JUDGMENT OF THE COURT (Second Chamber)

14 July 2005 *

In Case C-452/00,

ACTION for annulment under Article 230 EC, brought on 6 December 2000,

Kingdom of the Netherlands, represented by J. van Bakel, acting as Agent,

applicant,

v

Commission of the European Communities, represented by T. van Rijn and C. van der Hauwaert, acting as Agents, with an address for service in Luxembourg,

defendant,

* Language of the case: Dutch.

supported by

Kingdom of Spain, represented by N. Díaz Abad, acting as Agent, with an address for service in Luxembourg,

intervener,

THE COURT (Second Chamber),

composed of C.W.A. Timmermans, President of the Chamber, R. Silva de Lapuerta, R. Schintgen (Rapporteur), G. Arestis and J. Klučka, Judges,

Advocate General: P. Léger,
Registrar: R. Grass,

having regard to the written procedure,

after hearing the Opinion of the Advocate General at the sitting on 17 February 2005,

gives the following

Judgment

1 By its application, the Kingdom of the Netherlands seeks the annulment of Commission Regulation (EC) No 2081/2000 of 29 September 2000 introducing

safeguard measures for imports from the overseas countries and territories of sugar sector products with EC/OCT cumulation of origin (OJ 2000 L 246, p. 64, hereinafter 'the contested regulation').

Legal context

The common organisation of the markets in the sugar sector

2 By Regulation (EC) No 2038/1999 of 13 September 1999 on the common organisation of the markets in the sugar sector (OJ 1999 L 252, p. 1), the Council of the European Union consolidated Regulation (EEC) No 1785/81 of 30 June 1981, which had established that common organisation (OJ 1981 L 177, p. 4), after it had been amended several times. The purpose of that organisation is to regulate the Community sugar market in order to increase employment and raise the standard of living among Community producers.

3 Support for Community production through guaranteed prices is limited to national production quotas (A and B quotas) allocated by the Council, under Regulation No 2038/1999, to each Member State, which then divides them amongst its producers. Quota B sugar (termed 'B sugar') is subject to a higher production levy than Quota A sugar (termed 'A sugar'). Sugar produced in excess of the A and B quotas is termed 'C sugar' and cannot be sold within the European Community unless it is transferred to the A and B quotas for the following season.

4 Apart from those of C sugar, extra-Community exports benefit, under Article 18 of Regulation No 2038/1999, from export refunds to make up for the difference between the price on the Community market and the price on the world market.

5 The quantity of sugar which can benefit from an export refund and the total annual amount of refunds are governed by the World Trade Organisation (WTO) Agreements ('the WTO Agreements'), to which the Community is a party, approved by Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986-1994) (OJ 1994 L 336, p. 1). By the 2000/2001 marketing year at the latest the quantity of sugar exported with refund and the total amount of refunds were to be limited to 1 273 500 tonnes and to EUR 499.1 million, those figures representing a reduction of 20% and 36% respectively as against those for the 1994/1995 marketing year.

The association arrangements of overseas countries and territories with the Community

6 Under Article 3(1)(s) EC the activities of the Community include the association of the overseas countries and territories ('OCTs') 'in order to increase trade and promote jointly economic and social development'.

7 The Netherlands Antilles and Aruba form part of the OCTs.

8 The association of the OCTs with the Community is governed by Part Four of the EC Treaty.

9 Several decisions have been adopted on the basis of Article 136 of the EC Treaty (now, after amendment, Article 187 EC), among them 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), which, according to Article 240(1) thereof, is to apply for a period of 10 years from 1 March 1990.

10 Various provisions of Decision 91/482 were amended by Council Decision 97/803/EC of 24 November 1997 amending at mid-term Decision 91/482/EEC (OJ 1997 L 329, p. 50). Decision 91/482, as amended by Decision 97/803 (hereinafter 'the OCT Decision') was extended until 28 February 2001 by Council Decision 2000/169/EC of 25 February 2000 (OJ 2000 L 55, p. 67).

11 Article 101(1) of the OCT Decision provides:

'Products originating in the OCTs shall be imported into the Community free of import duty.'

12 Article 102 of the OCT Decision provides:

'Without prejudice to [Article] 108b, the Community shall not apply to imports of products originating in the OCTs any quantitative restrictions or measures having equivalent effect.'

13 The first indent of Article 108(1) of the OCT Decision refers to Annex II thereto for a definition of the concept of 'originating products' and the methods of administrative cooperation relating thereto. Under Article 1 of that annex a product is to be considered as originating in the OCTs, the Community or the African, Caribbean and Pacific States ('the ACP States') if it has been either wholly obtained or sufficiently processed there.

14 Article 3(3) of Annex II contains a list of types of working or processing which are insufficient to confer the status of originating products on products coming from the OCTs in particular.

15 Article 6(2) of that annex contains, however, rules known as the 'EC/OCT and the ACP/OCT cumulation of origin rules'. It provides:

'When products wholly obtained in the Community or in the ACP States undergo working or processing in the OCTs, they shall be considered as having been wholly obtained in the OCTs.'

16 Under Article 6(4) of Annex II, the EC/OCT and ACP/OCT cumulation of origin rules apply to 'any working or processing carried out in the OCTs including the operations listed in Article 3(3)'.

17 Decision 97/803 inserted into the OCT Decision inter alia Article 108b, paragraph 1 of which provides that '[t]he ACP/OCT cumulation of origin referred to in Article 6 of Annex II shall be allowed for an annual quantity of 3 000 tonnes of sugar'. Decision 97/803 did not, however, limit application of the EC/OCT cumulation of origin rule.

18 Article 109(1) of the OCT Decision authorises the Commission of the European Communities to take 'the necessary safeguard measures' if, 'as a result of the application of [the OCT] 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 ...'. Under Article 109(2) of the OCT Decision, the Commission must choose 'such measures as would least disturb the functioning of the association and the Community'. Moreover, '[those] measures shall not exceed the limits of what is strictly necessary to remedy the difficulties that have arisen'.

The safeguard measures adopted against imports of sugar and mixtures of sugar and cocoa qualifying for EC/OCT cumulation of origin

19 On the basis of Article 109 of the OCT Decision, the Commission adopted Regulation (EC) No 2423/1999 of 15 November 1999 introducing safeguard

measures in respect of sugar falling within CN code 1701 and mixtures of sugar and cocoa falling within CN codes 1806 10 30 and 1806 10 90 originating in the overseas countries and territories (OJ 1999 L 294, p. 11).

20 By that regulation, which applied until 29 February 2000, the Commission made imports of sugar qualifying for EC/OCT cumulation of origin subject to a system of minimum prices and made imports of mixtures of sugar and cocoa ('mixtures') originating in the OCTs subject to Community surveillance in accordance with the rules laid down in Article 308d of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ 1993 L 253, p. 1).

21 The Kingdom of the Netherlands brought an action for the annulment of Regulation No 2423/1999. That action was dismissed by today's judgment in Case C-26/00 *Netherlands* v *Commission* [2005] ECR I-6527.

22 On 29 February 2000 the Commission adopted, also on the basis of Article 109 of the OCT Decision, Regulation (EC) No 465/2000 introducing safeguard measures for imports from the overseas countries and territories of sugar sector products with EC/OCT cumulation of origin (OJ 2000 L 56, p. 39). That regulation restricted EC/OCT cumulation of origin to 3 340 tonnes of sugar for products falling within CN codes 1701, 1806 10 30 and 1806 10 90 during the period from 1 March 2000 to 30 September 2000.

23 The Kingdom of the Netherlands brought an action for the annulment of the latter regulation. That action was dismissed by today's judgment in Case C-180/00 *Netherlands* v *Commission* [2005] ECR I-6603.

24 On 29 September 2000, the Commission adopted the contested regulation also on the basis of Article 109 of the OCT Decision.

25 The first, fourth, fifth and sixth recitals in the preamble to the contested regulation state as follows:

'(1) The Commission has noted that imports of sugar (CN code 1701) and of mixtures of sugar and cocoa falling within CN codes 1806 10 30 and 1806 10 90 originating in [the OCTs] increased greatly between 1997 and 1999, particularly those imports with EC/OCT cumulation of origin, which increased from zero tonnes in 1996 to more than 53 000 tonnes in 1999. Such products are imported into the Community free of import duties and are admitted without quantity limits in accordance with Article 101(1) of the OCT Decision.

...

(4) In the past few years difficulties have arisen on the Community sugar market, a market in surplus. Sugar consumption is constant at some 12.8 million tonnes per year, while production under quota is around 14.3 million tonnes per year. Any imports of sugar into the Community therefore involve a corresponding quantity of Community sugar which cannot be sold on that market having to be exported. Refunds for that sugar, within the limit of certain quotas, are charged to the Community budget (currently at around EUR 520/tonne). However,

exports with refund are limited in volume by the Agreement on Agriculture concluded as part of the Uruguay Round and have been reduced from 1 555 600 tonnes for the 1995/96 marketing year to 1 273 500 tonnes for the 2000/01 marketing year.

(5) The operation of the COM [common organisation of the market] in sugar may be greatly destabilised by these difficulties. For the 2000/01 marketing year, the Commission decided to reduce Community producers' quotas by some 500 000 tonnes. Any further import of sugar or products with a high sugar content from the OCTs will mean a greater reduction in the quota for Community producers and a greater guaranteed income loss for them.

(6) As a result of these continuing difficulties, there is a risk that a sector of Community activity will deteriorate. ...'

26 Article 1 of the contested regulation reads:

'For products falling within tariff headings CN 1701, 1806 10 30 and 1806 10 90, EC/OCT cumulation of origin as referred to in Article 6 of Annex II to [the OCT Decision] shall be permitted for a quantity of 4 848 tonnes of sugar during the period of validity of this Regulation.

For products other than unprocessed sugar, the sugar content of the imported product shall be taken into account for the purposes of complying with that limit.'

27 The eighth recital in the preamble to the contested regulation states that the Commission fixed that quota of 4 848 tonnes taking account of 'the sum of the highest annual volumes of imports of the products in question recorded in the three years preceding 1999, the year in which imports recorded a sharp rise. In determining the quantities of sugar to be taken into consideration, the Commission takes note of the position adopted by the President of the Court of First Instance in his rulings of 12 July and 8 August 2000 in Cases T-94/00 R, T-110/00 R and T-159/00 R, without, however, recognising it as justified. Consequently, in order to avoid unnecessary procedures and solely for the purpose of adopting these safeguard measures, the Commission, for sugar falling within CN code 1701 and for 1997, bases itself on the figure of 10 372.2 tonnes for the total imports of sugar from the [OCTs] with EC/OCT and ACP/OCT cumulation of origin, as recorded by Eurostat'.

28 Under Article 2 of the contested regulation import of the products referred to in Article 1 is to be subject to the issue of an import licence, to be issued in accordance with the rules laid down in Articles 2 to 6 of Commission Regulation (EC) No 2553/97 of 17 December 1997 on rules for issuing import licences for certain products covered by CN codes 1701, 1702, 1703 and 1704 and qualifying as ACP/OCT originating products (OJ 1997 L 349, p. 26), which were to apply mutatis mutandis.

29 Finally, under Article 3 of the contested regulation, it applied from 1 October 2000 to 28 February 2001.

Forms of order sought by the parties

30 The Netherlands Government claims that the Court should:

— annul the contested regulation;

— order the Commission to pay the costs.

31 The Commission contends that the Court should:

— dismiss the action as unfounded;

— order the Kingdom of the Netherlands to pay the costs.

32 By letters lodged at the Court Registry on 19 and 25 April 2001 respectively, the Commission and the Kingdom of the Netherlands informed the Court that they did not object to the proceedings before the Court being stayed pending delivery of the Court of First Instance's decisions disposing of Joined Cases T-332/00 and T-350/00 *Rica Foods and Free Trade Foods* v *Commission*, the object of which was also the annulment of the contested regulation.

33 By order of 5 June 2001, the President of the Court of Justice stayed the proceedings, pursuant to the third paragraph of Article 47 of the EC Statute of the Court of Justice and Article 82a(1)(a) of the Rules of Procedure, pending delivery of the Court of First Instance's decisions disposing of Joined Cases T-332/00 and T-350/00.

34 The Court of First Instance, by judgment of 14 November 2002 in Joined Cases T-332/00 and T-350/00 *Rica Foods and Free Trade Foods* v *Commission* [2002] ECR II-4755, dismissed those actions as unfounded.

35 By order of 10 April 2003, the President of the Court of Justice granted the Kingdom of Spain leave to intervene in support of the forms of order sought by the Commission.

The action

36 In support of its application for annulment of the contested regulation, the Kingdom of the Netherlands relies on four pleas in law alleging respectively infringement of Article 109(1) and (2) of the OCT Decision, misuse of powers and breach of the duty to state reasons set out in Article 253 EC.

The first plea in law, alleging infringement of Article 109(1) of the OCT Decision

Arguments of the parties

37 By its first plea in law, the Netherlands Government claims that, as regards the import into the Community of sugar with EC/OCT cumulation of origin, the Commission made a manifestly incorrect assessment of the facts, before concluding that it was necessary to adopt safeguard measures.

38 According to that Government, safeguard measures are an exception to the normally applicable trading rules. It is therefore for the Commission to prove the existence of exceptional circumstances requiring such measures on the basis of the objective assessment criteria set out in Article 109 of the OCT Decision. That was not done here.

39 The first plea in law has five parts.

40 In the first place, the Netherlands Government claims that the quantities of sugar and mixtures imported from the OCTs, which, according to the statistics compiled by the Statistical Office of the European Communities (Eurostat), rose to about 40 000 tonnes in 1999, less than 0.4% of Community production, could not have presented any risk of disturbance in the common organisation of the sugar market. Likewise, it could not have been disturbed by imports of mixtures since, by virtue of Article 1(1) of Regulation No 2038/1999, cocoa is not covered by that common organisation.

41 Secondly, that Government points out that the total production of sugar in the Community varies by more than a million tonnes from one year to another. Since consumption also fluctuates, the assertion that each additional quantity imported from the OCTs leads to the export of a corresponding quantity is based on a failure to recognise reality. In any event, even if imports from the OCTs contribute to an increase in Community exports, such exports are not necessarily subsidised.

42 Thirdly, the Government submits that the sugar imports at issue were not such as to create difficulties for the Community in the light of its obligations under the WTO Agreements. Relying on the order of the President of the Court of First Instance of 30 April 1999 in Case T-44/98 R II *Emesa Sugar* v *Commission* [1999] ECR II-1427, paragraph 107, it observes that the Community had sufficient room for manoeuvre to cope with the increase of sugar imports from the OCTs.

43 Finally, the Government submits that it is not established that the sugar imports at issue caused loss to Community producers. First of all, export refunds are financed by the European Agricultural Guidance and Guarantee Fund (EAGGF) and not by Community producers. Next, in 1999, sugar was sold to the OCT producers at a price about double the world market price, which enabled the Community producers to make substantial profits. Lastly, the Commission has not shown that each tonne imported from the OCTs has led to a corresponding decrease in the sales made by Community producers.

44 In addition, the argument that imports result in costs for the European sugar industry is even less plausible as regards imports in modest quantities of mixtures

originating in the OCTs than it is as regards imports of sugar, since Community producers do not manufacture mixtures.

45 The Commission replies that the situation on the market is such that each tonne of sugar imported from the OCTs into the Community leads to a corresponding reduction in Community production quotas. Furthermore, in view of the production capacities of OCT undertakings, in the absence of any restriction imports of sugar from those countries could result in a reduction of Community production quotas by more than 40% to 50% of that already imposed by the Community authorities.

46 As for mixtures, even if it is indisputable that cocoa is not covered by the common organisation of the market it is just as evident that the mixtures in question contain a very high percentage of sugar. Imports of mixtures from the OCTs may therefore have detrimental effects on the sale of sugar by the producers to Community manufacturers of those mixtures.

47 The Commission also argues that the common organisation of the market has established production quotas, both for the sugar which will be consumed on the Community market (A sugar) and for sugar which can be exported with refund (A and B sugars). It submits that if the sugar producers cannot dispose of A sugar on the Community market, they try to export it in the framework of exports, necessarily subsidised. Another solution would be to store the sugar, but for some years now, sugar has no longer been offered to intervention and the Commission also discourages recourse to that procedure in view of its cost to the Community budget.

48 As regards compliance with the obligations undertaken in the framework of the WTO, the Commission refers to paragraph 56 of the judgment in Case C-17/98 *Emesa Sugar* [2000] ECR I-675.

49 Finally, as regards the detrimental effects for Community operators, the Commission, referring to paragraph 56 of the judgment in *Emesa Sugar* and to paragraph 88 of the Opinion of Advocate General Ruiz-Jarabo Colomer in that case, observes that export refunds are not financed entirely by the EAGGF, since responsibility for a substantial part of them is assumed by Community producers. While it is true that certain Community producers can make a profit from sales of C Sugar to OCT producers, that fact cannot compensate, in the Commission's submission, for the loss caused to the sector as a whole.

50 The Spanish Government's position is identical to that of the Commission. It points out that the substantial increase, since 1997, in sugar imports from the OCTs is the result of the revision of the OCT Decision which limited duty-free imports into the Community of products with ACP/OCT cumulation of origin. Undertakings in the sector, informed of that prospect at the time of the publication, in 1996, of the proposed revision, turned to products with EC/OCT cumulation of origin, which were not covered by the revision of the OCT Decision. The safeguard measures adopted are thus intended to protect the interests of Community producers in the framework of the common agricultural policy without affecting the OCTs' economies since the measures do not cover sugar produced in those countries.

51 That Government also points out that in 1999 the price of sugar on the world market was EUR 242 per tonne whereas sugar was sold at EUR 775 per tonne in Spain. The OCT operators thus extracted a profit margin of EUR 533 per tonne of sugar which they exported free of customs duties into the Community. They were therefore in a position to buy C sugar and, after minimum processing, to avoid

paying import duties whilst reaping huge profits. As regards the price of imports of mixtures, it, too, is lower than the price prevailing on the Community market.

52 In addition, the Spanish Government, noting that the sugar in question is not the product of crops cultivated in the OCTs, points out that the OCT Decision was adopted with a view to the development of those territories. Those countries derive no benefit from the added value obtained from processing operations on which the EC/OCT cumulation of origin depends, given that, in practice, the minimum processing which is carried out in them generates no employment and therefore does not encourage the development of those OCTs.

Findings of the Court

53 It should first be borne in mind that the Community institutions have a wide discretion in the application of Article 109 of the OCT Decision (see, to that effect, Case C-390/95 P *Antillean Rice Mills and Others* v *Commission* [1999] ECR I-769, paragraph 48, Case C-110/97 *Netherlands* v *Council* [2001] ECR I-8763, paragraph 61, and Case C-301/97 *Netherlands* v *Council* [2001] ECR I-8853, paragraph 73).

54 In those circumstances, the Community Court must restrict itself to considering whether the exercise of that discretion is vitiated by manifest error or misuse of powers and whether the Community institutions clearly exceeded the bounds of their discretion (see *Antillean Rice Mills and Others* v *Commission*, cited above, paragraph 48, Case C-110/97 *Netherlands* v *Council*, cited above, paragraph 62, and Case C-301/97 *Netherlands* v *Council*, cited above, paragraph 74).

55 The scope of the Community Court's review must be limited in particular if, as in the present case, the Community institutions have to reconcile divergent interests and thus to select options within the context of the policy choices which are their own responsibility (see, to that effect, Case C-17/98 *Emesa Sugar*, cited above, paragraph 53).

56 Under Article 109(1) of the OCT Decision the Commission 'may' take 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'. The Court of Justice held in paragraph 47 of its judgment in *Antillean Rice Mills and Others* v *Commission*, that, on the first hypothesis stated in that paragraph, the existence of a causal link must be established because the purpose of the safeguard measures must be to resolve or reduce the difficulties which have arisen in the sector concerned, and that, on the other hand, as regards the second hypothesis, it is not a requirement that the difficulties which justify the imposition of a safeguard measure result from the application of the OCT Decision.

57 The Commission based the contested regulation on the second hypothesis described in Article 109(1) of the OCT Decision. The sixth recital in the preamble to that regulation states that the Commission adopted the contested safeguard measure when 'as a result of ... difficulties there [was] a risk that a sector of Community activity [would] deteriorate'.

58 It is clear, more particularly, from the fourth to sixth recitals in the preamble to the contested regulation that recourse to Article 109 of the OCT Decision was motivated by the fact that the imports of sugar and mixtures with EC/OCT cumulation of origin involved the risk of a serious deterioration in the operation of the common organisation of the market in the sugar sector and effects highly detrimental to Community operators in that sector.

59 The first plea in law is made up of four parts the first three of which, in essence, concern the existence of a risk of disturbance in the common organisation of the sugar market and the fourth the existence of a risk of effects detrimental to Community operators.

The risk of disturbance in the common organisation of the sugar market

60 First, the Netherlands Government submits that, having regard to the tiny quantities of sugar imported under the system of EC/OCT cumulation of origin, there was no 'difficulty' within the meaning of Article 109(1) of the OCT Decision.

61 In that regard, the first and fifth recitals in the preamble to the contested regulation state that the Commission had noted that imports of sugar originating in the OCTs under the system of EC/OCT cumulation of origin had 'increased greatly' since 1997 and that the operation of the organisation of the market might be 'greatly destabilised'. The fourth recital in the preamble to that regulation states in that regard:

'... [T]he Community sugar market [is] a market in surplus. Sugar consumption is constant at some 12.8 million tonnes per year, while production under quota is around 14.3 million tonnes per year. Any imports of sugar into the Community therefore involve a corresponding quantity of Community sugar which cannot be sold on that market having to be exported. Refunds for that sugar, within the limit of certain quotas, are charged to the Community budget (currently at around EUR 520/tonne). However, exports with refund are limited in volume by the Agreement on Agriculture concluded as part of the Uruguay Round and have been reduced from 1 555 600 tonnes for the 1995/1996 marketing year to 1 273 500 tonnes for the 2000/2001 marketing year'.

62 It must be recalled that, as the Court found in paragraph 56 of its judgment in *Emesa Sugar*, in 1997 Community production of beet sugar already exceeded the quantity consumed in the Community; in addition cane sugar was imported from the ACP States to cater for specific demand for that product and the Community was under an obligation to import a certain quantity of sugar from non-member countries under WTO Agreements. The Community was also required to subsidise sugar exports by granting export refunds, within the limits laid down in the WTO Agreements. In those circumstances and in view of the growing increase in imports of sugar from the OCTs since 1997, the Commission was entitled to take the view that any additional quantity of sugar reaching the Community market, even if minimal compared with Community production, would have obliged the Community institutions to increase the amount of the export subsidies, within the limits mentioned above, or to reduce the quotas of European producers, which would have disturbed the common organisation of the sugar market, the balance of which was already precarious, and would have been contrary to the objectives of the common agricultural policy.

63 Furthermore, while mixtures are not covered by the common organisation of the sugar market, as is clear from Article 1(1) of Regulation No 2038/1999, the increase in imports of those products from the OCTs, generally with a high sugar content, gives rise none the less to a risk of disturbance in the functioning of the common organisation of the market in the sugar sector, since those imports may affect the opportunities for Community producers to sell sugar to Community manufacturers of those mixtures.

64 The Netherlands Government has therefore not shown that the Commission made a manifest error of assessment in considering that imports of sugar and mixtures originating in the OCTs had significantly increased between 1997 and 1999 and that that increase, though minimal compared to Community production, amounted to 'difficulties' within the meaning of Article 109(1) of the OCT Decision.

65 Consequently, the first part of the first plea in law must be rejected as unfounded.

66 Secondly, the Netherlands Government challenges the Commission's statement, in the fourth recital in the preamble to the contested regulation, that any additional imports of sugar 'involve a corresponding quantity of Community sugar which cannot be sold on [the] market having to be exported', since both the production and the consumption of sugar in the Community fluctuates from year to year. The Government also casts doubt on the fact that the exports in question are subsidised.

67 In that regard, it is sufficient to recall that Community production exceeds the consumption of sugar in the Community, a fact which the Netherlands Government does not dispute, and that the Community is, in addition, obliged to import a certain quantity of sugar from non-Member States under the WTO Agreements (*Emesa Sugar*, paragraph 56).

68 In view of the surplus on the Community sugar market, the fact that production and consumption of sugar in the Community may fluctuate from year to year is, as the Advocate General pointed out in paragraph 71 of his Opinion, irrelevant.

69 Precisely because of that surplus, any additional import under the system of EC/OCT cumulation of origin increases the surplus of sugar on the Community market and leads to an increase in subsidised exports (see *Emesa Sugar*, paragraph 56).

70 On that last point the Commission did not make a manifest error of assessment by considering that exports generated by imports of sugar from the OCTs were subsidised exports, since the sugar imported from the OCTs in substitution for Community sugar must itself be exported in order to maintain the equilibrium of the common organisation of the markets.

71 As a result, the second part of the first plea in law must also be rejected.

72 Thirdly, the Netherlands Government argues that the WTO Agreements still afforded sufficient room for manoeuvre to permit the imports in question into the Community.

73 In that regard, it must be observed that, even if the additional exports of sugar with refund which the sugar imports from the OCTs could have generated did not reach the sums and quantities fixed in the WTO Agreements, the Netherlands Government has not shown that the Commission made a manifest error of assessment by taking account of the purpose of those Agreements gradually to limit export subsidies and by considering that the increased sugar imports, under the system of EC/OCT cumulation of origin, increased, in their turn, the total amount of export subsidies and had given rise to the risk of destabilisation of the Community sugar sector, as the Court of First Instance pointed out in paragraph 139 of its judgment in Joined Cases T–94/00, T-110/00 and T-159/00 *Rica Foods and Others* v *Commission* [2002] ECR II-4677.

74 The third part of the first plea in law must, as a result, be rejected.

The effects on Community producers

75 The fifth recital in the preamble to the contested regulation states that the imports in question would lead to 'a greater guaranteed income loss' for Community sugar producers.

76 Contrary to the Netherlands Government's submission in support of the fourth part of its first plea in law, the Commission did not make a manifest error of assessment by putting forward such a ground to justify the adoption of the safeguard measure at issue.

77 First of all, it is evident that the deterioration or threat of deterioration in the common organisation of the market may necessitate a reduction in the production quotas and thus directly affect the income of Community producers.

78 Next, export refunds are financed in large measure by Community producers through production levies set each year by the Commission. As stated in paragraph 70 of this judgment, the Commission could legitimately find that the imports in question might have resulted in an increase in the volume of subsidised exports and, consequently, a rise in the production levy assumed by Community producers.

79 Lastly, even if certain producers could, as the Netherlands Government submits, realise substantial profits on the sale of C sugar to OCT operators by selling at prices much above the world market price, that assertion, which is not supported by any

specific evidence, cannot bring into question the Commission's assessment that the imports in question might have disturbed the sugar sector, and thus resulted in particular in an increase in the amount of export subsidies or a reduction in production quotas.

80 The fourth part of the first plea in law must therefore be rejected as unfounded.

81 In the light of all the foregoing considerations, the first plea in law must be rejected.

The second plea in law, alleging infringement of Article 109(2) of the OCT Decision

Arguments of the parties

82 By its second plea in law, the Netherlands Government claims that the Commission infringed the principle of proportionality set out in Article 109(2) of the OCT Decision. The plea in law has four parts.

83 First, the Government complains that the Commission disregarded the preferential status, as established by the OCT Decision, of products originating in the OCTs compared to the regime applying to products originating in the ACP States.

84 Secondly, the contested regulation was adopted without the Commission having calculated the negative effects of its application on the OCTs concerned and the undertakings affected.

85 Thirdly, even if the Community sugar market experiences difficulties, the objective pursued by the Commission could have been attained by means of a measure less restrictive for the OCTs and undertakings concerned, such as the imposition of a minimum sale price.

86 Fourthly, Article 2(2) of the contested regulation, in so far as it makes Article 3(3) of Regulation No 2553/97 applicable, is also contrary to the principle of proportionality. The amount of the guarantee required by the latter provision in respect of import licences is equal to 50% of the Common Customs Tariff duty applicable on the day of submission of the application, which was then about EUR 43.7 per 100 kg. Until 1 March 2000, the amount of the guarantee required for sugar covered by the system of EC/OCT cumulation of origin was ECU 0.3 per 100 kg. According to the Netherlands Government, under Article 8(1) of Commission Regulation (EC) No 1464/95 of 27 June 1995 on special detailed rules for the application of the system of import and export licences in the sugar sector (OJ 1995 L 144, p. 14), the security to be provided for sugar from the ACP and other non-Member States was also set at ECU 0.3 per 100 kg.

87 The Netherlands Government therefore submits that the amount of the security required by Article 3(3) of Regulation No 2553/97 is out of proportion to the amount of the security required for imports of sugar from the ACP and other non-Member States.

88 The Commission replies, first of all, that the OCTs' situation differs from that of the ACP and other non-Member States, since sugar is not produced in the OCTs. The cumulation of origin rule by virtue of which the OCTs currently export sugar and mixtures to the Community is not to be found in the agreements with the ACP and other non-Member States. In those circumstances, that Government cannot validly maintain that limiting the cumulation of origin mechanism constitutes interference with the OCTs' privileged position compared to the ACP and other non-Member States.

89 The Commission points out also that in the circumstances it could not analyse in depth the effects of the fixing of quotas for imports from the OCTs on the economies of those countries and on the industry concerned. The research which it had carried out on that subject was designed to enable it to submit to the Council a proposal for a permanent regulation in the matter.

90 The Commission also contends that the reduction of Community production quotas has grave consequences for Community operators, as only imports of sugar with cumulation of origin are restricted. In addition, even though the OCTs do not produce sugar, the quota determined on an annual basis of 11 635 tonnes represents almost four times that which is set by Decision 97/803 for the import of sugar under the system of ACP/OCT cumulation of origin and which the Court did not find unlawful in *Emesa Sugar*, cited above.

91 Finally, as regards the application of Article 3(3) of Regulation No 2553/97, the Commission observes that the security required by that provision is intended to ensure that the quantity applied for is actually imported, to prevent licences being sought for speculative purposes. That reason justifies the difference between that security and the security which is required for imports of sugar from the ACP and other non-Member States.

92 The Spanish Government adopts, in essence, the Commission's arguments. It maintains, in particular, that the fact that the OCT Decision itself provides for the possibility of adopting safeguard measures demonstrates the compatibility of the measures at issue with the association arrangements for the OCTs.

Findings of the Court

93 Article 109(2) of the OCT Decision provides:

'... 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.'

94 In this case, in order to remedy the difficulties which the Community market experienced, Article 1 of the contested regulation limits imports of sugar and mixtures with EC/OCT cumulation of origin to a maximum quantity of 4 848 tonnes for the period concerned. The eighth recital in the preamble to that regulation states that that figure represents 'the sum of the highest annual volumes of imports of the products in question recorded in the three years preceding 1999, the year in which imports recorded a sharp rise'.

95 In the first place, as regards the argument concerning disregard of the preferential status of sugar originating in the OCTs compared to sugar from the ACP states, it is

sufficient to state that Article 109 of the OCT Decision provides precisely for the possibility of the Commission adopting safeguard measures in the circumstances which it covers. The fact that the Commission adopted such a measure in respect of certain products originating in the OCTs is not such as to put in question the preferential status, under Article 101(1) of the OCT Decision, of products originating in those countries. A safeguard measure is, by nature, exceptional and temporary.

96 In addition, in this case, as the Court of First Instance observed in paragraph 205 of its judgment in Case T-94/00 *Rica Foods and Others* v *Commission*, cited above, only sugar and mixtures imported under the system of EC/OCT cumulation of origin are covered by the contested regulation, no ceiling being imposed as regards imports of sugar originating in the OCTs under the ordinary rules of origin, if such production were to exist.

97 As a result, the first part of the second plea in law must be rejected.

98 Secondly, as regards the argument based on breach of the duty to inform itself beforehand of the negative effects which the safeguard measure might have on the economy of the OCTs concerned and the undertakings affected, it must be stated that at the date on which the contested regulation was adopted proceedings had already been brought before both the Court of Justice and the Court of First Instance in respect of the requirements for importing sugar from the Netherlands Antilles and Aruba (see, in particular, in respect of the same problem, *Emesa Sugar*, on the subject of imports of sugar with ACP/OCT cumulation of origin; Cases C-26/00 and C-180/00 *Netherlands* v *Commission*, cited above, and Case T-47/00 *Rica Foods* v *Commission* [2002] ECR II-113, as regards imports of sugar with EC/OCT cumulation of origin). Furthermore, as is apparent from paragraphs 28 to 30 of the judgment in Case C-26/00 *Netherlands* v *Commission*, the adoption of Regulation No 2423/1999 was preceded by consultations between the Commission, the Kingdom of the Netherlands and the other Member States in the course of which the question of the economic consequences of the safeguard measure envisaged had to be discussed.

99 It follows from the foregoing that the Commission was informed of the particular situation of the Netherlands Antilles and Aruba when it envisaged adopting the contested regulation and was in a position to assess for that purpose the impact of the regulation on the economy of the OCTs concerned as well as for the undertakings affected.

100 The second part of the second plea in law must, as a result, be rejected.

101 Thirdly, as regards the alleged possibility of having recourse to a measure more appropriate and less restrictive than that provided for by the contested regulation, in order to attain the objectives pursued by the Commission, such as the imposition of a minimum sale price, it must be observed that the principle of proportionality, which is one of the general principles of Community law, requires that measures adopted by Community institutions should not exceed the limits of what is appropriate and necessary in order to attain the legitimate objectives pursued by the legislation in question, and where there is a choice between several appropriate measures, recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued (Case C-331/88 *Fedesa and Others* [1990] ECR I-4023, paragraph 13; Joined Cases C-133/93, C-300/93 and C-362/93 *Crispoltoni and Others* [1994] ECR I-4863, paragraph 41; *Antillean Rice Mills and Others* v *Commission*, cited above, paragraph 52; and Case C-189/01 *Jippes and Others* [2001] ECR I-5689, paragraph 81).

102 As regards judicial review of compliance with that principle, bearing in mind the wide discretionary power enjoyed, in particular, by the Commission in matters concerning safeguard measures, the legality of such a measure can be affected only if the measure is manifestly inappropriate in terms of the objective which the competent institution is seeking to pursue (see, to that effect, Case C-301/97 *Netherlands* v *Council*, cited above, paragraph 135 and the case-law cited there).

103 Thus, in this case, it is not for the Court to establish whether the provision adopted by the Commission is the only or the best measure which could be adopted, but to assess whether it was manifestly inappropriate.

104 In that regard, the Netherlands Government has not adduced evidence that the restriction to 4 848 tonnes of the quantity of sugar with EC/OCT cumulation of origin which could be imported into the Community free of customs duties during the period covered by the contested regulation was manifestly inappropriate in order to attain the objective pursued.

105 The third part of the second plea in law must, as a result, be rejected.

106 Lastly, as regards the challenge to the validity of Article 2(2) of the contested regulation, it must be observed that the objective pursued by the Commission, by requiring a large sum as security for the import of sugar with EC/OCT cumulation of origin, was, as it emphasised, to avoid speculation.

107 Such a security does not deprive genuinely interested undertakings of the possibility of exporting sugar to the Community. Whilst the amount of the security must admittedly be paid to obtain the import licences, that sum is reimbursed to the undertaking if the import operation is carried out (see, to that effect, Case C-110/97 *Netherlands* v *Council*, paragraph 132).

108 In those circumstances, it has not been established that the measure at issue was manifestly inappropriate or unreasonable in order to attain the objective pursued by the Commission.

109 Since its fourth part cannot be accepted either, the second plea in law must be rejected in its entirety.

The third plea in law, alleging misuse of powers

Arguments of the parties

110 By its third plea in law, the Netherlands Government complains that the Commission sought to establish restrictions on sugar imports under the system of EC/OCT cumulation of origin, despite the fact that the Council had not provided for such restrictions in the successive revisions of the OCT Decision.

111 Article 109 of the OCT Decision does not confer on the Commission discretionary power to amend or supplement a Council decision where its effects, foreseen or even only envisaged, occur afterwards. That argument is especially pertinent since, in this case, the Council abstained, when it extended the validity of Decision 91/482, from adopting measures concerning sugar with EC/OCT cumulation of origin and mixtures.

112 The Commission replies that, in Joined Cases T-32/98 and T-41/98 *Netherlands Antilles* v *Commission* [2000] ECR II-201, the Court of First Instance did not consider that it had misused its powers.

113 The Spanish Government submits that the Kingdom of the Netherlands has put forward no evidence to establish that the contested regulation was not adopted with the intention of avoiding deterioration in the Community sugar sector.

Findings of the Court

114 The Court has consistently held that there is a misuse of power where an institution adopts a measure with the exclusive or main purpose of achieving an end other than that stated or evading a procedure specifically prescribed by the Treaty for dealing with the circumstances of the case (see, in particular, Case C-84/94 *United Kingdom* v *Council* [1996] ECR I-5755, paragraph 69, and Case C-48/96 P *Windpark Groothusen* v *Commission* [1998] ECR I-2873, paragraph 52).

115 In this case, it is clear from the consideration of the first plea in law that the Commission was entitled to find that the sugar imports with EC/OCT cumulation of origin constituted 'difficulties', within the meaning of Article 109(1) of the OCT Decision, which might disturb the operation of the common organisation of the sugar market.

116 Furthermore, the Netherlands Government has produced no evidence from which it appears that the contested regulation was not adopted with the aim of remedying the disturbances noted or avoiding more serious disturbances on the Community sugar market. In that regard, the mere fact that the Council introduced, in Article 108b of the OCT Decision, a quantitive restriction for sugar from the ACP/OCTs does not in the least affect the Commission's power under Article 109(1) of the OCT Decision to adopt the necessary safeguard measures as regards sugar or any other product originating in the OCTs, if the requirements for the adoption of such measures are met.

117 Therefore, the third plea in law must also be rejected.

The fourth plea in law, alleging breach of the duty to state reasons

Arguments of the parties

118 By its fourth plea in law, the Netherlands Government maintains that the contested regulation contains no statement of reasons:

— as to the grounds on which the Commission considered it necessary to continue, from 1 October 2000, safeguard measures introduced by Regulation No 465/2000;

— as to the utility of the safeguard measures in question;

— for the adoption of identical restrictions for sugar and mixtures originating in the OCTs, whereas Regulation No 2423/1999 prescribed different measures for those two types of products;

— as to the risk of deterioration of the situation on the Community sugar market because of reduced imports of sugar and mixtures with EC/OCT cumulation of origin;

— as to the derogation applied to the preferential position enjoyed by the OCTs compared to the ACP and other non-Member States.

119 In addition, the Netherlands Government claims that the statement of reasons for fixing the quota at 4 848 tonnes is insufficient. The Commission lost sight of the fact that imports of sugar with EC/OCT cumulation of origin started only in 1999 and that imports of those products were stimulated by the Council.

120 The Commission submits, on the contrary, that the statement of reasons in the contested regulation satisfies the requirements of the case-law in that it clearly discloses the reasoning of the institution which adopted it. The sixth recital in the preamble to the contested regulation states the reason for the continuation of the safeguard measures and the eighth recital explains the volume of the quota set.

121 The Spanish Government's position is identical to that of the Commission. It adds that, according to the Court's case-law, in the case of a measure of general application, as here, the statement of reasons may be confined to indicating the general situation which led to its adoption, on the one hand, and the general objectives which the institution which adopted it intended to achieve, on the other. If the contested measure clearly discloses the essential objective pursued by the institution concerned, it would be unreasonable to require a specific statement of reasons for the various technical choices made. That is all the more so where, as in the present case, the Community institutions have a broad discretion in their choice of the means necessary to implement a complex policy.

Findings of the Court

122 The Court observes that it is settled case-law that the statement of reasons required by Article 253 EC must be appropriate to the nature of the act at issue and must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in question in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the Community Court to exercise its power of review. It is not necessary for the reasoning to go into all the relevant facts and points of law, since the question whether the statement of reasons for a measure meets the requirements of Article 253 EC must be assessed

with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (see, inter alia, Joined Cases C-9/95, C-23/95 and C-156/95 *Belgium and Germany* v *Commission* [1997] ECR I-645, paragraph 44, and Case C-367/95 P *Commission* v *Sytraval and Brink's France* [1998] ECR I-1719, paragraph 63).

123 It must be stated that in the first to sixth recitals in the preamble to the contested regulation the Commission explained the difficulties which had persisted since 1997 on the Community sugar market, the reasons for which those difficulties could give rise to deterioration in the functioning of the common organisation of the market and to detrimental effects for Community operators, in view of the reduction in Community production quotas decided in the meantime. In addition, the Commission stated in the sixth recital in the preamble to that regulation that the difficulties which led to the adoption of Regulation No 465/2000 had 'continu[ed]', so that the continuation of the safeguard measure was required, and it provided, in the eighth recital, which is reproduced in full in paragraph 27 of this judgment, the reasons which led it to fix the quota in issue.

124 In those circumstances, contrary to the Netherlands Government's submission, the preamble to the contested regulation discloses clearly and unequivocally the reasoning followed by the Commission, in such a way as to enable those concerned to ascertain the reasons for the measures adopted and the Court to carry out its review, as is clear from the examination of the preceding pleas in law. Furthermore, the Kingdom of the Netherlands was closely associated with the process of preparing the contested regulation.

125 Since the fourth plea in law cannot be accepted either, the action must be dismissed.

Costs

126 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 Commission has applied for costs and the Kingdom of the Netherlands has been unsuccessful, the latter must be ordered to pay the costs. In accordance with Article 69(4) the Kingdom of Spain must bear its own costs.

On those grounds, the Court (Second Chamber) hereby:

1. **Dismisses the action;**

2. **Orders the Kingdom of the Netherlands to pay the costs;**

3. **Orders the Kingdom of Spain to bear its own costs.**

[Signatures]