Reports of Cases

JUDGMENT OF THE GENERAL COURT (Fifth Chamber)

14 January 2016*

(Agriculture — Export refund — Poultrymeat — Fixing of the refund at EUR 0 — Obligation to state reasons — Possibility for the Commission to confine itself to a standard statement of reasons — Commission's usual practice in fixing refunds — Article 164(3) of Regulation (EC) No 1234/2007 — Non-exhaustive nature of the prescribed criteria)

In Case T-549/13,

French Republic, represented by G. de Bergues, D. Colas and C. Candat, acting as Agents,

applicant,

v

European Commission, represented by D. Bianchi and K. Skelly, acting as Agents,

defendant,

APPLICATION for annulment of Commission Implementing Regulation (EU) No 689/2013 18 July 2013 fixing the export refunds on poultrymeat (OJ 2013 L 196, p. 13),

THE GENERAL COURT (Fifth Chamber),

composed of A. Dittrich (Rapporteur), President, J. Schwarcz and V. Tomljenović, Judges,

Registrar: S. Bukšek Tomac, Administrator,

having regard to the written procedure and further to the hearing on 24 April 2015,

gives the following

Judgment

Background to the dispute

1 By the present action, the French Republic seeks annulment of a measure adopted by the European Commission, whereby the latter fixed at zero the amount of the export refunds on poultrymeat for three categories of deep-frozen whole chickens.

* Language of the case: French.

2 The principles governing export refunds are laid down in Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products ('the Single CMO Regulation') (OJ 2007 L 299, p. 1), as amended.

3 Chapter, III, 'Exports', of Part III, 'Trade with third countries', includes Section II, 'Export refunds', devoted to such refunds. Article 162 of that regulation provides that, to the extent necessary to enable exports on the basis of world market quotations or prices and within the limits resulting from agreements concluded in accordance with Article 218 TFEU, the difference between those quotations or prices and prices in the European Union may be covered by export refunds for the products in, inter alia, the poultrymeat sector.

4 According to Article 164(1) of Regulation No 1234/2007, export refunds are to be the same for the whole of the European Union. According to paragraph 2 of that article, refunds are to be fixed by the Commission and may be fixed at regular intervals or, for certain products, by invitation to tender. That paragraph also provides that, except where fixed by tender, the list of products on which an export refund is granted and the amount of export refunds are to be fixed at least once every three months.

5 Article 164(3) of Regulation No 1234/2007 is worded as follows:

'One or more of the following aspects shall be taken into account when refunds for a certain product are being fixed:

(a) the existing situation and the future trend with regard to:

— prices and availabilities of that product on the Community market,

— prices for that product on the world market;

(b) the aims of the common market organisation which are to ensure equilibrium and the natural development of prices and trade on this market;

(c) the need to avoid disturbances likely to cause a prolonged imbalance between supply and demand on the Community market;

(d) the economic aspect of the proposed exports;

(e) the limits resulting from agreements concluded in accordance with Article [218 TFEU];

(f) the need to establish a balance between the use of Community basic products in the manufacture of processed goods for export to third countries, and the use of third-country products brought in under processing arrangements;

(g) the most favourable marketing costs and transport costs from Community markets to Community ports or other places of export together with forwarding costs to the countries of destination;

(h) demand on the Community market;

(i) in respect of the pigmeat, eggs and poultrymeat sectors, the difference between prices within the Community and prices on the world market for the quantity of feed grain input required for the production in the Community of the products of those sectors.'

6 In accordance with those rules, the Commission regularly fixed, by implementing regulations, the amount of the export refunds in the poultrymeat sector.

7 Since the adoption of Commission Regulation (EC) No 525/2010 of 17 June 2010 fixing the export refunds on poultrymeat (OJ 2010 L 152, p. 5), the amount of those refunds has gradually fallen for three categories of deep-frozen chickens. The amount of the export refunds was first of all reduced from EUR 40/100 kg to EUR 32.50/100 kg. After being maintained by eight successive implementing regulations, the latter amount then fell to EUR 21.70/100 kg pursuant to Commission Implementing Regulation (EU) No 962/2012 of 18 October 2012 fixing the export refunds on poultrymeat (OJ 2012 L 288 p. 6).

8 A new reduction, bringing the amount of the refunds to EUR 10.85/100 kg for the three categories of deep-frozen chickens in question, was imposed by Commission Implementing Regulation (EU) No 33/2013 of 17 January 2013 fixing the export refunds on poultrymeat (OJ 2013 L 14, p. 15). That amount was then maintained by Commission Implementing Regulation (EU) No 360/2013 of 18 April 2013 fixing the export refunds on poultrymeat (OJ 2013 L 109, p. 27).

9 By Implementing Regulation (EU) No 689/2013 of 18 July 2013 fixing the export refunds on poultrymeat (OJ 2013 L 196, p. 13; 'the contested regulation'), the Commission, in particular, fixed at zero the amount of export refunds for three categories of deep-frozen chickens, the codes of which are 0207 12 10 9900, 0207 12 90 9190 and 0207 12 90 9990.

10 The amount of the refunds for the other six products — essentially chicks — set out in the annex to the contested regulation, which had been fixed at zero by Commission Implementing Regulation (EU) No 1056/2011 of 20 October 2011 fixing the export refunds on poultrymeat (OJ 2011 L 276, p. 31), was not amended.

11 According to the annex to the contested regulation, the destinations affected by the export refunds are, in particular, countries in the Middle East.

12 The contested regulation also repealed Regulation No 360/2013 which until then had fixed the level of the refunds for the sector in question.

13 Recitals 1 to 3 of the contested regulation are worded as follows:

'(1) Article 162(1) of Regulation (EC) No 1234/2007 provides that the difference between prices on the world market for the products referred to in Part XX of Annex I to that Regulation and prices in the Community for those products may be covered by an export refund.

(2) In view of the current situation on the market in poultrymeat, export refunds should be fixed in accordance with the rules and certain criteria provided for in Articles 162 to 164, 167 and 169 of Regulation (EC) No 1234/2007.

(3) Article 164(1) of Regulation (EC) No 1234/2007 provides that export refunds may vary according to destination, especially where the world market situation, the specific requirements of certain markets or obligations resulting from agreements concluded in accordance with Article 300 of the Treaty make this necessary.'

Procedure and forms of order sought

14 By application lodged at the Court Registry on 14 October 2013, the French Republic brought the present action.

15 On hearing the report of the Judge-Rapporteur, the Court decided to open the oral procedure and, in the context of the measures of organisation of procedure provided for under Article 64 of the Rules of Procedure of the General Court of 2 May 1991, requested the parties to reply in writing to certain questions. The parties complied with that request within the prescribed period.

16 The French Republic claims that the Court should:

— annul the contested regulation;

— order the Commission to pay the costs.

17 The Commission contends that the Court should:

— dismiss the action as unfounded;

— reserve the costs.

Law

18 In support of its action, the French Republic raises two pleas in law alleging, first, breach of the obligation to state reasons laid down in the second paragraph of Article 296 TFEU and, second, infringement of Article 164(3) of Regulation No 1234/2007.

1. *First plea, alleging breach of the obligation to state reasons laid down in the second paragraph of Article 296 TFEU*

19 The French Republic claims that in the contested regulation the Commission did not disclose its reasoning in a clear and unequivocal fashion and, consequently, does not allow those concerned to protect their rights and the Court to exercise its power of review. In its submission, it was incumbent on the Commission to develop its reasoning in an explicit manner, since the contested regulation went significantly further than the previous regulations.

20 The Commission disputes the French Republic's arguments.

The case-law on the obligation to state reasons

21 It is settled case-law that the statement of reasons required by the second paragraph of Article 296 TFEU must be appropriate to 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 competent court to exercise its power of review (see judgment of 15 April 1997 in *Irish Farmers Association and Others*, C-22/94, ECR, EU:C:1997:187, paragraph 39 and the case-law cited). 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 meets the requirements of the second paragraph of Article 296 TFEU 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 judgment of 6 March 2003 in *Interporc* v *Commission*, C-41/00 P, ECR, EU:C:2003:125, paragraph 55 and the case-law cited).

22 It has also consistently been held that the scope of the obligation to state reasons depends on the nature of the measure in question and that, in the case of measures of general application, 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 it is intended to achieve, on the other (see judgment of 9 September 2004 in *Spain* v *Commission*, C-304/01, ECR, EU:C:2004:495, paragraph 51 and the case-law cited).

23 Furthermore, the degree of precision of the statement of reasons for a decision must also be weighed against practical realities and the time and technical facilities available for making the decision (judgment of 1 December 1965 in *Schwarze*, 16/65, ECR, EU:C:1965:117).

24 In addition, it is settled case-law that the reasons on which a decision which follows a well-established line of decisions is based may be given in a summary manner, for example by a reference to those decisions (see judgment of 14 February 1990 in *Delacre and Others* v *Commission*, C-350/88, ECR, EU:C:1990:71, paragraph 15 and the case-law cited, and judgment of 8 November 2001 in *Silos*, C-228/99, ECR, EU:C:2001:599, paragraph 28). In the judgment in *Delacre and Others* v *Commission*, cited above (EU:C:1990:71, paragraph 19), the Court of Justice observed that, in the circumstances of that case, the reference in the contested decision to the legal base applicable fulfils the requirement that reasons must be stated and that it was not necessary to state the specific reasons for the modification of the amount of the aid in question compared with previous individual invitations to tender. The Court of Justice held, in paragraph 17 of that judgment, that the fixing of the maximum amounts of the aid 'constitute[d] a uniform procedure which [was] repeated approximately every two weeks, in which decisions [were] taken on the basis of explicit criteria contained in rules with which the trade circles concerned [were] perfectly familiar and neither the mode of adoption nor the contents of those decisions differ[ed] to any appreciable extent'.

25 On the other hand, it is settled case-law that the EU authority must give an explicit account of its reasoning if the decision goes appreciably further than the previous decisions (see judgment in *Delacre and Others* v *Commission*, cited in paragraph 24 above, EU:C:1990:71, paragraph 15 and the case-law cited, and judgment in *Silos*, cited in paragraph 24 above, EU:C:2001:599, paragraph 28).

26 In the judgment in *Silos*, cited in paragraph 24 above (EU:C:2001:599, paragraph 29), on which the French Republic relies, the Court of Justice held that the statement of reasons in a regulation fixing at zero the amount of the export refunds on cereals did not satisfy the obligation to state reasons. The Court of Justice held that the statement of reasons for that regulation, which was identical to that in the previous regulation whereby the Commission had increased the amount of the refunds on the product at issue in the main proceedings by raising it to ECU 74.93 per tonne, provided no particular explanation of the reasons which had led the Commission, one week after the adoption of the latter regulation, to withdraw, in effect, those refunds by reducing their amount to ECU 0 per tonne. The Court of Justice also observed, in paragraph 30 of that judgment, that the mere reference to the possibilities and conditions for sale on the world market, to the need to avoid disturbances on the EU market and to the economic aspect of the exports could not, contrary to the Commission's submission, constitute a sufficient statement of reasons for a regulation which broke with the Commission's usual practice, which consisted in fixing the amount of the refunds by reference to the difference between the prices of the products concerned on the EU market, on the one hand, and those prices on the world market, on the other.

27 It should be pointed out, however, that it follows from the judgment in *Schwarze*, cited in paragraph 23 above (EU:C:1965:117), that in agricultural matters recourse to standard statements of reasons is in certain circumstances permissible.

28 In addition, it follows from the judgment in *Delacre and Others* v *Commission*, cited in paragraph 24 above (EU:C:1990:71, paragraphs 15, 17 and 19), that a reference in the statement of reasons for a measure to 'the legal base applicable' may be sufficient provided that that measure follows a well-established line of decisions.

29 As Advocate General Geelhoed observed in point 52 of his Opinion in *Silos* (C-228/99, ECR, EU:C:2001:196), normal practice must be taken to mean the consistent policy of the Commission in the light of existing market conditions.

The sufficiency of the statement of reasons in the contested regulation

30 In the present case, it should be noted that the statement of reasons in the contested regulation corresponds to a standard statement of reasons. As the French Republic emphasises, that statement of reasons is identical to that in the previous regulations which had fixed the amount of the refunds at EUR 32.50/100 kg, EUR 21.70/100 kg and EUR 10.85/100 kg respectively (see paragraphs 7 and 8 above).

31 It should be observed that, given the regular nature of the fixing of the amount of the export refunds and the uniform procedure applicable for the adoption of the respective regulations, a standard statement of reasons is, according to the case-law referred to in paragraph 24 above, permissible provided that the Commission acts in accordance with its normal practice when fixing that amount. The French Republic acknowledges, moreover, in paragraph 31 of the application, that the contested regulation follows a well-established line of decisions and that, on that basis, the reasons on which it is based may in principle be set out in a summary manner. The French Republic nonetheless maintains that it was incumbent on the Commission to give an explicit account of its reasoning in so far as the contested regulation went appreciably further than the previous regulations.

32 The Court must therefore examine whether the Commission acted in accordance with its normal practice when fixing the amount of the export refunds in the contested regulation.

The Commission's normal practice

33 In answer to a written question put by the Court, the Commission explained in detail the normal practice which it followed at the time of the adoption of the contested regulation when fixing the amount of the refunds on poultrymeat.

34 The Commission observed, in particular, that its normal practice consisted in carrying out a theoretical calculation of the amount of the export refunds, based on the difference between prices on the EU market and prices on the world market and in analysing the market situation.

35 The Commission also explained that, as regards deep-frozen whole chickens, the difference in price is calculated (1) on the basis of the difference between the resale price in France calculated on a fob (free on board) basis and the selling price at destination (world price taken into account), which is the price submitted by the operators, and (2) on the basis of the difference between the resale price in France calculated on a fob basis and the Brazilian price, where available and up to date.

36 It stated that the market analysis which it carried out consisted of the fullest possible collection of economic data from the sector, including, in particular, the development of the average weekly price of chicken in the European Union; the variation in percentage of the prices of chicken; future quotations of soya beans, maize and feed wheat; exchange rates; prices of basic ingredients; changes in compound feedingstuffs; production forecasts and production of chickens; imports and exports.

37 The Commission also explained that, on the basis of all of those factors, it was possible to draw overall conclusions on the market situation, including: production in the European Union, prices of poultrymeat on the EU market, European producers' margins by reference to the cost of feedingstuffs, the situation of exports and imports for the EU market, including for exports with refunds, the situation and prices on international markets (Brazil and the United States), taking the exchange rate into account.

38 According to the explanations which it supplied, the Commission inferred the amount of the refund from the combination of those two factors, namely the theoretical calculation and the analysis of the market.

39 As regards the conclusions to be drawn from the judgment in *Silos*, cited in paragraph 24 above (EU:C:2001:599), and in particular from paragraph 30 of that judgment, where the Court of Justice observed, concerning the cereals sector, that the Commission's usual practice consisted in fixing the amount of the refunds by reference to the difference between the prices of the products concerned on the EU market, on the one hand, and those prices on the world market, on the other, the Commission observed that it fixed the amount of the refunds 'by reference to' that difference in price in the sense that that difference was a factor which it took into account. It observed that its usual practice had never consisted exclusively in taking that factor alone into account and fixing the export refunds at the difference between the EU market price and the world market price, but that it had always taken the other criteria for fixing the refunds indicated in the applicable legislation into account.

40 Questioned in that regard at the hearing, the French Republic did not deny that the Commission's usual practice consisted in carrying out (1) a theoretical calculation of the amount of the export refunds and (2) an analysis of the market situation, in accordance with the explanations provided by the Commission in answer to the written questions put to it.

41 The Court must therefore examine the question whether, when adopting the contested regulation, the Commission departed from its usual practice, as described. If the Commission departed from its usual practice when adopting the contested regulation, the standard statement of reasons which it provided in the contested regulation would not be sufficient, in accordance with the case-law cited in paragraphs 25 and 26 above.

Whether the Commission departed from its usual practice

42 In answer to a question put by the Court at the hearing, the French Republic did not dispute that, in the present case, the Commission had carried out (1) a theoretical calculation of the amount of the export refunds and (2) an analysis of the market situation. The French Republic does not dispute that, from a procedural viewpoint, the Commission followed the usual procedure when fixing the amount of the export refunds in the contested regulation.

43 The French Republic relies on two factors in order to substantiate its claim that the contested regulation goes appreciably further than the previous regulations. First, it asserts that fixing the amount of the export refunds at zero is an unprecedented measure for the products in question. Second, it claims that the Commission broke with its usual practice in relying, when adopting the contested regulation, on the internal context and the international context.

– The argument concerning the existence of an unprecedented measure

44 The French Republic maintains that the Commission broke with its previous practice when taking decisions, since the fixing of the amount of the export refunds at zero constituted an unprecedented measure for the products in question.

45 It should be observed, however, that the mere fact that that amount was fixed at zero for the first time for the products in question does not automatically mean that the Commission broke with its usual practice.

46 The modification of the amount of the export refunds is inherent in the system under which the amount of those refunds is fixed at regular intervals, and the same statement of reasons may therefore cover export refunds the amounts of which differ considerably.

47 It should also be observed that, as the Commission emphasises, the absolute amount of the reduction was the same size as the amount of the two previous reductions (from EUR 32.50/100 kg to EUR 21.70/100 kg and then to EUR 10.85/100 kg). In addition, for other poultrymeat products, essentially chicks, the amount of the export refunds had already been fixed at zero in 2011.

48 In so far as the French Republic claims that the fixing of the amount of the export refunds in previous regulations related to products falling within the category of live animals, which are not comparable to the poultrymeat in respect of which the amount of the export refunds was fixed at zero in the contested regulation, and that the previous regulations related to exports to all destinations apart from the United States of America, it should be observed that those arguments are based on too broad an interpretation of the concept of 'unprecedented measure'. It cannot be asserted that, whenever the amount of the export refunds for a given product and a specific destination is fixed at zero for the first time, the measure in question is unprecedented. The poultrymeat sector has been characterised by a gradual fall in the amount of export refunds and, for some products in that sector, the amount of the refunds had already been fixed at zero.

49 As the Commission emphasises, the fixing at zero of the amount of the export refunds cannot therefore be described as abrupt. The reduction of the amount of those refunds from EUR 10.85/100 kg to EUR 0 is not structurally different from the previous reductions from EUR 32.50/100 kg to EUR 21.70/100 kg and then to EUR 10.85/100 kg.

50 In so far as the French Republic relies on the judgment in *Silos*, cited in paragraph 24 above (EU:C:2001:599), it should be observed that in that judgment the Court of Justice did not rely solely on the fact that the amount had been fixed at zero in order to establish that the regulation at issue broke with the Commission's usual practice consisting in fixing the amount of the export refunds by reference to the difference between prices on the EU market and prices on the world market. It also relied on the fact that, only one week before adopting the regulation at issue in that case, the Commission had increased the amount of the export refunds to EUR 74.93 per tonne. That case therefore involved an abrupt fall in the amount of the export refunds, which seemingly could not be explained by a change in the market situation.

51 In the present case, the fall cannot be described as abrupt, as it formed part of a gradual fall in the amount of the export refunds and because the absolute amount of the fall corresponded to that of the previous falls.

52 The French Republic also acknowledged, at the hearing, that the fixing of the amount of the export refunds at zero did not require a special statement of reasons where it was dictated by the economic data. It should be observed that, as is apparent upon examination of the first part of the second plea (see paragraphs 87 to 142 below), the Commission was entitled to take the view, without making a manifest error of assessment, that, in the light of the market situation, it was not necessary to fix the export refunds at a positive amount.

53 It follows from the foregoing that the French Republic's argument concerning the existence of an 'unprecedented' measure going appreciably further than the previous regulations, on the ground that the amount of the refunds was fixed at zero for certain products for the first time, must be rejected.

– The taking into account of the internal context and the international context

54 The French Republic maintains that the Commission broke with its usual practice by relying, when adopting the contested regulation, on the internal context and the international context, that is to say, on the prospect of the future entry into force of the new common agricultural policy (CAP) and the foreseeable completion of the international negotiations concerning export refunds in the context of the World Trade Organisation (WTO).

55 The Commission maintains that the taking into account of the internal context and the international context does not result from a change in practice, as those are factors which form part of the general context and which are and must be taken into account whenever the amount of refunds is fixed, pursuant to Article 164(3) of Regulation No 1234/2007.

56 As regards the latter assertion, the French Republic maintains that the Commission's reasoning is inconsistent, in so far as it asserts, in paragraph 38 of the defence, that it is obliged to take the internal context and the international context into consideration, while in paragraphs 59 and 61 of the defence it asserts only that Article 164(3) of Regulation No 1234/2007 does not preclude those factors being taken into consideration.

57 It should be stated that the Commission is under no obligation to take the current negotiations within the WTO or the finalisation of the legal documents containing changes of political orientation into consideration. The Commission is under no obligation to take into account, when fixing the amount of the export refunds, the fact that negotiations concerning their abolition are being held within the WTO, so long as those negotiations have not led to the conclusion of a binding agreement. As regards developments in the CAP, it should be observed that it was only on 17 December 2013 that a regulation was adopted providing, with effect from 1 January 2014, that export refunds of a positive amount are to be granted only in case of crisis (see Article 196(1) and (3) and the first subparagraph of Article 232(1) of Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and No 1234/2007 (OJ 2013 L 347, p. 671). The Commission was under no obligation to take the new political orientation into consideration when fixing the amount of the export refunds before 1 January 2014, the date on which the new provisions in question entered into force.

58 However, it was entirely open to the Commission to take into consideration, when fixing the amount of the refunds, the future development of the CAP and the negotiations within the WTO, although those factors are not explicitly provided for in Article 164(3) of Regulation No 1234/2007 (see, for more details, paragraphs 143 to 158 below).

59 It is appropriate, however, to examine the question whether, when the Commission takes factors which are not explicitly provided for in Article 164(3) of Regulation No 1234/2007 into consideration, it must expressly mention those factors in the statement of reasons for a regulation fixing the amount of the export refunds.

60 In that regard, it should be observed that the adoption of acts of general scope always takes place in a general political and economic context. Although Article 164(3) of Regulation No 1234/2007 explicitly provides for certain criteria that may be taken into consideration, the fact nonetheless remains that the adoption of a regulation fixing the amount of the export refunds takes place in such a context, which may, where appropriate, be taken into consideration by the Commission.

61 It should be pointed out that it is not always necessary to mention that general context in the statement of reasons for a regulation. Since it is quite normal that the Commission should take the general political and economic context into consideration, the mere fact that it does so does not mean that it is acting outside its usual practice. In addition, the general political and economic context is usually known to the operators concerned.

62 As regards, more particularly, the factors taken into account by the Commission in the present case, the following observations are called for.

63 In the first place, the negotiations within the WTO concerning the abolition or restriction of export refunds form part of the general context which does not necessarily need to be mentioned in the statement of reasons for a regulation fixing the amount of the export refunds.

64 Indeed, when the system of export refunds has attracted criticism at international level and when the Commission has given a commitment, subject to conclusion of an agreement, to abolish export refunds, that is a factor which is liable to influence the Commission's decisions in which it fixes the amount of the export refunds. It should be observed that the commitment, subject to conclusion of an agreement, to abolish export refunds by the end of 2013 had already been taken in 2005 within the framework of the Doha round of the WTO.

65 In addition, as the Commission observes, in essence, the negotiations being held within the WTO are part of the context which is known to the operators concerned. It is natural that operators active in the field of exports of poultry to third countries should closely follow the negotiations within the WTO concerning export refunds.

66 Such ongoing negotiations form part of a general context that may lead the Commission to show greater reticence when fixing the amount of export refunds.

67 Since it is normal for the Commission to take account of the general context, the fact that it takes the ongoing negotiations into account does not mean that it is breaking with its usual practice.

68 In the second place, as regards the fact that the future political orientation is taken into account, the following observations are called for.

69 At the time of the adoption of the contested regulation, the reform of the CAP had formed the subject-matter of a political agreement and the finishing touches were being put to the legislative measures.

70 According to that political agreement, export refunds at a positive amount were to be granted only in case of crisis (see, as regards the regulation to that effect adopted on 20 December 2013, paragraph 57 above).

71 A political agreement on the future orientation of the CAP forms part of the general political and economic context that may be taken into consideration by the Commission. If it is foreseeable that the amount of the export funds will be permanently fixed at zero in the near future, except in case of crisis on the market, that may lead the Commission to tend to reduce the amount of the export refunds.

72 It should also be observed that the future political orientation is part of the general context of which the operators concerned are aware.

73 The fact that the negotiations being held within the WTO and the future political orientation were taken into account therefore did not need to be explicitly mentioned in the statement of reasons for the contested regulation, unless those factors had not only formed part of the general political and economic context taken into account when the export refunds were fixed, but had been the *raison d'être* of the contested regulation.

74 In the present case, the French Republic acknowledged at the hearing that the Commission had calculated the theoretical amount of the export refunds. It also follows from the analysis of the second plea that the Commission carried out an analysis of the market situation, which allowed it to consider, without making a manifest error of assessment, that the market situation was stable and that it was not necessary to fix export refunds at a positive amount (see paragraphs 87 to 142 below).

75 In those circumstances, there is no reason to think that the negotiations being held within the WTO and the future political orientations had been the *raison d'être* of the contested regulation.

76 At the hearing, the Commission confirmed that the fixing of the amount of the export refunds at zero was explained by the analysis of the market situation and that neither the negotiations being held within the WTO nor the future orientation of the CAP had been key factors in the fixing of the amount of those refunds.

77 The French Republic asserted at the hearing that the Commission had departed from the economic analysis by imposing the reduction to zero of the amount of the export refunds in order to be consistent with its position in the negotiations being held within the WTO, irrespective of the outcome of the economic analysis.

78 However, the French Republic has not raised arguments that would substantiate that assertion. Although the French Republic claims that the Commission itself has acknowledged having done so, it is sufficient to state that the Commission merely indicated that the negotiations being held within the WTO and the new orientation of the CAP had been taken into account when it adopted the contested regulation, but that it never asserted that those considerations had constituted either the *raison d'être* of or one of the main factors in the fixing of the amount of the refunds at zero. As regards the French Republic's argument that, from an economic viewpoint, a refund was necessary, it is sufficient to state that that argument is unfounded, as is apparent from the analysis of the first part of the second plea. The mere fact that the theoretical calculation of the amount of the export refunds led to a positive result does not mean that the analysis of the market cannot lead the Commission to fix the amount of the refunds at zero (see paragraphs 94 to 99 below). The fact that there was a discrepancy between the result of the theoretical calculation and the amount fixed in the contested regulation therefore does not permit the conclusion that the negotiations being held within the WTO or the future orientation of the CAP were either the *raison d'être* of or a key factor in the fixing of the amount of the export refunds at zero.

79 It follows from all of the foregoing that when adopting the contested regulation the Commission did not depart from its usual practice and that it was therefore entitled to provide only a standard statement of reasons, in accordance with the case-law cited in paragraph 24 above, and that the fact that the negotiations being held within the WTO and the future political orientation were taken into account did not need to be specifically mentioned in the statement of reasons for the contested regulation.

The other arguments raised by the French Republic

80 The French Republic takes issue with the Commission for having confined itself to listing the factors on which, pursuant to Article 164(3) of Regulation No 1234/2007, it is required to rely when fixing the amount of the export refunds, without specifying which of those factors it had placed particular reliance on or the assessment which it had made of them. In that regard, it should be noted that the Commission is correct to observe that it is not required to list in order of importance the criteria on which it placed greater emphasis when adopting its decision or the particular factual hypotheses it took into account in support of its analysis.

81 The French Republic contends, moreover, that in the contested regulation the Commission failed to specify the factors on which it had based its assessment and that such a statement of reasons amounts to a failure to state reasons.

82 It should be observed that it follows from paragraph 19 of the judgment in *Delacre and Others* v *Commission*, cited in paragraph 24 above (EU:C:1990:71), that, where a standard statement of reasons is sufficient because when adopting the act at issue the Commission followed a well-established line of decisions, the reference in the act at issue to 'the legal base applicable' satisfied the obligation to state reasons. In the present case, the Commission mentioned the legal base applicable for the fixing of the export refunds in the recitals of the contested regulation, in particular in recital 2.

83 The French Republic claims, moreover, that, where the EU institutions have a broad discretion, respect for the guarantees conferred by the EU legal order in administrative proceedings, in particular the obligation to state sufficient reasons for the decision, assumes even more fundamental importance.

84 In that regard, it is sufficient to state that the judgments cited in paragraphs 24 and 28 above, in which it was held that it is permissible for the Commission to have recourse to standard reasons when it is following a consistent practice in taking decisions, concerned cases falling within the sphere of agriculture. That case-law cannot therefore be called into question on the ground that the Commission generally has a broad discretion in that sphere.

85 It follows from all of the foregoing that the statement of reasons for the contested regulation was sufficient. The first plea must therefore be rejected.

2. *Second plea, alleging infringement of Article 164(3) of Regulation No 1234/2007*

86 The second plea consists of two parts, alleging, first, a manifest error of assessment of the market situation and, second, that the Commission manifestly exceeded the limits of its discretion by taking into account, when adopting the contested regulation, aspects not provided for in Article 164(3) of Regulation No 1234/2007.

First part, alleging a manifest error of assessment of the market situation

87 The French Republic maintains that, in taking the view that the market situation justified fixing the amount of the export refunds on poultrymeat at zero, the Commission made a manifest error of assessment.

88 The Commission disputes the French Republic's arguments.

89 As a preliminary point, it should be borne in mind that the EU legislature enjoys a wide discretionary power which corresponds to the political responsibilities conferred on it by Articles 40 TFEU to 43 TFEU. Consequently, judicial review by must be limited to verifying that the measure in question is not vitiated by any manifest error or misuse of powers and that the authority concerned has not manifestly exceeded the limits of its discretion (see judgment of 14 March 2013 in *Agrargenossenschaft Neuzelle*, C-545/11, ECR, EU:C:2013:169, paragraph 43 and the case-law cited).

Certain premisses on which the French Republic's reasoning is based

90 It should be pointed out that the French Republic's argument is based on a flawed premiss concerning the *raison d'être* of export refunds.

91 The French Republic maintains, in the reply, that it is apparent from Article 162(1) of Regulation No 1234/2007 that the *raison d'être* of export refunds is to cover the difference between world market quotations or prices and prices in the European Union.

92 However, it should be pointed out that the *raison d'être* of export refunds is to allow the European Union to dispose of its surplus stocks of the product in question in the internal market to third countries (see order of 26 September 2013 in *Tilly-Sabco* v *Commission*, T-397/13 R, EU:T:2013:502, paragraph 31 and the case-law cited). The purpose of the export refunds system is not to subsidise any exporter, but to facilitate, where necessary, exports in the context of the attainment of the objectives of the CAP, as laid down in Article 39 TFEU, that is to say, in particular, to stabilise markets and to ensure a fair standard of living for the agriculture community and also reasonable prices for consumers (order in *Tilly-Sabco* v *Commission*, cited above, EU:T:2013:502, paragraph 30).

93 Covering the difference between world market quotations or prices and prices in the European Union is therefore not the *raison d'être* of export refunds, but only a means of allowing the European Union to dispose of its surplus stocks to third countries, in order to ensure, in particular, the stability of its market. Thus, Article 164(3)(b) of Regulation No 1234/2007 provides that the Commission may take account of 'the aims of the common market organisation which are to ensure equilibrium and the natural development of prices and trade on this market'.

94 The French Republic's argument is also based on the premiss that the development of prices of the product under consideration within the European Union and on the world market is a crucial factor when export refunds are fixed.

95 At the hearing, the French Republic further submitted that the theoretical calculation of the amount of the export refunds, based on the difference between prices on the EU market and prices on the world market, was a crucial factor when the export refunds were fixed and that the amount of the refund resulting from the theoretical calculation can be 'adjusted' only by reason of the analysis of the market situation. It contends, moreover, that it is only in case of serious crisis on the market that the analysis of the market prevails over the result of the theoretical calculation. In its submission, the analysis of the market can always 'slightly vary' the amount of the refund, but the only situation in which it would be open to the Commission not to grant a refund when a refund is 'necessary' would be where there was a shortage of poultrymeat on the EU market.

96 However, those premisses are incorrect. According to the wording of Article 164(3) of Regulation No 1234/2007, the Commission must take account of 'one or more' of the aspects provided for in that provision. According to that wording, it is even open to the Commission to rely on only one of the aspects provided for in that provision. Nor does that provision establish a hierarchy between those various aspects. There is nothing to prevent the Commission from placing particular importance on, for example, the aspect in Article 164(3)(b) of Regulation No 1234/2007, namely 'the aims of the common market organisation which are to ensure equilibrium and the natural development of prices and trade on this market'. The Commission may therefore, when fixing the amount of the export refunds, place more importance on the result of the analysis of the market than on the result of the theoretical calculation.

97 The French Republic's assertion that the analysis of the market situation only allows the result of the calculation to be 'adjusted' finds no support in Regulation No 1234/2007. The same applies to the French Republic's argument that the only situation in which it is open to the Commission not to grant a refund when a refund is 'necessary' would be where there was a shortage of poultrymeat on the EU market.

98 It should be observed that when the French Republic refers, in that context, to a 'refund [being] necessary', it is referring to the result of the theoretical calculation of the amount of the refund. That theoretical calculation relates only to the question whether an export refund at a positive amount is 'necessary' for poultrymeat exports in order to be able to sell their products in the areas to which those refunds apply. However, in the context of the global analysis of the market situation, the Commission is not required to consider the particular situation of exporting undertakings. Even if an export refund is 'necessary' for exporters in order for them to be able to sell their products, that does not mean that it is 'necessary', in the light of the overall market situation, to fix export refunds at a positive amount.

99 It is possible that the analysis of the market situation will allow the Commission to take the view that the market situation in the European Union is stable and that there is no need to fix export refunds at a positive amount in order to ensure market stability and to ensure a fair standard of living for the agricultural community. In such a situation, it is open to the Commission not to grant export refunds

or to fix their amount at zero, even if the result of the theoretical calculation of the amount of the export refunds is positive. Such a situation is not limited to those in which there is a shortage of poultrymeat or a serious crisis on the EU market.

100 It is appropriate now to analyse the aspects on which the Commission relied when fixing the amount of the export refunds at zero, in the light of the explanations which it has provided during the present proceedings, and then to examine the specific arguments put forward by the French Republic in support of its general argument that the Commission assessed the market situation in a manifestly incorrect manner.

The aspects on which the Commission relied when fixing the amount of the export refunds at zero

101 The Commission observed, in the defence, that when fixing the amount of the export refunds at zero in the contested regulation, it had taken into account, in particular, the following aspects:

— poultrymeat prices on the internal market were high, sustained by solid internal demand;

— producers' margins by reference to the costs of feedingstuffs were above the historical average, in spite of the cost of feedingstuffs having been high for several months; in addition, the cost of cereals, after having reached historical levels, was due to fall;

— exports with refunds continued to increase in spite of three successive reductions of the amount of the refunds (an increase of 7% for the first five months of 2013);

— exports of poultrymeat increased (by 0.6% in volume and 1% in value for the first five months of 2013), including exports of products without refunds, which represented the major part of exports, showing that the sector was competitive;

— market development prospects were good, with forecasts of growth in the production of European poultrymeat of 0.7%, driven by increased demand on the internal market and the international market;

— conversely, given the high prices of chicken on the internal market, the high costs of feedingstuffs and the devaluation of the Brazilian real (BRL), the price differential with chickens from Brazil was estimated at EUR 44.73/100 kg;

— changes in the exchange rate were taken into account.

102 The Commission also observed that, in view of the market situation and its development, export refunds were not necessary in order to ensure market stability, in particular in the European Union, and the natural development of prices.

103 It follows from the explanations provided by the Commission that, although the result of the theoretical calculation of the amount of the export refunds was positive, it took the view that the market situation in the EU was stable and that it was not necessary to fix export refunds at a positive amount in order to ensure market stability and the natural development of prices. It therefore placed particular importance on the criterion set out in Article 164(3)(b) of Regulation No 1234/2007.

104 It should be observed that factors such as higher prices on the EU market, the fact that EU producers' margins were higher than the historical average and an increase in exports are factors which in principle allow the Commission to conclude, without making a manifest error of assessment, that the market situation in the EU was stable and that it was not necessary to fix export refunds at a positive amount in order to ensure market stability.

105 It is therefore appropriate to examine the specific arguments raised by the French Republic concerning manifest errors of assessment which the Commission is alleged to have made.

The specific arguments raised by the French Republic concerning the manifestly incorrect assessment of the market situation

106 The French Republic maintain that, as regards the development of prices within the European Union and of world market prices of the product under consideration, the analysis put forward by the Commission at the 18 July 2013 meeting of the Management Committee for the Common Organisation of Agricultural Markets, based on a document entitled 'EU Market situation for poultry', is manifestly incorrect.

107 The French Republic observes that the Commission considered that poultrymeat prices on the market had risen. It asserts that, in doing so, the Commission had not taken into account the variable connected with the exchange rate between the euro and the United States dollar (USD) and that if the Commission had taken that variable into account it would have found that world poultrymeat prices had remained stable overall or at least had risen only very slightly.

108 In that regard, the French Republic observes that poultrymeat prices on the world market rose from around USD 185/100 kg to USD 204/100 kg over the year preceding the adoption of the contested regulation, an increase of 9.3%, but that that increase was largely offset by the fact that the euro appreciated by 6.5% against the United States dollar over the same period.

109 First, it should be pointed out that, even if the figures supplied by the French Republic are taken into account, it is not apparent that the Commission made a manifest error of assessment in finding that prices on the world market had risen. The French Republic acknowledges that the price increase of 9.3% was 'largely', but not wholly, offset by the increase in the value of the euro against the United States dollar. It should be pointed out that an increase, even a relatively small increase, is still an increase.

110 Second, it should be observed that the figures relating to prices on the world market on which the French Republic relies (up from USD 185/100 kg to USD 204/100 kg) correspond to the figures communicated by operators to the Commission, as the French Republic confirmed in answer to a question put by the Court at the hearing. The figures relate to the selling price at destination, namely in the Middle East, and are therefore the figures taken into account by the Commission when it calculated the theoretical amount of the export refunds.

111 At the hearing, the French Republic observed that the result of the Commission's theoretical calculation of the amount of the refunds corresponded, to its knowledge, closely to the figure arrived at by the operators concerned. The French Republic therefore does not claim that the Commission made a manifest error of assessment in the context of the theoretical calculation. In particular, it does not claim that the Commission miscalculated the theoretical amount of the export refunds because it failed to take variations in the exchange rate into account when comparing prices on the EU market and on the world market.

112 As regards the French Republic's argument that the Commission was wrong to take the view, on the basis of the figures on page 18 of the document submitted to the management committee, that poultrymeat prices had risen on the world market, the following observations are called for.

113 Page 18 of the document submitted to the management committee shows the development of prices on the markets in the EU, the United States and Brazil. Those prices are all expressed in euros, which means that they take the variation in the exchange rate of the United States dollar and the Brazilian real against the euro into account.

114 It should be noted that the document submitted to the management committee relates above all to the analysis of the market situation. In the context of the analysis of the market situation, the Commission is not required to take into account the particular situation of undertakings which export the products to which the export refunds apply to the destinations concerned, but it may consider the overall market situation.

115 The Commission's decision not to submit to the management committee the selling price of exporters to the Middle East can be explained by the fact that the document submitted to the management committee is not intended to explain the theoretical calculation of the amount of the export refunds, but is primarily intended to present the market situation. In answer to a question on that point put by the Court at the hearing, the French Republic confirmed that it was aware of the Commission's practice of keeping within the Commission the details of the calculation of the theoretical amount of the refunds and the result of that calculation and not communicating those factors to the management committee.

116 At the hearing, the French Republic raised the question as to why the Commission does not submit to the management committee the figures on which it bases the theoretical calculation of the amount of the export refunds and the result of that calculation. In that regard, it should be stated that the French Republic did not raise a plea alleging that the management committee had been misled on an essential point by any omissions on the Commission's part. Nor does the French Republic claim that it or another Member State asked a question about the theoretical calculation at the meeting of the management committee and that the Commission refused to answer that question.

117 The French Republic also claims that the fall in poultrymeat prices on the Brazilian market over the year preceding the adoption of the contested regulation, as shown in the figures on page 18 of the document submitted to the management committee, had a much greater impact on world prices than the increase in prices on the American market, as also shown in the figures on that page, and that world poultrymeat prices therefore did not rise over the year preceding the adoption of the contested regulation.

118 That argument cannot be upheld. While it is true that prices in Brazil are taken into account in the theoretical calculation of the export refunds, where they are available and up to date (see paragraph 35 above), that does not mean that, when analysing the overall market situation, the Commission is required to base its analysis of price developments on the world market primarily on prices in Brazil.

119 It should also be observed that page 18 of the document submitted to the management committee shows long-term price developments, namely over the period from 2009 to 2013.

120 In that regard, it should be borne in mind that the document submitted to the management committee is not intended to explain the theoretical calculation of the export refunds, but is primarily intended to present the overall market situation. Although the theoretical calculation takes short-term price developments into account, it is permissible for the Commission to take long-term price developments into account when assessing the market situation.

121 It is clear from page 18 of the document submitted to the management committee that the long-term trend of chicken prices in the EU and in the United States was upwards.

122 As regards chicken prices in Brazil, it is apparent from page 18 of the document submitted to the management committee that at the end of the period under consideration prices had fallen. However, there was no downward trend in prices in Brazil, if the whole of the period under consideration, from 2009 to 2013, is taken into account.

123 Given a clear upward trend in chicken prices in the United States, and in the absence of a downward long-term trend in prices in Brazil, the Commission did not make a manifest error of assessment in finding that prices on the world market were increasing.

124 The French Republic asserts that the Commission ought to have compared poultrymeat prices on the EU market and poultrymeat prices in the Middle East.

125 In that regard, it is sufficient to point out that the Commission did in fact compare those prices, when it calculated the amount of the export refunds.

126 The French Republic's argument that such a comparison must necessarily have led the Commission to maintain, if not increase, the amount of the export refunds is based on the incorrect premiss that the theoretical calculation must constitute the key factor in the fixing of the amount of the export refunds and that the market analysis only allows that amount to be 'adjusted'.

127 The French Republic claims, moreover, that, owing to the devaluation of the Brazilian real in 2012, poultrymeat prices in the Middle East were more likely to fall and that, in any event, they were unlikely to rise, still less to be higher than poultrymeat prices on the EU market. It maintains that the Commission ought to have found that the gap between prices on the EU market and prices on the Middle East market was unlikely to narrow and that it was even likely that such a gap would increase over the forthcoming period and that, consequently, when, in application of Article 164(3) of Regulation No 1234/2007, future trends with regard to prices on the EU market and on the world market were taken into account, the Commission should, when adopting the contested regulation, have been led to maintain, if not increase, the amount of the export refunds on poultrymeat.

128 In that regard, it should be borne in mind that the gap between EU market prices and selling prices in the Middle East concerns the theoretical calculation of the amount of the export refunds. The French Republic's argument is therefore based on the incorrect premiss that the Commission must take the result of the theoretical calculation into account as a key element when fixing the amount of the export refunds.

129 It should further be noted that the French Republic's argument is tantamount to asserting that the rise in prices within the European Union was a factor that ought to have led the Commission to increase the amount of the export refunds, as that rise increased the gap between prices on the EU market and prices in the Middle East, and therefore the result of the theoretical calculation. However, that argument ignores the fact that an increase in the price of the product in question on the EU market is a factor that argues in favour of a stable situation on that market and may therefore be one of the aspects that may lead the Commission not to grant export refunds, or to fix the amount of such refunds at zero. A market situation in the EU that is already stable may lead the Commission to conclude that export refunds at a positive amount are not necessary in order to dispose of surplus stocks and to ensure market stability.

130 The French Republic asserts, moreover, that the Commission failed to take into account the very significant increase in cereals and soybean prices on the world market, which automatically increased the cost of feed for chickens and thus very significantly increased poultrymeat production costs for breeders in the European Union.

131 In that regard, the Commission emphasises that it took into account the fact that producers' margins by reference to the cost of feed were above the historical average even though the price of feed had been high for several months. In addition, the costs of cereals, after reaching historical levels, were, according to the Commission, due to fall.

132 It should be observed that, on pages 8 and 9 of the document submitted to the management committee, the price development of feed for chickens is indicated. In addition, page 10 of that document indicates producers' margins by reference to the cost of feed for chickens.

133 In those circumstances, there is no reason to think that the increase in the cost of feed was not taken into consideration by the Commission.

134 Questioned on that point at the hearing, the French Republic asserted only that the mere fact that the Commission had mentioned the increase in the price of feed in the tables submitted to the management committee does not show that it had actually taken that aspect into account.

135 In that regard, first, it should be observed that it is for the French Republic to show that the Commission made a manifest error of assessment. The document submitted to the management committee, which was produced by the French Republic in an annex to its application, and on which it relies, shows the Commission's analysis of the market situation and therefore provides information on the aspects which the Commission took into account in that analysis. If the French Republic considers that an aspect was not taken into account, although it appears in the document submitted to the management committee, it is incumbent on it to supply firm evidence to show that the Commission nonetheless failed to take that aspect into account.

136 Second, it should be observed that the fact that producers' margins by reference to the cost of feed were above the historical average, in spite of a rise in the cost of feed, was specifically an aspect arguing in favour of a stable situation on the EU market. The fact that that circumstance was taken into account means that the Commission necessarily took account of the increase in the cost of feed, which is one of the factors in that calculation.

137 Third, it should be borne in mind that, in the context of the theoretical calculation of the amount of the export refunds, the difference in price is calculated on the basis of the difference between the resale price in France calculated on a fob basis and the selling price at destination (see paragraph 35 above). The fact that resale price was taken into account means that the Commission took the price of feed into account. As the Commission explained, in answer to the written questions put by the Court, the resale price in France is calculated taking into account the cost of feed, the live cost, the dead cost, the 'abattoir' cost and the cost of placing the product in fob. It should also be borne in mind that the French Republic does not claim that the Commission made a manifest error of assessment in the theoretical calculation of the export refunds (see paragraph 111 above).

138 In answer to an argument raised by the Commission in the defence, namely that poultrymeat exports were increasing, the French Republic asserts that, with an increase in poultrymeat exports of 0.6% in volume and 1% in value over the first five months of 2013, the Commission ought to have concluded that exports had remained stable over that period.

139 In that regard, it is sufficient to state that an increase, even a small increase, is still an increase. It was open to the Commission to take an increase, even a small increase, in exports into consideration as a factor arguing against the need to fix export refunds at a positive amount.

140 Last, the French Republic claimed at the hearing that the market situation in July 2013 was the same as in April and as in January 2013.

141 However, the French Republic has not substantiated that assertion by solid arguments. It is apparent from the document submitted to the management committee, moreover, that the market situation in July 2013 was not the same as that prevailing in April or in January 2013. For example, it is apparent from the document submitted to the management committee that producers' margins by reference to the cost of feedingstuffs were higher in July 2013 than in April or January 2013.

142 It follows from all of the foregoing that the first part of the second plea must be rejected.

Second part, alleging that the Commission manifestly exceeded the limits of its discretion by taking into account, when adopting the contested regulation, aspects not provided for in Article 164(3) of Regulation No 1234/2007

143 The French Republic maintains that when fixing the amount of the export refunds the Commission is required to take into account only aspects among those listed in Article 164(3) of Regulation No 1234/2007, that list being exhaustive. It submits that, in taking into account when adopting the contested regulation the internal context and the international context, that is to say, the existence of a political agreement on the reform of the CAP and the existence, in the context of the negotiations for the Doha round of the WTO, of a commitment, subject to conclusion of an agreement, to abolish export refunds, the Commission took aspects not provided for in Article 164(3) of Regulation No 1234/2007 into account and therefore manifestly exceeded the limits of its discretion.

144 The Commission disputes the French Republic's arguments.

145 The French Republic's argument is based on the premiss that the list in Article 164(3) of Regulation No 1234/2007 of the aspects which the Commission may take into account when fixing the amount of the refunds is exhaustive.

146 The Court must therefore examine whether that premiss is correct.

147 It should be observed that the wording used in Article 164(3) of Regulation No 1234/2007 is rather flexible. According to that paragraph, 'one or more of the following aspects shall be taken into account when refunds for a certain product are being fixed …'.

148 It follows from that form of words of that provision that the Commission is required to take at least one of the aspects listed in that article into account. However, it does not follow from that wording that the list of aspects is exhaustive. The expression 'shall be taken into account' does not preclude other aspects being taken into account.

149 The flexibility of the form of words chosen argues against the restrictive nature of the list of aspects. That flexibility is also confirmed by other language versions of the provision in question. Thus, the French version, 'lors de la fixation des restitutions applicables à un produit donné, il est tenu compte d'un or de plusiers des éléments suivants', and the German version, 'Die Ausfuhrerstattungen werden je nach Erzeugnis unter Berücksichtigung eines oder mehrerer der folgenden Faktoren festgesetzt', confirm that the Commission is required only to 'take into account' one or more of the aspects listed, which does not mean that it must rely exclusively on such aspects.

150 Furthermore, the fact that, according to Article 162(1) of Regulation No 1234/2007, the actual grant of export refunds is optional argues in favour of the Commission having a very wide discretion and great flexibility when it fixes the amount of such refunds.

151 Indeed, it would be somewhat unconvincing to consider that the Commission may decide not to grant any export refunds at all, without being required to base that decision on any specific criteria, but that when fixing the amount of those refunds it must take account solely of aspects set out in an exhaustive list.

152 Contrary to the French Republic's assertion, Article 164(3) of Regulation No 1234/2007 would not be deprived of all practical effect if the list of factors set out in that provision were not considered to be exhaustive.

153 In fact, although Article 164(3) of Regulation No 1234/2007 does not preclude other aspects being taken into account, it follows from that paragraph that the Commission is required to take account (also) of at least one of the aspects listed in that provision.

154 It follows from the foregoing that the premiss on which the French Republic bases its argument is incorrect.

155 In the interest of completeness, it should be pointed out that, as the Commission essentially observes, even if the list of criteria set out in Article 164(3) of Regulation No 1234/2007 were considered to be exhaustive, that would not preclude the general political and economic context being taken into account.

156 It should be borne in mind that the adoption of acts of general application always forms part of a general political and economic context and that it is quite normal that the Commission should take that context into account (see paragraphs 60 and 61 above).

157 When the Commission takes the future political orientation and the negotiations being held at international level into account when fixing the amount of the refunds according to the flexible criteria provided for in Article 164(3) of Regulation No 1234/2007, that does not mean that it exceeds the limits of its discretion, even if the list of criterion set out in the provision in question were considered to be exhaustive. The general context may always have an influence on the exercise of the Commission's discretion and a list, even an exhaustive list, of the criteria which the Commission may take into consideration cannot prevent it from taking that general context into account.

158 It follows from all of the foregoing that the Commission's decision to take the future reform of the CAP and also the negotiations being held within the WTO into consideration cannot be criticised.

159 The second part of the second plea, and, accordingly, the application in its entirety must therefore be rejected.

Costs

160 Under Article 134(1) of the Rules of Procedure of the General Court, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

161 In the present case, the Commission claimed that the Court should 'reserve the costs'. In doing so, it did not validly claim that the French Republic should be ordered to pay the costs. In fact, the claim that the Court should reserve the costs makes no sense in the present case and is tantamount to a failure on the Commission's part to apply for costs.

162 In those the circumstances, the Court decides that each party must bear its own costs.

On those grounds,

THE GENERAL COURT (Fifth Chamber)

hereby:

1. Dismisses the action;

2. Orders the parties to bear their own costs.

Dittrich Schwarcz Tomljenović

Delivered in open court in Luxembourg on 14 January 2016.

[Signatures]