

ORDER OF THE COURT OF FIRST INSTANCE (Fourth Chamber)
17 September 1997 *

In Case T-26/97,

Antillean Rice Mills NV, a company incorporated under the law of the Netherlands Antilles, established in Bonaire, Netherlands Antilles, represented by W. Knibbeler, of the Amsterdam Bar, and K. J. Defares, 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, Legal Adviser, acting as Agent, with an address for service in Luxembourg at the office of C. Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for annulment of Commission 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),

* Language of the case: Dutch.

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

composed of: K. Lenaerts, President, P. Lindh and J. D. Cooke, Judges,

Registrar: H. Jung,

makes the following

Order

- 1 On 8 January 1997, the Commission adopted Regulation (EC) No 21/97 introducing safeguard measures in respect of imports of rice originating in the overseas countries and territories (OJ 1997 L 5, p. 24). The second paragraph of Article 7 of that regulation provided that it was to apply from 1 January to 30 April 1997.
- 2 By application lodged at the Registry of the Court of First Instance on 6 February 1997, the applicant brought an action seeking the annulment of that regulation. That action was registered as Case T-26/97.
- 3 By separate document lodged on the same day at the Court Registry, the applicant sought interim measures under Articles 185 and 186 of the EC Treaty. That application was registered as Case T-26/97 R, and was subsequently removed from the register by order of the President of the Court of First Instance of 20 March 1997, in which the decision on costs was reserved.

- 4 In support of its application for annulment, the applicant put forward four pleas in law. The first plea alleges failure to comply with Article 133(1) of the Treaty and Article 101(1) of Council Decision 91/482/EEC of 25 July 1991 on the association of the overseas countries and territories with the European Economic Community (OJ 1991 L 263, p. 1, 'the OCT Decision'). The second plea alleges failure to comply with Article 109(1) of the OCT Decision. The third plea alleges failure to comply with Article 109(2) of the OCT Decision. The fourth plea alleges disregard of the principle that measures must be drawn up with care and of Article 190 of the Treaty.
- 5 On 17 February 1997, by virtue of Article 1(7) of Annex IV to the OCT Decision, the Council adopted Regulation (EC) No 304/97 introducing safeguard measures in respect of imports of rice originating in the overseas countries and territories (OJ 1997 L 51, p. 1).
- 6 Article 7(1) of Regulation No 304/97 repeals Commission Regulation No 21/97. Under the second paragraph of Article 8, Regulation No 304/97 was to apply retroactively from 1 January to 30 April 1997, except for the second indent of Article 1(1)(a), which was to apply only from the date of entry into force of the regulation, namely 21 February 1997, the day of its publication in the *Official Journal of the European Communities*.
- 7 By application lodged at the Court Registry on 27 February 1997, the applicant sought the annulment of Regulation No 304/97. That action was registered as Case T-41/97.
- 8 In support of that application, the applicant puts forward four pleas in law, identical to those relied on in Case T-26/97.

- 9 By letter of 10 March 1997, lodged at the Registry on 11 March 1997, the Commission requested the Court to declare that the application in Case T-26/97 had become devoid of purpose following the adoption of Regulation No 304/97, which, it stressed, applied retroactively from 1 January 1997 and repealed Regulation No 21/97.

- 10 By letter of 17 March 1997, lodged at the Court Registry on 18 March 1997, the applicant expressed its opposition to the Commission's request, submitting that it had not been established that the provision in Regulation No 304/97 repealing Regulation No 21/97 with retroactive effect had been adopted in compliance with the rules in Annex IV to the OCT Decision.

- 11 The Court considers that the Commission's letter of 10 March 1997 raises a preliminary plea which should be dealt with without oral procedure, in accordance with Article 114(3) of the Rules of Procedure.

- 12 To the extent that the applicant's argument is to be understood as meaning that the application in Case T-26/97 has not become devoid of purpose because it is not certain that Regulation No 21/97 has been repealed by Regulation No 304/97 since it has not been established that Regulation No 304/97 was adopted in compliance with the rules in Annex IV to the OCT Decision, it must be pointed out that Regulation No 304/97 refers explicitly to Article 1(7) of Annex IV to the OCT Decision, that the fourth recital in its preamble specifies that the Government of the United Kingdom referred the Commission's decision to adopt Regulation No 21/97 to the Council in accordance with Article 1(5) of Annex IV to the OCT Decision and that the fifth recital points out that, pursuant to paragraph 7 of that article, the Council may adopt a different decision from that of the Commission within the period indicated therein.

- 13 The applicant cannot, therefore, claim that it has not been established that Regulation No 304/97 was adopted in compliance with the rules in Annex IV to the OCT Decision. The Court notes, moreover, that it has not raised such a plea in its application in Case T-41/97.

- 14 To the extent that the applicant's argument is to be understood as meaning that the application in Case T-26/97 has not become devoid of purpose because the legality of the retroactive repeal of Regulation No 21/97 is not established as long as the application for annulment of Regulation No 304/97 is still pending before the Court of First Instance, since Regulation No 21/97 might become applicable again if Regulation No 304/97 were to be annulled, it must be pointed out that, by requesting a declaration that there is no need to adjudicate on the present application and by submitting that Regulation No 21/97 has been retroactively repealed and replaced by Regulation No 304/97, the Commission has implicitly but clearly acknowledged that Regulation No 21/97 no longer forms part of the Community legal order. Consequently, if the Court annuls Regulation No 304/97, the Commission will no longer be able to claim that Regulation No 21/97 is applicable or rely on it as against the applicant.
- 15 In those circumstances, the Court considers that the repeal of Commission Regulation No 21/97 by Council Regulation No 304/97 has given the applicant the result it sought to achieve by the present application, namely the removal of Regulation No 21/97 from the Community legal order.
- 16 It follows that the action has become devoid of purpose and that there is no need to adjudicate on it.

Costs

- 17 Under Article 87(6) of the Rules of Procedure, where a case does not proceed to judgment, the costs are in the discretion of the Court. It is common ground that Regulation No 21/97 was repealed, after the present action was brought, by a decision taken by the Council in accordance with the procedure laid down in Annex IV to the OCT Decision. That repeal is not to be explained on the ground either that the Commission committed an error or that the pleas in law put forward by the applicant in this case are acknowledged to be well founded, but is merely the result of the exercise of a power of decision conferred on the Council. In those circumstances, it is appropriate that the parties each bear their own costs, including those relating to the application for interim measures.

On those grounds,

THE COURT OF FIRST INSTANCE (Fourth Chamber)

hereby orders:

- 1. There is no need to adjudicate on the application.**
- 2. The parties shall each bear their own costs, including those relating to the application for interim measures.**

Luxembourg, 17 September 1997.

H. Jung

Registrar

K. Lenaerts

President