-4501, paragraph 25).

31 However, contrary to the applicant's assertion, the Kingdom of Spain's intervention in both cases is admissible. Under the first paragraph of Article 37 of the EC Statute of the Court of Justice, which applies to the Court of First Instance by virtue of the first paragraph of Article 46 of that Statute, Member States are entitled to intervene in any proceedings before the Court of First Instance. The fact that the Kingdom of the Netherlands ratified the Treaty of Accession of the Kingdom of Spain only in respect of its European territory is not capable of affecting the latter's exercise of that right, which is vested in it by virtue of its status as a Member State.

The admissibility of the applications

Arguments of the parties

32 Without formally raising any objections of inadmissibility under Article 114(1) of the Rules of Procedure, the Commission contends that the applications are inadmissible on three grounds.

33 First, the Commission contends that the applicant is not entitled to base its applications on the second paragraph of Article 173 of the EC Treaty (now, after amendment, the second paragraph of Article 230 EC). It refers to the order of the Court of Justice in Case C-95/97 *Région Wallonne* v *Commission* [1997] ECR I-1787, paragraph 6, and adds that Part Four of the Treaty does not grant the Netherlands Antilles particular rights or impose particular obligations on them such as to render their legal position comparable to that of the Member States. Their role in the decision-making process in the areas covered by Part Four of the Treaty is likewise not comparable to that of the institutions.

34 Second, the Commission contends that the applications are also inadmissible in so far as they are based on the fourth paragraph of Article 173 of the Treaty. First, Regulations Nos 2352/97 and 2494/97 (hereinafter 'the contested regulations') are not of direct concern to the applicant. Since the Netherlands Antilles are not, as such, involved in trade in rice with the Community, the contested regulations can be of concern to their government only to the extent to which undertakings in the rice sector established on their territory are affected. Moreover, the contested regulations are not of individual concern to the applicant. The Commission submits that the reference to the Netherlands Antilles in Annex IV to the Treaty is not decisive. Nor does the applicant belong to a closed class of persons as defined in the case-law (Case 25/62 *Plaumann* v *Commission* [1963] ECR 95), since the number and identity of the persons to whom the contested regulations apply was not definitively known at the time of their adoption. There are no specific matters of fact or of law such as to distinguish the Netherlands Antilles from the other OCTs. Each OCT thus, at least in theory, has an opportunity to process rice in the same way as the Netherlands Antilles. The situation is different from that prevailing in 1993, when only the Netherlands Antilles exported rice to the Community, because, since 1996, Montserrat has started exporting rice as well. The Commission also cites an extract from the order of the Court of First Instance in Case T-238/97 *Comunidad Autónoma de Cantabria* v *Council* [1998] ECR II-2271, paragraphs 49 and 50).

35 Moreover, the express reference to the Netherlands Antilles in the seventh recital in the preamble to Regulation No 2352/97 is merely intended to indicate that the

decision by the Ministers of Economic Affairs and Finance of that country establishing a minimum export price for rice does not make it superfluous to adopt the contested safeguard measures. It cannot be inferred from this that the applicant is individually concerned by that regulation. Similarly, Article 109 of the OCT Decision requires the Commission to take account of the consequences which safeguard measures may have for the economy of all the OCTs, and not only for that of the Netherlands Antilles. A quantitative criterion based on the volume of rice exported to the Community likewise does not satisfy the conditions for admissibility laid down in the case-law.

36 Third, the Commission contends, first, that the applicant has not proved a sufficient interest in bringing the present actions for annulment under the fourth paragraph of Article 173 of the Treaty. It states that the Netherlands Antilles are merely a subdivision of the Kingdom of the Netherlands, a country which is entitled to vote within the Council. It therefore maintains that, in view of the place occupied by the applicant's representatives within the Government of the Netherlands, the Netherlands Antilles cannot be disassociated from the Member State of which they form an integral part when the latter expresses its views on a matter concerning the OCTs.

37 The Commission then observes that the Kingdom of the Netherlands is independently entitled to bring an action under the second paragraph of Article 173 of the Treaty and that, unlike Regulations Nos 304/97 and 1036/97, the contested regulations have not been the subject of an action for annulment by it (see paragraphs 14 and 15 above).

38 Finally, the Commission states that, in order to defend the OCTs' interests, a special procedure for appeals to the Council by the Member States with which the OCTs are associated has been established (Article 1(5) of Annex IV to the OCT Decision). The OCT Decision thus entrusts defence of the OCTs' interests to those Member States.

39 In its rejoinder, the Commission states that it is not desirable to accept that the applicant has an interest in bringing an action, since that would be tantamount to conceding that the applicant could call in question before the Community judicature the balance of interests arrived at by the competent authorities of the Kingdom of the Netherlands, that being, in this area, a matter for those authorities alone. The Court of First Instance confirmed that view of the matter in its order in *Comunidad Autónoma de Cantabria* v *Council*, cited above. On the other hand, the situation was different in Case T-214/95 *Vlaams Gewest* v *Commission* [1998] ECR II-717, in so far as the contested Commission decision related to aid for which sole competence attached to a federated entity of the Kingdom of Belgium. In this case, the Commission stresses that the various entities making up the Netherlands have no powers of their own of that kind regarding the trading regime applicable to the OCTs.

40 The Kingdom of Spain also submits that the actions are inadmissible, in that the applicant has no *locus standi*. It contends, in particular, that the applicant is not directly concerned by the contested regulations since measures to implement them have yet to be taken.

41 The applicant rejects all the arguments put forward by the Commission and contends that its actions are admissible by virtue of both the second and the fourth paragraphs of Article 173 of the Treaty.

Findings of the Court

42 As regards, first, the admissibility of the actions by reason of their being based on the second paragraph of Article 173 of the Treaty, it must be borne in mind that, under Article 3 of Council Decision 88/591/ECSC, EEC, Euratom of 24 October 1988 establishing a Court of First Instance of the European Communities (OJ 1988 L 319, p. 1), as amended, the Court of First Instance has jurisdiction, at

first instance, for actions for annulment based on the fourth paragraph of Article 173 of the Treaty. On the other hand, only the Court of Justice has jurisdiction to hear applications under the second paragraph of Article 173 of the Treaty by a Member State, the Council or the Commission. Accordingly, if the applicant had considered itself entitled to rely on the latter provision of the Treaty in order to seek annulment of the contested regulations, it should have brought its actions before the Court of Justice.

43 In any event, it is clear from the general scheme of the Treaties that the concept of a Member State, within the meaning of the institutional provisions thereof and, in particular, those relating to judicial remedies, only applies to the government authorities of the Member States of the European Communities and cannot be extended to regional governments or self-governing communities, regardless of the extent of their powers (*Vlaams Gewest* v *Commission*, cited above, paragraph 28, the order in *Comunidad Autónoma de Cantabria* v *Council*, cited above, paragraph 42, and the case-law cited therein, and the order of the Court of First Instance of 23 October 1998 in Case T-609/97 *Regione Puglia* v *Commission and Spain* [1998] ECR II-4051, paragraph 16). The applicant therefore has no *locus standi* under the second paragraph of Article 173 of the Treaty.

44 As regards, next, the admissibility of the applications in so far as they are based on the fourth paragraph of Article 173 of the Treaty, it must be borne in mind at the outset that the provisions of the Treaty concerning the right of interested parties to bring proceedings cannot be interpreted restrictively (see, in particular, *Plaumann* v *Commission*, cited above, at p. 107, and Joined Cases T-528/93, T-542/93, T-543/93 and T-546/93 *Métropole Télévision and Others* v *Commission* [1996] ECR II-649, paragraph 60).

45 It is common ground that the Netherlands Antilles constitute an autonomous entity endowed with legal personality under Netherlands law. A territorial unit of a Member State, endowed with legal personality under national law, may, in principle, bring an action for annulment under the fourth paragraph of Article 173 of the Treaty, pursuant to which any natural or legal person may institute proceedings 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 (order in *Comunidad Autónoma de Cantabria* v *Council*, cited above, paragraph 43).

46 Since the contested regulations are not decisions addressed to the applicant, within the meaning of the fourth paragraph of Article 173 of the Treaty, it is necessary to determine whether they are measures of general application or if they must be regarded as decisions in the form of regulations. In order to determine whether or not a measure is of general application, it must be assessed in the light of its character and of the legal effects which it is intended to produce or actually produces (Case 307/81 *Alusuisse* v *Council and Commission* [1982] ECR 3463, paragraph 8).

47 In this case, it is, admittedly, clear from the preamble to Regulation No 2352/97 that the Commission, when adopting that measure, took account of the applicant's attitude and, in particular, the fixing by it of a minimum export price. Similarly, in its written pleadings and at the hearing, the Commission has not denied that, when the contested regulations were adopted, it was aware that most imports of rice from the OCTs came from the Netherlands Antilles. However, it must be observed that the Commission did not adopt decisions relating only to imports of rice from that source. In fact, the Commission adopted measures of general application applicable without distinction to imports of rice from all the OCTs.

48 Consequently, the contested regulations are, by their nature, of general application and do not constitute decisions within the meaning of Article 189 of the EC Treaty (now Article 249 EC).

49 It is nevertheless important to consider whether, even though the contested regulations are of general application, the applicant may nevertheless be regarded

as directly and individually concerned by them. The fact that a measure is of general application does not mean that it cannot be of direct and individual concern to certain natural or legal persons (see Case C-309/89 *Codorniu* v *Council* [1994] ECR I-1853, paragraph 19, Joined Cases T-480/93 and T-483/93 *Antillean Rice Mills and Others* v *Commission* [1995] ECR II-2305, paragraph 66, and Joined Cases T-481/93 and T-484/93 *Exporteurs in Levende Varkens and Others* v *Commission* [1995] ECR II-2941, paragraph 50).

50 As regards, first, the question whether the contested regulations are of individual concern to the applicant, it must be borne in mind that, for it to be possible for a measure of general application adopted by a Community institution to be of individual concern to a natural or legal person, the latter must be affected by the measure at issue by virtue of certain attributes which are peculiar to that person or circumstances must exist in which that person is differentiated from all other persons with regard to that measure (*Plaumann* v *Commission*, cited above, p. 107, *Codorniu* v *Council*, cited above, paragraph 20, Case T-12/93 *CCE de Vittel and Others* v *Commission* [1995] ECR II-1247, paragraph 36, and Case T-135/96 *UEAPME* v *Council* [1998] ECR II-2335, paragraph 69, and the order of the Court of First Instance of 30 September 1997 in Case T-122/96 *Federolio* v *Commission* [1997] ECR II-1559, paragraph 59).

51 In that regard, it is settled case-law that where the Commission is, by virtue of specific provisions, under a duty to take account of the consequences of a measure which it envisages adopting for the situation of certain individuals, that fact is such as to distinguish them individually (Case 11/82 *Piraiki-Patraiki and Others* v *Commission* [1985] ECR 207, Case C-152/88 *Sofrimport* v *Commission* [1999] ECR I-2477, Joined Cases T-480/93 and T-483/93 *Antillean Rice Mills and Others* v *Commission*, cited above, paragraph 67, and Case C-390/95 P *Antillean Rice Mills and Others* v *Commission* [1999] ECR I-769, paragraphs 25 to 30).

52 In this case, Regulation No 2352/97 and Regulation No 2494/97, adopted for its implementation, were based on Article 109 of the OCT Decision, paragraph 1 of which provides that the Commission is authorised, under certain conditions, to take safeguard measures.

53 Article 109(2) provides that '[f]or the purpose of implementing paragraph 1, priority shall be given to such measures as would least disturb the functioning of the association and the Community. These measures shall not exceed the limits of what is strictly necessary to remedy the difficulties that have arisen'.

54 It is clear from that provision that, where the Commission envisages taking safeguard measures on the basis of Article 109(1) of the OCT Decision, it is required to take account of the negative effects which its decision might have on the economy of the overseas country or territory concerned as well as on the undertakings concerned (Case C-390/95 P *Antillean Rice Mills and Others*, cited above, paragraph 28, and Joined Cases T-480/93 and T-483/93 *Antillean Rice Mills and Others*, cited above, paragraph 70).

55 The applicant is one of the OCTs specifically named in Annex IV to the Treaty to which the provisions of Part Four of the Treaty concerning association of the OCTs apply. Under Article 109(2) of the OCT Decision, the Commission was therefore required, when adopting the contested regulations, to take account of the particular situation of the applicant, particularly since it was foreseeable that the adverse repercussions of the measures taken would be felt mainly in the applicant's territory. When the contested regulations were adopted, the Commission was aware, as it in fact acknowledged both in its written pleadings and at the hearing, that most imports of OCT rice into the Community came from the Netherlands Antilles.

56 The applicant, benefiting as it thus did from specific protection under Community law when the Commission adopted the contested regulations, is affected by them by virtue of factual circumstances which distinguish it from any other person (*Plaumann* v *Commission*, cited above, at p. 107, *Piraiki-Patraiki*, cited above, paragraphs 28 to 31, and Case C-390/95 P *Antillean Rice Mills and Others*, cited above, paragraph 28). Consequently, the contested regulations are of individual concern to the applicant within the meaning of the fourth paragraph of Article 173 of the Treaty.

57 It is true, as the Commission points out, that the fact that a local or regional authority of a Member State demonstrates that the application or implementation of a Community measure is capable of affecting socio-economic conditions within its territory is not sufficient for it to be recognised that that measure is of individual concern to it (see the orders in *Comunidad Autónoma de Cantabria* v *Council*, cited above, paragraphs 49 and 50, and in *Regione Puglia* v *Commission and Spain*, cited above, paragraphs 21 and 22). However, in this case, the contested measures are of individual concern to the applicant in so far as the Commission, when envisaging their adoption, was under a duty specifically to take account of the applicant's situation by virtue of Article 109(2) of the OCT Decision.

58 Second, the applicant cannot be regarded as having no interest in bringing proceedings for annulment of the contested regulations merely because the Kingdom of the Netherlands has an independent right of action under the second paragraph of Article 173 of the Treaty. It must be pointed out that, in other areas, the fact that a Member State and one of its entities both have an interest in bringing proceedings against the same measure has not led the Court of First Instance to hold that the entity's interest in bringing proceedings was not sufficient to render admissible an action for annulment based on the fourth paragraph of Article 173 of the Treaty (see the judgments in *Vlaams Gewest* v *Commission*, cited above, paragraph 30, and in Joined Cases T-132/96 and T-143/96 *Freistaat Sachsen and Volkswagen* v *Commission* [1999] ECR II-3663, paragraph 92). The fact that the Kingdom of the Netherlands could have invoked Article 1(5) of Annex IV to the OCT Decision to make a special appeal to the Council against the contested regulations likewise does not affect the applicant's interest in bringing proceedings in this case.

59 Similarly, the Commission's argument that a particular region may not challenge before the Community judicature the balance made by a Member State of the interests of the various regions comprising it before that Member State defines its position within the Council must also be rejected. It need merely be observed, in that regard, that the contested regulations were adopted by the Commission, not the Council. The Commission exercises its functions entirely independently from the Member States in the general interest of the Community.

60 As regards, finally, the question whether the contested regulations are of direct concern to the applicant, Regulation No 2352/97 contains comprehensive rules leaving no latitude to the authorities of the Member States. As regards rice from the OCTs, it regulates in a binding manner the machinery for submission and issue of import licences and also authorises the Commission to suspend the issue thereof if a quota determined by it is exceeded or there are serious disturbances of the market. Regulation No 2352/97 is therefore of direct concern to the applicant (see Joined Cases 41/70 to 44/70 *International Fruit Company and Others* v *Commission* [1971] ECR 411, paragraphs 23 to 28, and Case 294/83 *Les Verts* v *Parliament* [1986] ECR 1339, paragraph 31).

61 Regulation No 2494/97 is also of direct concern to the applicant in that it excludes the issue of import licences for rice falling within CN code 1006 and originating in the OCTs for applications submitted from 3 December 1997 and suspends until 31 December 1997 the submission of further import licence applications for rice from that origin.

62 It follows that the present actions must be declared admissible.

Substance

63 The applicant puts forward ten pleas in support of its application in Case T-32/98. The first alleges misuse of powers. The second alleges that the wrong legal basis was chosen for Regulation No 2352/97. The third alleges breach of the principle of legal certainty, and the fourth infringement of Article 133(1) of the Treaty. The fifth alleges infringement of Articles 132(1) and 134 of the Treaty, of

Article 102 of the OCT Decision and of Article 19 of Annex II to the OCT Decision. The sixth plea alleges infringement of Article 7(5) of the agreement on safeguards, of Article XIII:2(c) of the 1994 GATT (General Agreement on Tariffs and Trade), and of Article 228(7) of the EC Treaty (now, after amendment, Article 300(7) EC). The seventh plea alleges infringement of Article 109(1) of the OCT Decision. The eighth alleges infringement of Article 109(2) of the OCT Decision. The ninth alleges infringement of Article 190 of the EC Treaty (now Article 253 EC), and the tenth infringement of essential procedural requirements.

64 In Case T-41/98, the applicant seeks annulment of Regulation No 2494/97, relying on the illegality of Regulation No 2352/97, putting forward the same pleas as in Case T-32/98.

65 It is appropriate first to examine the plea alleging infringement of Article 109(1) of the OCT Decision.

Arguments of the parties

66 The applicant maintains, first, that Article 109(1) of the OCT Decision does not empower the Commission to take safeguard measures by reason of the volume of imports originating in the OCTs. The applicant refers in that connection to Article 132(1) of the Treaty and states that the Member States are not authorised to take safeguard measures restricting trade between them by reason of the volume of imports from other Member States. Second, the applicant submits that, even if the Commission were entitled to rely on the volume of imports from the

OCTs in order to adopt safeguard measures, in this case it could not show that there was a risk that the quantity of rice imported from the OCTs was such as to cause disturbance of the Community market. Third, the applicant argues that no such disturbance could derive from the volume of rice imports from the OCTs owing to the minimum export price which it had set for rice originating in the Netherlands Antilles.

67 The Commission replies, first, that the applicant's first argument is based on a misinterpretation of Article 132(1) of the Treaty. That provision does not contain an unconditional legal rule but merely states one of the objectives pursued by cooperation between the OCTs and the Community. The applicant cannot therefore validly rely on that article as a ground for contending that the Commission is not entitled to adopt measures based on Article 109 of the OCT Decision by reason of the volume of imports of products from the OCTs.

68 Second, the Commission states that the increase in the quantities of rice imported from the OCTs as from the 1995/1996 marketing year was steeper than that of the total volume of rice imports into the Community. The share of imports from the OCTs started increasing in the 1994/1995 marketing year and continued to do so until the first safeguard measures were adopted at the beginning of 1997.

69 According to the Commission, the Community statistics show that the total volume of rice imports from the OCTs amounted to 162 541 tonnes of wholly milled rice for the 1996/1997 marketing year, and not 65 000 tonnes as contended by the applicant. The increase in rice imports from the OCTs thus exposed the prices of Community paddy rice to very great pressure, necessitating intervention purchases and even exports, with refunds, of Community indica rice on a market which was, nevertheless, structurally in deficit. By means of the safeguard measures, it was possible to halt and reverse the downward trend observed on the Community market.

70 The Commission also states that it has no duty to demonstrate a causal link between the threat of disturbance of the Community rice market and imports of rice from the OCTs. It is sufficient if there is some relationship between the two phenomena. It is undeniable that imports from third countries have an impact on that market.

71 Third, the Commission replies that, although the rice from the OCTs exported to the Community is essentially from the Antilles, the fact remains that it does not come exclusively from the Netherlands Antilles. The Commission contends that it was required to fix a limit for all the OCTs and that it could not therefore adopt a separate measure for the Netherlands Antilles alone.

72 The intervener states that, when Regulation No 2352/97 was adopted, rice imports from the OCTs were causing serious disturbances on the Community market. It refers in particular to statements made by members of parliament and members of the Commission to the European Parliament, which draw attention to the steep increase in such imports since 1995. The intervener also gives details of the price of indica rice (equivalent quantity, husked) produced on its territory, which declined between January 1997 and February 1998. It also refers to the Commission's broad discretion in this area.

Findings of the Court

73 It must first be borne in mind that Regulation No 2352/97 was adopted on the basis of Article 109 of the OCT Decision.

74 Under Article 109(1) of the OCT Decision, the Commission may take or authorise 'the necessary safeguard measures' either '[i]f, as a result of the application of the [OCT Decision which in principle provides for free access to the Community for products originating in the OCTs], serious disturbances occur in a sector of the economy of the Community or one or more 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'.

75 At the hearing, the Commission stated that the wording of the first sentence of the second recital in the preamble to Regulation No 2352/97 gives the impression that that regulation comes within the first set of circumstances envisaged in Article 109(1) of the OCT Decision.

76 It must be observed that, in fact, it is clear from that passage of Regulation No 2352/97 that the Commission adopted the contested measure in that context. The first phrase of the second recital in the preamble to Regulation No 2352/97 states 'the import of unlimited quantities of rice originating in the OCTs threatens seriously to disturb the Community market in rice'.

77 However, the Court of Justice made it clear in its judgment in C-390/95 P *Antillean Rice Mills*, cited above, that 'in the first hypothesis referred to in Article 109(1) of the OCT Decision, 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' (paragraph 47).

78 Accordingly, even if the Commission enjoys a wide discretion not only regarding the existence of conditions justifying the adoption of safeguard measures but also as regards the principle of adopting such measures (Joined Cases T-480/93 and T-483/93 *Antillean Rice Mills*, cited above, paragraph 122, and Case C-390/95 P *Antillean Rice Mills*, cited above, paragraph 48), the fact nevertheless remains that, in this case, it was under an obligation, in order to enable it to adopt the measures contained in Regulation No 2352/97, to establish the existence of a causal link between application of the OCT Decision and the emergence of disturbances of the Community market.

79 However, it does not appear from Regulation No 2352/97 that the Commission established the existence of any such link. Thus, there is nothing in the preamble to explain how and to what extent application of the OCT Decision guaranteeing 'the import of unlimited quantities of rice from the OCTs' (see paragraph 76 above) provoked serious disturbances of the Community rice market in such a way that it was necessary to adopt Regulation No 2352/97 in order to resolve or reduce the difficulties encountered.

80 It is true that, when Regulation No 2352/97 was adopted on 27 November 1997, Regulation No 1036/97, which limited rice imports from the OCTs (see paragraph 15 above) was about to expire and the mid-term amendment decision, which has the same effects (see paragraph 11 above), had not yet entered into force. By adopting the contested regulations, the Commission therefore sought to control and limit imports of rice from the OCTs between the expiry of Regulation No 1036/97 and the entry into force of the mid-term amendment decision.

81 However, instead of specifically examining what might be the effects on the Community rice market of applying the OCT Decision, the Commission simply

presumed that its application, in the absence of protective measures limiting imports of rice from the OCTs, would necessarily disturb that market seriously.

82 Thus, it is common ground that the Commission did not check whether the price of rice imported from the OCTs was lower than that of Community rice. Indeed, the Commission conceded, in its answer to a written question from this Court of 14 June 1999, that it had never 'made a comparison between the price of rice imported from the OCTs and the price of Community rice'. It explains that its view that the contested measure needed to be adopted 'was not based on a possibly lower export price of rice... but on the threat of imports of unlimited quantities (see the second recital in the preamble to Regulation No 2352/97)'. However, if it had proved to be the case, as the applicant claims, that the rice imported from the OCTs was marketed at a higher price than Community rice, it could not have attracted, in the Community, demand of such a level that the quantities imported could have given rise to serious disturbances on the Community market after the expiry of Regulation No 1036/97.

83 However, the threat of imports of unlimited quantities of products from the OCTs derives directly from application of the provisions of Part Four of the Treaty and of the OCT Decision, which provide that trade with the OCTs is in principle to be placed on the same footing as trade between Member States (see paragraphs 2 to 8 above). If such a threat, which is always imminent in the absence of safeguard measures, were sufficient to demonstrate the existence of a causal link between application of the OCT Decision and possible disturbances in a sector of the Community economy and therefore to justify the adoption of measures under Article 109(1) of the OCT Decision, the objectives pursued by the provisions of Part Four of the Treaty and of the OCT Decision would be rendered nugatory.

84 It must therefore be concluded that, contrary to the requirements of Article 109(1) of the OCT Decision, the Commission did not establish the existence of a causal link between the volume of imports from the OCTs deriving from application of the OCT Decision or that any serious disturbances had arisen on the Community rice market. That omission derives from an error of law in that the Commission again emphasised, in its defence in both cases, that it did not have to establish the existence of any such link.

85 The plea alleging infringement of Article 109(1) of the OCT Decision is therefore well founded.

86 It is not for the Court, in proceedings for annulment, to substitute its own assessment for that of the Commission and consider, on the basis of the information before it, whether, when Regulation No 2352/97 was adopted, there was in fact a causal link between application of the OCT Decision and any disturbances of the Community rice market at that time (see to that effect Joined Cases T-79/95 and T-80/95 *SNCF and British Railways* v *Commission* [1996] ECR II-1491, paragraph 64).

87 Without there being any need for a decision on the merits of the other pleas put forward by the applicant, Regulation No 2352/97 must therefore be annulled. Consequently, Regulation No 2494/97, which is based on Regulation No 2352/97, is also vitiated by illegality and must likewise be annulled.

Costs

88 Under Article 87(2) of the Rules of Procedure of the Court of First Instance, 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 Commission has been unsuccessful, it must, in accordance with the form of order sought by the applicant, be ordered to pay the costs.

89 The Kingdom of Spain, which intervened in support of the Commission, must be ordered to bear its own costs in accordance with Article 87(4) of the Rules of Procedure.

On those grounds,

THE COURT OF FIRST INSTANCE (Third Chamber)

hereby:

1. Joins Cases T-32/98 and T-41/98 for the purposes of the judgment;

2. Annuls 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;

3. Annuls 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;

4. Orders the Commission to bear its own costs and to pay those of the Netherlands Antilles Government in both cases;

5. Orders the intervener to bear its own costs in both cases.

Jaeger Lenaerts Azizi

Delivered in open court in Luxembourg on 10 February 2000.

H. Jung

Registrar

K. Lenaerts

President