OPINION OF ADVOCATE GENERAL LÉGER

delivered on 26 September 1996 *

1. This Opinion concerns two related direct actions brought by the United Kingdom and the Kingdom of Spain respectively against the Council. In the first case (C-150/94), the United Kingdom asks the Court to annul a provision in Council Regulation (EC) No 519/94 of 7 March 1994 on common rules for imports from certain third countries and repealing Regulations (EEC) Nos 1765/82, 1766/82 and 3420/83. [1] In the second case (C-284/94), the Kingdom of Spain asks the Court to annul Council Regulation (EC) No 1921/94 of 25 July 1994 amending Regulation (EC) No 519/94. [2]

2. The two cases concern the rules governing the import arrangements for certain toys from the People's Republic of China (hereinafter 'China'). One questions whether the imposition of Community import quotas is in fact valid. The other challenges a measure increasing existing quotas.

Background

Relevant provisions prior to Regulation No 519/94

3. Before Regulation No 519/94 came into force, imports of products originating in State-trading countries were governed by several Council regulations.

4. Council Regulation (EEC) No 1766/82 on common rules for imports from the People's Republic of China [3] applied to imports which were not subject to any quantitative restrictions, without prejudice to any safeguard measures.

5. Council Regulation (EEC) No 3420/83 of 14 November 1983 on import arrangements for products originating in State-trading coun-

* Original language: French.

1 — OJ 1994 L 67, p. 89.

2 — OJ 1994 L 198, p. 1.

3 — OJ 1982 L 195, p. 21.

tries, not liberalised at Community level, [4] provided for quantitative restrictions on the importation of numerous products. Under Article 1(1), that regulation was to apply to imports of products originating in the countries listed in Annex I, which included China. Article 2(1) stated that the putting into free circulation of the products listed in Annex III, including the toys at issue in these proceedings, then classified under tariff heading 97.03, was to be subject to quantitative restrictions in the Member States as indicated in that annex against those products. Before 1 December of each year, the Council was, in accordance with Article 113 of the EEC Treaty, to lay down for those products the import quotas to be opened by the Member States for the following year in respect of the various State-trading countries (Article 3(1) of the regulation). If no decision had been adopted by that date, the existing import quotas were to be extended on a provisional basis for the following year (Article 3(2)). Article 4 laid down the conditions on which the Member States might, in administering the import arrangements, adopt measures adapting or abolishing quantitative restrictions. Articles 7 to 10 contained the rules applicable for the purpose of amending the import arrangements laid down by the regulation.

6. On the date of its entry into force, Regulation No 3420/83 provided, as regards toys, for import quotas to be opened by the Federal Republic of Germany, the Hellenic Republic and the French Republic. Council Regulation (EEC) No 3784/85 of 20 December 1985 amending, on account of the accession of Spain and Portugal, Annexes I and III to Regulation No 3420/83 on import arrangements for products originating in State-trading countries, not liberalised at Community level, [5] also provided for toy quotas to be opened by the Kingdom of Spain as from 1 January 1986.

7. Regulation No 3420/83 was most recently amended by Council Regulation (EEC) No 2456/92 of 13 July 1992 fixing the import quotas to be opened by Member States in respect of State-trading countries in 1992 and amending Regulation (EEC) No 3420/83. [6] That regulation fixed the quotas to be opened for 1992. With regard to toys from China, Annex VIII provided for quotas for the Federal Republic of Germany and the Kingdom of Spain. Article 5 of Regulation No 2456/92 provided that Article 3(2) of Regulation No 3420/83, concerning automatic extension of the previous year's quotas, would not be applicable for 1993. According to the fifth recital in the preamble to the regulation, that derogation was justified by the need to replace, as from 1 January 1993, the system of maintaining imports quotas to be opened purely at national level, by a Community mechanism covering any restrictions remaining on 31 December 1992.

8. No regulation setting import quotas for 1993 was adopted.

4 — OJ 1983 L 346, p. 6.

5 — OJ 1985 L 364, p. 1.

6 — OJ 1992 L 252, p. 1.

9. The Community mechanism provided for was not, however, introduced in order to operate as from 1993. In those circumstances, applying Articles 7 to 10 of Regulation No 3420/83 concerning amendment of the import arrangements, and more specifically Article 9(1) and (3), the Commission authorised certain Member States to open quotas in 1993 and the early months of 1994. Out of a total of 79 decisions taken, six authorised the Kingdom of Spain to open quotas for toys falling within HS/CN Code 9503. The other Member States did not request quotas to be fixed for those toys.

The Community mechanism introduced by Regulation No 519/94

10. Regulation No 519/94, which applies from 15 March 1994, repeals Regulations Nos 1766/82 and 3420/83.

11. It applies to imports of products originating in the third countries referred to in Annex I, including China (Article 1(1)).

12. In accordance with Article 1(2), those imports are to take place freely, without prejudice to any safeguard measures or the quotas referred to in Annex II to the regulation which is concerned solely with products originating in China, including the toys at issue in this case, which now fall within HS/CN Codes 9503 41, [7] 9503 49 [8] and 9503 90. [9]

13. Annual Community quotas for those toys were fixed at ECU 200 798 000, ECU 83 851 000 and ECU 508 016 000 respectively. For the period from 15 March to 31 December 1994, they were therefore fixed *pro rata temporis* at ECU 158 965 083, ECU 66 382 042 and ECU 402 179 333 respectively.

Quota raised by Regulation No 1921/94

14. Article 1 of Regulation No 1921/94 increased the quota opened for the period from 15 March to 31 December 1994 for toys falling within HS/CN Code 9503 41 from ECU 158 965 083 to ECU 204 500 000.

15. The third recital in the preamble to the regulation explained that the implementation

7 — Stuffed toys representing animals or non-human creatures (for example teddy bears).

8 — Other toys representing animals or non-human creatures (for example plastic animals).

9 — Certain miscellaneous toys (for example toy weapons).

of the quota fixed by Regulation No 519/94 had revealed disruptions in trade with China affecting Community economic sectors involved in the import, marketing and processing of the toys concerned and causing economic difficulties.

16. The Council therefore considered it expedient to adjust the quota in question by making an appropriate increase for 1994, without prejudice to a review of the situation (fourth recital). [10]

Forms of order sought by the parties

17. In Case C-150/94, the United Kingdom claims that, pursuant to Article 173 of the EC Treaty, the Court should:

— annul Article 1(2) of Council Regulation No 519/94 in so far as it applies to toys falling within tariff headings HS/CN 9503 41, 9503 49 and 9503 90;

— order the Council to pay the costs.

18. The Federal Republic of Germany has intervened in support of the United Kingdom.

19. The Council contends that the Court should:

— dismiss the application;

— reject as inadmissible the new ground of annulment put forward in paragraphs 16 to 18 of the statement in intervention concerning an alleged infringement of the third paragraph of Article 3b of the Treaty as regards the statement of reasons for the contested measure and, in the alternative, reject the new ground of annulment as unfounded;

— order the United Kingdom to pay the costs.

10 — Most recently, Council Regulation (EC) No 752/96 of 22 April 1996 amending Annexes II and III to Regulation (EC) No 519/94 on common rules for imports from certain third countries (OJ 1996 L 103, p. 1) merged the three quotas relating to the three categories of toys at issue in these proceedings into a single quota.

20. The Kingdom of Spain and the Commission have intervened in support of the Council. They contend that the application should be dismissed. The Kingdom of Spain has asked for the United Kingdom to be ordered to pay the costs.

21. In Case C-284/94, the Kingdom of Spain claims that, pursuant to Article 173, the Court should:

— annul Regulation No 1921/94;

— order the Council to pay the costs.

22. The Council contends that the application should be dismissed and the applicant should be ordered to pay the costs.

23. The Commission has intervened in support of the Council and asked for the Kingdom of Spain to be ordered to pay the costs.

Grounds of annulment relating to Regulation No 519/94

24. The United Kingdom puts forward five grounds of annulment alleging:

— infringement of Article 190 of the Treaty;

— failure to carry out any appreciation of the facts or a manifest error of appreciation;

— the arbitrary nature of the quotas concerned;

— breach of the principle of proportionality;

— breach of the principle of equal treatment.

25. I shall consider each of those grounds in turn.

26. In my view, the Court need not consider whether a sixth ground, alleging breach of the principle of the protection of legitimate expectation, raised for the first time by the United Kingdom in its observations [11] on the statements in intervention submitted by the Federal Republic of Germany and the Kingdom of Spain, is well founded. This plea, which was raised indirectly in the course of arguments relating to the abovementioned second plea in the application, is inadmissible in accordance with Article 42(2) of the Rules of Procedure.

Infringement of Article 190 of the Treaty

27. The United Kingdom maintains that the defendant failed to state any, or any adequate, reasons on which Regulation No 519/94 is based. The sixth recital in the preamble is, it claims, wholly inadequate to support the imposition of Community quotas on the toys at issue, in that it refers to 'the sensitivity of certain sectors of Community industry' in order to justify those quantitative restrictions.

11 — Observations lodged on 15 May 1995, paragraph 3.9.

28. As a preliminary point, the United Kingdom claims that the magnitude of the restrictions in question is such that they were 'quasi-penal' in nature and for that reason called for very careful scrutiny.

29. It goes on to point out that the contested regulation is based on the commercial policy provisions of the Treaty, which are intended, in accordance with Article 110 thereof, to contribute to '... the progressive abolition of restrictions on international trade and the lowering of customs barriers'.

30. The fifth recital in the preamble to the regulation lays down the principle of liberalisation of imports. The applicant considers that in so far as the quotas constitute an exception to that principle, it was incumbent on the Council to explain with particular care the reasons for the option it chose.

31. According to the United Kingdom, the Council ought to have explained:

— why certain sectors of Community industry are sensitive to the importation of the toys in question from China, as opposed to any other third country;

— why it was necessary to replace a national restriction affecting only 2% by value of the imports of the toys in question from China with a Community-wide restriction, when the national restriction could have been abolished or replaced by a regional safeguard measure, for which, moreover, the regulation itself makes express provision;

— why it was necessary to replace a restrictive measure which had minimal effect at Community level with a restriction which has a very significant impact on account of the dramatic increase which it entailed.

32. The United Kingdom cites in particular the judgment in Case 166/78 *Italy* v *Council*, [12] in which the Court held that a specific statement of reasons must be supplied in support of all the details which might be contained in a measure adopted pursuant to an act of general application, if those details do not fall within the general scheme of the measure as a whole. According to the applicant, the quotas are an exception to the general scheme in both the contested regulation and Regulation No 3420/83. That exception is of an entirely different nature from the one national restriction authorised by the latter regulation. It is a wholly new restriction, and the Council should therefore have explained why such a departure from Regulation No 3420/83 was necessary. The obligation to give proper reasons, it maintains, is essential where there is a major change of policy.

33. In the applicant's view, assuming that the contested quotas did form part of the new commercial regime governing relations with China, they would none the less constitute an exception to the principle of liberalisation of imports on which that regime is based.

34. Furthermore, in its view, a defective statement of the reasons on which the measure is based cannot be remedied by the explanation given by the Council in these proceedings concerning the growth of imports from China. It also points out that in its defence, the Council seeks to explain the level of the quotas imposed, while the regulation is silent on this point.

35. The Federal Republic of Germany adopts the United Kingdom's arguments and claims that the obligation to state reasons made it necessary to do so with respect to the principle of proportionality, which was expressly introduced in the third paragraph of Article 3b of the Treaty, and which requires *inter alia* the interests of the Member States to be taken into consideration. The Council cites Article 37 of the EC Statute of the Court of Justice to challenge the admissibility of that ground, which it describes as a new plea.

12 — Case 166/78 *Italy* v *Council* [1979] ECR 2575, paragraph 8.

36. As a preliminary to my consideration of the ground put forward by the United Kingdom, I would point out that examination of the question whether the statement of reasons for a measure is adequate is independent of the assessment of the validity of those reasons.

37. In addition, there are several factors to be borne in mind.

38. In imposing an obligation to state the reasons on which acts are based, Article 190 of the Treaty is not taking mere formal considerations into account but seeks to give an opportunity to the parties of defending their rights, to the Court of exercising its power of review and to Member States and all interested nationals of ascertaining the circumstances in which the institution has applied the Treaty. [13]

39. The scope of the obligation to state reasons depends, however, on the nature of the measure in question. In the case of a measure intended to have general application, such as a regulation, 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. Consequently, it is not possible to require that the statement of reasons should set out the various facts, often very numerous and complex, on the basis of which the regulation was adopted, or *a fortiori* that it should provide a more or less complete evaluation of those facts. [14]

40. A specific statement of the reasons for particular details in a measure of general application is not necessary provided that those details fall within the general scheme of the measure as a whole, [15] or provided that the regulation itself falls within the general scheme of the body of measures of which it forms part. [16]

41. Moreover, the statement of reasons for a measure is not required to specify every relevant point of fact and law, as it must be considered not only with reference to the wording of the measure but also to its context and the whole body of legal rules governing the matter in question. [17] This is the case where the Member States have been closely associated with the process of drafting the contested

13 — Case 24/62 *Germany* v *Commission* [1963] ECR 63, at p. 69.

14 — Case 5/67 *Beus* v *Hauptzollamt München* [1968] ECR 83, at p. 95.

15 — Case 80/72 *Koninklijke Lassiefabrieken* v *Hoofdproduktschap voor Akkerbouwprodukten* [1973] ECR 635, paragraphs 24 and 25; Case 166/78 *Italy* v *Council*, cited above, paragraph 8, and Case 37/83 *Rewe-Zentrale* v *Landwirtschaftskammer Rheinland* [1984] ECR 1229, paragraph 13.

16 — Joined Cases 292/81 and 293/81 *Société Jean Lion and Others* v *Fonds d'Intervention et de Régularisation du Marché du Sucre* [1982] ECR 3887, paragraph 19; Case 250/84 *Eridania and Others* v *Cassa Conguaglio Zucchero* [1984] ECR 117, paragraph 38; Joined Cases C-63/90 and C-67/90 *Portugal and Spain* v *Council* [1992] ECR I-5073, paragraph 16, and Case C-353/92 *Greece* v *Council* [1994] ECR I-3411, paragraph 19.

17 — Case C-478/93 *Netherlands* v *Commission* [1995] ECR I-3081, paragraph 49 and Case C-466/93 *Atlanta Fruchthandelsgesellschaft and Others* v *Bundesamt für Ernährung und Forstwirtschaft* (II) [1995] ECR I-3799, paragraph 16.

measure and are thus aware of the reasons underlying it. [18]

42. At issue in the present case is the statement of reasons for a regulation, a measure of general application.

43. I shall not dwell on the allegation that the quotas are 'quasi-penal' in nature. As the Council and the Commission have pointed out, the concept of sanctions has nothing whatever to do with the introduction of the restrictions adopted.

44. Regulation No 519/94 sets out the overall situation which led to its adoption:

— the common rules applicable to imports under *inter alia* Regulations Nos 1766/82 and 3420/83 still allow exceptions and derogations enabling Member States to continue applying national measures to imports of products originating in the countries in question (first recital in the preamble to the regulation);

— under Article 7a of the Treaty, the internal market comprises since 1 January 1993 an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured (second recital).

45. Starting from that premise, the Community legislature sets forth its objectives and the means chosen to attain them:

— it seeks to complete the common commercial policy as it pertains to rules for imports, as a necessary complement to the completion of the internal market and in order to ensure that the rules applying to the Community's trade with third countries correctly reflect the integration of the markets (third recital);

— to that end, it lays down provisions to eliminate the remaining national commercial policy exceptions and derogations, and in particular the quantitative restrictions maintained by Member States under Regulation No 3420/83 (fourth recital);

— it states that the liberalisation of imports, namely the absence of any quantitative

18 — Case C-478/93 *Netherlands* v *Commission*, cited above, paragraph 50. See also, with regard to a decision, Case 13/72 *Netherlands* v *Commission* [1973] ECR 27, paragraph 12, and Case 1252/79 *Lucchini* v *Commission* [1980] ECR 3753, paragraph 14.

restrictions, must form the starting point for the Community rules (fifth recital);

— however, for a limited number of products originating in China, it considers that, owing to the sensitivity of certain sectors of Community industry, quantitative quotas and surveillance measures applicable at Community level should be introduced, and a procedure laid down for reviewing and checking those measures in order to adapt them to changes in the situation (sixth recital);

— in the case of other products, it provides for the possibility of adopting surveillance and safeguard measures, on a regional basis where appropriate (eighth to tenth recitals).

46. As the Commission correctly submits, [19] the reasons for the measure were stated to be: (1) the context in which the quotas were adopted (completion of the commercial policy to allow the functioning of the internal market and overall liberalisation of trade); (2) the basis on which the sectors subject to Community-wide quotas were chosen (limited number and sensitivity of the sector concerned) and (3) the reason why Community-wide quotas were necessary ('integration of markets', that is to say, absence of border controls within the internal market).

47. A quota is by definition a protective measure against imports or, more accurately, against the harmful competition which those imports may constitute for the Community traders concerned. The mere fact of its imposition shows that, in the legislature's view, the product subject to quota would constitute a danger to Community interests if it could be imported without any limitation. Where the Community legislature refers concisely to 'the sensitivity of certain sectors of Community industry', the explanation is, necessarily albeit by implication, that the product from the third country is in an advantageous competitive position compared with the equivalent Community product, most frequently on account of its competitive price, and that it might thereby jeopardise the outlets open to Community traders manufacturing a similar product, or even imperil their existence.

48. During these proceedings, the Council has stated that it took account of the considerable increase over the previous years in imports of the toys in question from China. That reason is not mentioned in the recitals in the preamble to Regulation No 519/94. However, it is clear from the documents before the Court that the Member States, and in particular the applicant, were aware of it,

19 — Statement in intervention, paragraph 13.

from having been closely associated with the process of drafting the regulation. In its application, [20] the United Kingdom recalls that when the Commission submitted a proposal for a regulation in November 1992, it described the Community system it had in mind; furthermore, in the case of the toys at issue: 'the Commission proposed quantitative restrictions at the Community level. It sought to justify its proposal by pointing to *the significant share of the Community market held by the Chinese imports, the significant growth in Chinese imports* and the existing national restrictions'. [21] Those statements demonstrate that the Commission informed the Council, but also the Member States, that the planned restrictions would be based in particular on the position of the Chinese products on the Community market and the considerable increase in the volume of such imports. Consequently, it was in full knowledge of those reasons that, in the first stage of the drafting of the measure, the applicant voiced its opposition to the restrictions on imports proposed by the Commission. [22] It was in the same circumstances that it continued to oppose the introduction of Community quotas for toys when discussions resumed in January 1994. [23]

49. It follows from those findings that, contrary to the United Kingdom's contention, the Council did not attempt in its defence to remedy the allegedly defective statement of reasons for the measure. The reasons in dispute were already known to the applicant when the contested measure was adopted. Consequently, the principle that a defective statement of reasons cannot be remedied in the course of proceedings before the Court [24] is not applicable in this case.

50. In the result, it would seem that as regards both its wording and the context in which it was drafted, Regulation No 519/94 has largely fulfilled the minimum obligation to state reasons laid down in *Beus*, cited above.

51. That being so, the question arises whether, in the circumstances of this case, a specific statement of the reasons for all the details in the measure was required in accordance with the case-law referred to in paragraph 40 above. In particular, the point is to determine whether the regulation had to specify all the reasons for the choice and the level of the disputed quotas.

52. The answer to that question depends on whether or not the quotas fall within the general scheme of a body of measures as a whole.

20 — Paragraph 2.16.

21 — Emphasis added.

22 — Application, paragraph 2.19.

23 — Ibid., paragraph 2.20.

24 — Case 195/80 *Michel* v *Parliament* [1981] ECR 2861, paragraph 22, and Case 183/83 *Krupp* v *Commission* [1985] ECR 3609, paragraph 21.

53. The basic objective pursued by the contested regulation is the 'completion' [25] of the common commercial policy.

54. Article 113(1) of the Treaty provides that that policy is to be based on uniform principles, particularly in regard to changes in tariff rates, the conclusion of tariff and trade agreements, the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade.

55. Since the end of the transitional period, [26] the common commercial policy has been the responsibility of the Community.

56. Since then, national measures of commercial policy have been permissible only if specifically authorised by the Community. [27]

57. The *national* quantitative restrictions authorised pursuant to Regulation No 3420/83 had their origin in a system based on that principle. As a result of the imminent introduction of the internal market, it was in fact necessary to bring those derogations from a *Community* commercial policy to an end. The effect of abolishing internal frontier controls was to render the authorised national restrictions wholly invalid.

58. Accordingly, the purpose of the commercial policy provided for by the Treaty in conjunction with the need for restrictions on imports to be effective justified transferring the appraisal of the necessary measures to the Community. To that end, the power of assessment had to be concentrated at the level of the institutions at the same time as the perspective for assessing Community interests in the internal market as a whole had to be widened. The previous existence of one or more national restrictions was not a decisive factor. It was merely one factor among others which had to be taken into account, the most important being the economic data relating to the entire Community, as known at the date when the situation was assessed.

59. The general scheme of Regulation No 519/94 corresponds therefore to a change in the level but not the nature of the previous scheme. Like the latter, it still displays the features of an instrument of commercial policy. It is the result not of a 'major change of policy' [28] but of the implementation of a

25 — See the end of the first recital in the preamble to the regulation.

26 — See the wording of Article 113(1) of the *EEC* Treaty.

27 — Case 174/84 *Bulk Oil* v *Sun International* [1986] ECR 559, paragraph 31.

28 — See paragraph 32 above.

common commercial policy provided for by the Treaty.

60. The characteristic feature of a protective measure is to define in outline the products which may be freely imported and those which are subject to import restrictions, and to determine the nature and size of the restrictions imposed. The restrictions form part of the scheme as a whole. They are only a means of achieving the degree of protection sought.

61. Just as national quotas were one element in the general scheme of the body of measures of which they formed part, so Community quotas and other restrictions on imports are now components of the general scheme of Regulation No 519/94. Moreover, the entire regulation itself forms part of the whole constituted by the common commercial policy, which is intended to embrace '... all the measures aimed at regulating economic relations with third countries'. [29]

62. Consequently, the Community legislature was not required to give particular reasons for choosing to restrict imports rather than to liberalise the toys in question or for choosing a Community quota rather than a regional surveillance or safeguard measure, any more than for the levels of the quotas imposed. In accordance with the Court's case-law, the regulation could not be required to set out reasons specifying the variety of numerous and complex facts on the basis of which it was adopted. I would observe that the reason based on 'the sensitivity of certain sectors of Community industry' in the sixth recital in the preamble to the regulation applies to quantitative quotas, of which there are 15 for seven categories of products, as well as to surveillance measures in respect of 27 categories of products coming under 37 HS/CN codes. It is worth considering the number of facts and analyses which it would have been necessary to incorporate in a statement of reasons consistent with the wishes of the United Kingdom Government. It is also worth bearing in mind that out of all the thousands of national restrictions reviewed when the contested regulation was drafted, the legislature could quite plausibly have retained at Community level not tens of restrictions but several hundred. Can it for one moment be assumed that the regulation ought to have contained detailed figures and economic analyses explaining every choice made?

63. My conclusion is not called in question by the United Kingdom's contention that a quota, as an exception to the principle of liberalisation of imports arising from Article 110 of the Treaty and from the contested regulation itself, must be strictly interpreted and therefore be justified by specific reasons.

29 — P. Pescatore: 'La Politique Commerciale', *Droit des Communautés Européennes, Les Novelles*, 1969, pp 917, 921.

64. It is indeed a principle of substantive law that an exception to a rule is to be interpreted strictly. However, I cannot endorse the conclusion drawn by the United Kingdom from that principle.

65. The principle of strict interpretation serves to establish *in substantive terms* the limits of an exception [30] and not the *extent to which reasons are given* for it. That is determined solely in accordance with the abovementioned case-law concerning the definition of 'general scheme'. We have seen that such a scheme may very well include an instrument operating in accordance with a 'principle-exception' relationship.

66. That relationship cannot therefore be relied on in support of the ground of annulment based on Article 190 of the Treaty.

67. It follows from the foregoing observations that the ground put forward by the United Kingdom relating to Article 190 of the Treaty is not well founded.

68. What of the obligation to provide specific reasons in the light of the principle of proportionality which, according to the German Government, has existed since that principle was incorporated in the third paragraph of Article 3b of the EC Treaty by the Treaty on European Union?

69. Does the intervener's allegation constitute a new submission, which is inadmissible under the third paragraph of Article 37 of the Statute of the Court?

70. I do not think that this is a distinct, and therefore a new, plea. The statement made by the Federal Republic of Germany relates to the content of the obligation to state reasons arising under Article 190 of the Treaty. The intervener is simply arguing, from the insertion in the text of the Treaty of the principle of proportionality laid down by the Court, that the principle now falls within the scope of the obligation to state reasons for Community acts.

71. Is that argument valid?

72. I do not think so. In its decisions the Court has never laid down a special obligation to state reasons with respect to the principle of proportionality. That principle is taken

30 — Either when the measure is adopted, where it derogates from an overriding rule of the Treaty, or in other cases only when the measure laying down a principle and [one or more] exception[s] is implemented: see section 119, below.

into consideration when the exercise of its discretion by an institution adopting a Community act is reviewed. In the absence of any express provision in the Treaty, it cannot have become mandatory to refer to it in the statement of reasons required by Article 190 as a result of a new Article 3b being added to the Treaty.

73. In the result, the ground of annulment based on Article 190 of the Treaty, as expounded by the applicant and the Federal Republic of Germany, must be rejected.

Failure to carry out any appreciation of the facts or manifest error of appreciation

74. In the reasoning common to the five grounds of annulment in its application, the United Kingdom claims, on the basis both of the aim under Article 110 of the Treaty of liberalising trade and of the principle of liberalising imports laid down in Regulation No 519/94, that the quotas at issue, being an exception to the principle of liberalisation, must be wholly justified from the point of view of Community law. It points out that an exception to a general rule must be strictly interpreted.

75. It submits that at the date when the contested regulation was adopted, the only national restriction on the toys in question was the quota opened by the Kingdom of Spain for direct imports from China. It claims that to move from that situation to the situation prevailing under the regulation constitutes a fundamental change of position on the part of the Council. The latter has moved from authorising a trade restriction in one Member State to imposing a restriction on all Member States.

76. According to the applicant, the Council did so without any information, report or investigation capable of justifying that decision following an assessment of the relevant facts.

77. In the applicant's view, such an assessment would have involved consideration *inter alia* of the following factors:

— the position and state of the Spanish toy industry;

— the arguments for and against extending the protection of the Spanish toy industry as against maintaining the existing restrictions as a regional safeguard measure;

— the position of toy industries in other Member States;

— the balancing of interests between that part of the Community toy industry which sought protection against the greater part which was opposed to such protection;

— the effect of the proposed measures and,

— more generally, the balancing of the Community's interest in free trade against protectionism.

78. The applicant maintains that since the Council did not address itself to any of those issues, Regulation No 519/94 should be annulled for failure to carry out an appreciation of the facts. If annulment is justified by a manifest error of appreciation, it is *a fortiori* justified by a failure to carry out any appreciation at all.

79. In the alternative, the United Kingdom pleads that there was a manifest error of appreciation of the facts.

80. In its reply, it states that the only reason given by the Council was the rapid growth in imports of the toys at issue since 1990.

81. It considers that such growth was not in itself sufficient justification.

82. The Council's assessment was, it considers, irrelevant, inasmuch as:

— the impact of the growth of those imports on the Community industry was not considered;

— there was no examination of the size, structure, production, production capacity and profitability of the Community toy industry or of the Community toy market itself (whether the market is static, expanding or declining).

83. In its view, the Council has failed to produce any evidence that it had available to it any fact other than the growth in imports from China in deciding whether the Community industry needed protection.

84. In its observations on the statements in intervention of the Federal Republic of Germany and the Kingdom of Spain, with regard to the principle that exceptions must be strictly interpreted, the United Kingdom maintains that an analogy should be drawn with the Community's internal trading regime, the basic principle of which is the free movement of goods (Article 12 et seq. and Article 30 et seq. of the Treaty). In that field, the exception arising under Article 36 of the Treaty and the 'mandatory requirements' constitutes a derogation from a fundamental principle and must be interpreted strictly.

85. In any case, in order to impose a new restriction on Member States other than the Kingdom of Spain at a time when trade in the toys at issue was *de facto* liberalised, the Council should have followed the same procedure as (or a procedure similar to) that provided for by Regulation No 519/94 for the introduction of safeguard measures.

86. The Federal Republic of Germany considers that the Council committed an error of assessment in omitting to consider Article 110 of the Treaty while maintaining existing restrictions and introducing new ones, contrary to the general objective laid down in that provision of primary law.

87. In reply to the intervener, the Council maintains that it has supplied no proof of any such omission and that the applicant has made no such claim. The Council therefore concludes that that argument should be rejected. In any event, Article 110 of the Treaty cannot be construed as preventing the Council from adopting the contested quotas under Article 113 of the Treaty.

88. As in the case of the previous ground of annulment, I propose to summarise the substantive provisions relating to the exercise by the Council or the Commission of its power of assessment, before applying the principles so elicited to the circumstances of the present case.

89. In areas involving appraisal of complex economic situations, the competent institution enjoys a wide measure of discretion. In reviewing the legality of the exercise of such a discretion, the Court must confine itself to examining whether it is vitiated by a manifest error or by a misuse of power or whether the authority concerned clearly exceeded the bounds of its discretion. [31]

31 — Case 29/77 *Roquette Frères* v *France* [1977] ECR 1835, paragraphs 19 and 20, and Case 98/78 *Racke* [1979] ECR 69, paragraph 5. See also Case C-179/87 *Sharp Corporation* v *Council* [1992] ECR I-1635, paragraph 58.

90. More specifically, where the Community legislature is obliged, in connection with the adoption of rules, to assess their future effects, which cannot accurately be foreseen, its assessment is open to criticism only if it appears manifestly incorrect in the light of the information available to it at the time of the adoption of the rules in question. [32]

91. The discretion which the Council has in assessing a complex economic situation can be exercised in relation not only to the nature and scope of the provisions which are to be adopted but also, to a certain extent, to the establishment of the basic facts, in that the Council is free to base its assessment, if necessary, on findings of a general nature. [33]

92. The burden of proving that there has been an error of assessment or a misuse of power or that the bounds of a discretion have been overstepped falls on the party seeking the annulment of the measure. [34]

93. At issue in the present case is a measure falling within the common commercial policy provided for by Article 113 of the Treaty. That area, like the common agricultural policy and competition policy, entails in practice the assessment of complex economic situations. Accordingly, the competent institutions enjoy a wide measure of discretion in that respect.

94. With reference to the United Kingdom's claim to that effect, I acknowledge that a failure to assess the facts, like a manifest error of assessment, must *a fortiori* be deemed to justify the annulment of a measure.

95. In the present case, can it be argued that the Council failed to assess the facts?

96. As the applicant itself recognises, the Commission and hence the Council took into account at Community level '... the significant share of the Community market held by the Chinese imports (and) the significant growth in Chinese imports'. [35]

97. It is clear from a study carried out by the Netherlands Economic Institute (hereinafter

32 — Joined Cases C-267/88 to C-285/88 *Wuidart and Others* [1990] ECR I-435, paragraph 14. See also the earlier judgment in Case 40/72 *Schroeder* v *Germany* [1973] ECR 125, ground 14.

33 — Case 166/78 *Italy* v *Council*, cited above, paragraph 14.

34 — Ibid., paragraph 15.

35 — Application, paragraph 2.16.

or 'the NEI study'), [36] submitted as evidence by the Council and not contested by the United Kingdom, that the share of the Community toy market held by imports from outside the Community had increased steadily over the years from 1982 to 1991.

98. The following table, drawn up on the basis of the figures (in millions of ECUs) set out in Tables 1 and 3 of the study, [37] traces that development by setting out year by year the ratio of extra-Community imports to Community consumption ('EI: C' in the table):

	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991
IE/C (%)	21.7	23.6	23.5	23.2	24.7	28.1	29.7	29.3	31.6	38.2

99. During the years 1988 to 1991 alone, the proportion of the Community market held by extra-Community imports rose from 29.7% to 38.2%, an increase of 28.6%. [38]

100. Table 2 in the NEI study [39] shows that during the period from 1985 to 1991 the average annual rate of growth was 10.2%, whereas the annual rate of growth of extra-Community imports came to 18.8%. It confirms the increase in the rate at which they have penetrated the Community market.

101. In its defence, [40] the Council describes the growth of imports from China between 1988 and 1993 for each of the three categories of toys in dispute.

102. The following tables, which are based on those figures, [41] show, product by product and year by year, the rate of growth in imports compared to the previous year, and also the percentage of total imports for which they account:

36 — *Panorama de l'Industrie Communautaire*, Commission of the European Communities, 1993 edition.

37 — Page 23.

38 — See also the following observation in the NEI study (p. 26): 'Whereas net imports accounted for 15% of apparent consumption in 1980, they rose to 38% in 1991.'

39 — Page 23.

40 — Paragraph 3.2.3 and Annex I.

41 — These figures which are, with one exception, lower than those referred to by the United Kingdom with regard to 1991 to 1993, are not disputed.

Stuffed toys representing animals or non-human creatures
(HS/CN Code 9503 41)

	1988	1989	1990	1991	1992	1993
Percentage increase compared to previous year		+4.52	+1.25	+73.84	+21.98	+15.94
Percentage of total imports	38	37	43	54	62	68

Other toys representing animals or non-human creatures
(HS/CN Code 9503 49)

	1988	1989	1990	1991	1992	1993
Percentage increase compared to previous year		+20.25	+12.43	+52.33	+33	+54.67
Percentage of total imports	38	48	52	64	71	81

Other toys
(HS/CN Code 9503 90)

	1988	1989	1990	1991	1992	1993
Percentage increase compared to previous year		+61.13	+18.39	+41.12	+18.45	+7.64
Percentage of total imports	33	45	51	59	66	66

103. Accordingly, between 1990 and 1993 imports from China rose by 145.88%, 213.39% and 79.94% in each of the three categories of toys respectively. During the same period, such imports came to account for a substantial majority of total imports (68%, 81% and 66% respectively).

104. If those last-mentioned data are correlated with those in the table in paragraph 98 above, [42] it is clear that imports of the toys in question from China have increased significantly, to the point where they represent two-thirds, even four-fifths, of total imports, that is to say the bulk of the share of the *Community market* held by extra-Community imports. It is equally clear that this growth has resulted in an increased market share at the expense of both other extra-Community imports and the Community market as such.

105. Those data may also be viewed in conjunction with well-known economic factors, such as the volume of China's potential production and its extreme competitiveness as regards price due to its low labour costs, an advantage which is clearly decisive in a sector in which the many assembly operations are difficult to automate. [43]

106. It may be deduced therefrom that imports from China, whether achieved at the expense of Community production and/or of other extra-Community imports, exert a strong pressure overall on Community market prices.

107. In those circumstances, taking into account the share of the Community market held by imports from China and the effect on that situation of a very considerable growth in imports during the years prior to the contested measure, the Council assessed the facts, partly on the basis of findings of a general nature.

108. Contrary to the United Kingdom's contention, that assessment was not made purely in respect of the state of the Spanish market, but with regard to the interests of the Community market as a whole.

42 — Even while noting that they cover all the toys.

43 — See the NEI study, p. 26.

109. Consequently, the allegation that there was a failure to assess the facts cannot be upheld.

110. Did the Council commit a manifest error in assessing the facts?

111. Is that error a consequence of the Council's failure to consider Article 110 of the Treaty, in disregard of the general objective of liberalisation of trade laid down in that provision?

112. It is not open to the Council to assert that that argument should be rejected in that it was put forward by the intervener, the Federal Republic of Germany, and had not previously been raised by the applicant. In observations common to all the grounds it has put forward, the United Kingdom expressly referred to the objective of Article 110 of the Treaty. It even suggested drawing an analogy with Article 12 et seq. and Article 30 et seq. of the Treaty and went on to call for the principle that exceptions should be strictly interpreted to be applied in this case.

113. Were that principle and Article 110 of the Treaty capable of restricting in substance the legislature's ability to adopt Community protection measures?

114. I think not.

115. The first paragraph of Article 110 merely expresses an intention, without any time-limit, that is to say an objective which the signatories express their readiness to pursue: '... Member States *aim to contribute*, in the common interest, *to the harmonious development of world trade, the progressive abolition* of restrictions on international trade and the lowering of customs barriers'. [44]

116. In Case 112/80 *Dürbeck* [45] and Case 245/81 *Edeke Zentrale*, [46] the Court held that Article 110 '... could not be interpreted as prohibiting the Community from enacting ... any measure liable to affect trade with non-member countries ...'. Those cases concerned measures that were needed on account of the risk of serious disturbances on the Community market which might have jeopardised the objectives set out in Article 39 of the Treaty and which were justified by provisions of Community law.

44 — Emphasis added.

45 — Case 112/80 *Dürbeck* v *Hauptzollamt Frankfurt am Main-Flughaven* [1981] ECR 1095, paragraph 44.

46 — Case 245/81 *Edeka Zentrale* v *Federal Republic of Germany* [1982] ECR 2745, paragraph 24.

117. However, I consider that situations as restrictive as those are not the only ones in which protective measures may be taken. Without prejudice to its international undertakings, [47] and subject *inter alia* to any manifest error, it seems to me that the Community is free to assess the trade protection measures required by its internal market on the basis of international competition data. That assessment falls *ex hypothesi* within the scope of the common commercial policy provided for in Article 113 of the Treaty.

118. The United Kingdom's suggested analogy with Article 12 et seq. and Article 30 et seq. of the Treaty is irrelevant. First, because unlike Article 110, Articles 12 and 30 lay down strict obligations agreed amongst themselves by the States which are signatories of the Treaty. Next, because precisely for that reason the introduction of Community protection measures by Regulation No 519/94 does not constitute the implementation of an exception to an overriding rule, as a provision implementing Article 36 might do, but the embodiment of an exception to a principle which does not entail any real obligation, and whose scope the legislature was *free* to establish at the very moment when it determined the exceptions to it.

119. Although the principle that exceptions must be strictly interpreted may, where it applies to a derogation from an overriding rule of the Treaty, preclude *the adoption of measures* of implementation going beyond the bounds of a narrow interpretation, it does not operate in other cases. Where the legislature's power is not restricted by an overriding rule, it is only *subsequently* that the principle of strict interpretation can be relied on, in connection with the *implementation of the measure* which the legislature will enact if, as in this case, it decides to lay it down embodying a principle and the exceptions to it. Moreover, it will be possible to invoke that rule only until the legislature enacts another measure which, if the Treaty does not preclude it altogether, would alter the ambit of the principle by widening the scope of the exceptions.

120. If Article 110 of the Treaty did not in itself constitute an obstacle to Regulation No 519/94, does the transformation without objective justification of a national restriction into a restriction applicable to the whole of the Community amount to a manifest error of assessment?

121. The United Kingdom starts from the premise that national restrictions existed in only one Member State, the Kingdom of Spain.

122. That statement must first be viewed in relative terms in the light of the particular circumstances surrounding the adoption of the regulation.

47 — In particular the General Agreement on Tariffs and Trade (GATT).

123. I have already pointed out that the Community machinery finally established by that regulation should have entered into force on 1 January 1993, as provided for by Regulation No 2456/92.

124. Annex VIII to Regulation No 2456/92 fixed the quotas to be applied during 1992 by the Federal Republic of Germany and the Kingdom of Spain.

125. Consequently, on 31 December 1992, quotas existed in two Member States, one of which was the Federal Republic of Germany, the largest toy producer in the Community, according to the applicant. [48] While quotas thus ceased to be applied in Germany on 1 January 1993, it was primarily in pursuance of Regulation No 2456/92 which had brought the automatic extension of the previous year's quotas to an end.

126. Secondly, and above all, the United Kingdom cannot argue that the legislature was unable to introduce a *Community* quota on the ground that nearly all the Member States had liberalised imports of the toys in question.

48 — The second largest in 1991, after France, according to the NEI study (p. 24).

127. That reasoning, it seems to me, misinterprets the nature and scope of the power wielded by an institution in response to the Member States in the context of a common policy. It also misinterprets the actual circumstances of the case and in particular the change in those circumstances.

128. Where an institution, whether the Council or the Commission, exercises the powers conferred on it by the Treaty in place of the Member States, the intention expressed is not the direct result of the assessments that the States were able to make, by reference to their national interests alone, before the entry into force or the completion of a common policy. The choices made are, first and foremost, the result of a fresh line of approach to the problems raised, namely the general Community interest, as distinct from the sum of the States' individual interests. The problems themselves are analysed in the context of the matters of which they form part. Where appropriate, and subject to any manifest error of assessment or abuse of powers, they may be included in a compromise measure dictated by the general interest.

129. If the United Kingdom were correct in its reasoning, would it not have to be acknowledged that the dispute would never have arisen, because quite simply the qualified majority required by Article 113(4) of the Treaty could not have been secured? Apart from the United Kingdom, however, all the other Member States, including the Federal Republic of Germany which has intervened in support of the United Kingdom, voted in favour of adopting the regulation.

130. The independent political will of an institution is demonstrated particularly clearly in the breadth of its discretion, which is conferred on it by the Treaty in areas covering complex economic situations.

131. With regard to trade protection measures, it should be borne in mind that in absolute terms two separate bodies with decision-making power could very well differ in their assessment, with regard to the same economic situation, of the right time for adopting such measures and how forceful they should be. The difference in approach would quite naturally arise from the discretion enjoyed by the body vested with such power. Similarly, confronted by the same set of circumstances, a Community institution may take a view of what is required different from that which could have been taken by the Member States earlier. They might have placed the threshold at which the threat was serious enough to warrant their intervention at a higher level. Likewise, they may have been less aware of the overall risk. In both cases, they would have tended to postpone the adoption of measures.

132. Furthermore, the applicant's reasoning does not take account of the actual facts of the case.

133. It is based on the mistaken view that the economic situation had been frozen, at least since 1990 and 1991, which could have been used as reference years in the determination of the last national restrictions for 1992 fixed by Regulation No 2456/92.

134. The figures set out in paragraph 102 above demonstrate that imports from China continued to increase unrelentingly.

135. Thus, it seems to me quite unjustified to claim that, when confronted with such developments in a situation which already posed a threat, the introduction of Community quotas capable of protecting the Community market as a whole was the result of a manifest error of assessment.

136. As Émile de Girardin said, 'gouverner, c'est prévoir' (to govern is to look ahead).

137. When imports of very competitively priced products amount to two-thirds or even four-fifths of total imports, it is easily foreseeable that those imports will not only lead to a loss of market share for other Community imports and/or products but will also exert strong competitive pressure on the price

levels prevailing on the single market and may thus cause damage to the Community industry.

138. The Council cannot be required to supply at the very least, beyond evidence of a risk, or the initial signs, of disturbance, proof of damage which has by and large already been sustained.

139. Such a requirement would undermine in one respect the very definition of political action, which is considered to be the art of foresight. There would even be a most unfortunate risk that if the remedy is too long delayed, the body vested with power would in many cases no longer be able to effect a cure.

140. Finally, care should be taken lest, under cover of an approach which takes a logical argument too far, the burden of proof relating to manifest errors of assessment is surreptitiously reversed.

141. Is that not the possible outcome of the United Kingdom's repeated demands that the Council should adduce evidence, down to the smallest details, of each stage of its reasoning and above all of each fact establishing that an event had actually occurred rather than that a risk had been incurred?

142. I believe that in the areas in which the Community legislature enjoys a broad discretion it must, irrespective of the obligation to give concise reasons for a measure of general application, be able to consider in depth the decisive issues of fact or of law involved as well as the reasoning which led it to adopt the contested measure.

143. It is then for the applicant to adduce evidence of the existence of a manifest error of appreciation or misuse of powers.

144. It is clear that the United Kingdom has not discharged the burden of proof incumbent on it.

145. In connection with its demands for evidence to be adduced, the United Kingdom has not produced any document demonstrating that in assessing the need for Community quotas, the effects of which could not have been foreseen with any degree of certainty, the Council committed a manifest error of assessment in the light of the information available to it at the time when it adopted the regulation. In particular, the documents placed before the Court contain nothing to show that the protective measure adopted was even in principle actually harmful to the Community industry which it was meant to safeguard.

146. The reports cited by the United Kingdom in its application [49] in support of the assertion that Community restrictions were not justified on economic grounds are not conclusive. Those reports, which were written in 1989, are based on data relating to 1988 at the latest, a period in which the share of total imports represented by imports from China amounted to 38% for the first two categories of toys and 33% for the third.

147. I would note that the Council has, for its part, produced an economic study reflecting, as of 1993, the development of the Community toy industry and the trend with regard to imports, both of which it took into consideration when making its assessment.

148. Finally, as regards the United Kingdom's claim that in respect of the toys in question the Council should have followed the same procedure as (or a procedure similar to) that provided for by Regulation No 519/94, this relates to the fifth ground alleging breach of the principle of equal treatment. By implication it refers to the existence of discrimination between traders dealing in toys in respect of which the regulation imposed quotas at once as opposed to those dealing in other liberalised products which, pursuant to the regulation, were to be subjected to restrictions in due course.

49 — Paragraphs 2.17 and 2.18.

149. Accordingly, that claim does not fall to be considered in connection with this ground.

The arbitrary nature of the quotas

150. The United Kingdom maintains that the Council acted arbitrarily in failing to carry out any, or any proper, appreciation of the facts. Support for this ground of annulment can be found in the fact that none of the provisions of the contested regulation explains why a national restriction having a *de minimis* effect was replaced by a Community restriction having considerable impact. This ground is also supported by the fact that the Council took into account only the growth of imports from China.

151. To my mind, it is clear from the actual wording of this plea that it is comprised within the first and second grounds of annulment which have already been considered above. It could also relate to the ground alleging breach of the principle of proportionality, which will be examined below.

152. The third ground need not therefore be considered separately.

Breach of the principle of proportionality

153. This ground of annulment consists of three parts.

154. In the first part, the applicant claims that, when introducing Community quotas, the Council did not adopt a measure proportionate to the aim pursued, which was limited to protecting the Spanish toy industry. In relation to that objective, the measure adopted was not the least restrictive means necessary. A regional protection measure would have been sufficient.

155. We have seen, however, that the Community legislature did in fact assess the need for protection against imports from China in terms of the overall trend regarding those imports, not only at the level of the Spanish market but also at the level of the Community market as a whole.

156. The first part of this ground must accordingly be rejected.

157. In the second part, the United Kingdom claims that the Council had considerably increased the degree of protection by reducing trade at Community level by up to 50%. In that respect, a simple Community surveillance measure would have been less restrictive. In any case, the Council has not supplied any evidence to explain why it referred to the level of imports from China in 1991 rather than 1992 or 1993 when fixing the levels of the quotas.

158. The second part of this ground should, like the first, be rejected.

159. Where the Community legislature has a broad power of assessment, '... the legality of a measure adopted in that sphere can be affected only if the measure is manifestly inappropriate having regard to the objective which the competent institution is seeking to pursue'. [50] The Court's review of proportionality 'must be limited ... in particular' where 'the Council has to reconcile divergent interests and thus select options within the context of the policy choices which are its own responsibility'. [51]

50 — See, in particular, Case C-331/88 *Fedesa and Others* [1990] ECR I-4023, paragraph 14.

51 — Case C-280/93 *Germany* v *Council* [1994] ECR I-4973, paragraph 91.

160. In a situation in which in the space of a few years imports have increased substantially so as to account for two-thirds to four-fifths of total imports, it does not seem possible to me to maintain that a mere Community surveillance measure, with no immediate effect on the level of imports, would have been sufficient. More precisely, I should say that, in those circumstances, quotas are not measures manifestly inappropriate to the protective purpose which the Council intended to pursue.

161. With regard to the yearly amounts fixed by Regulation No 519/94 for the three toy quotas, it is clear from the documents before the Court that they are in fact very close to the figures for imports of those toys in 1991.

162. The Council explains that it pursued the objective of ensuring that the rules applying to the Community's trade with third countries accurately reflected the completion of the internal market, whilst taking account of the sensitivity of the Community industry in the sector concerned. In setting the quotas at the level of imports for 1991, and not at the substantially lower level of 1990, the Council strove to find a balance between adequate protection of the sectors of Community industry concerned and the need to maintain an acceptable level of trade with China, having regard to the interests of the Community economic sectors involved.

163. I note that consideration of the first two grounds of annulment has confirmed that the first objectives quoted are genuine and lawful.

164. It seems to me that the choice of 1991 as the reference year in fact takes into account, subject to any subsequent adjustments, not only the interests of Community producers but also those of the other Community traders concerned, such as importers, distributors, retailers and so on. The amounts of the quotas set include the very substantial increase in imports which occurred in 1991 (+73.84% for toys falling under Code 9503 41, +52.33% for those falling under Code 9503 49 and +41.12% for those under Code 9503 90). [52] Plainly, they also include the previous years' increases.

165. The United Kingdom, which bears the burden of proof, has adduced no evidence that the level of protection thus chosen by the legislature was manifestly inappropriate in relation to the objectives pursued. I would point out that even while 'other means for achieving the desired result were indeed conceivable, the Court cannot substitute its assessment for that of the Council as to the appropriateness or otherwise of the measures

52 — See the tables in section 102 above.

adopted by the Community legislature if those measures have not been proved to be manifestly inappropriate ...'. [53]

166. In the third part of this ground, the applicant claims that the general extension of the scope and effect of the Spanish restrictions contrasts with the case-by-case factual investigation required by the regulation before the imposition of surveillance or safeguard measures on liberalised products.

167. I consider that there is no need to determine whether that claim is valid in connection with the fourth ground of annulment.

168. Consideration of the question of proportionality from the perspective contemplated here is connected with the examination of the fifth ground, alleging breach of the principle of equal treatment. The United Kingdom implies that the treatment of toys covered by the quotas, which were not the subject of a case-by-case investigation, is disproportionate to that of other liberalised products, in respect of which the contested regulation requires a case-by-case investigation before any surveillance or safeguard measure is taken. Thus it refers by implication to the existence of unequal treatment. Only where discrimination is actually found to have occurred is it necessary, when verifying whether such discrimination is objectively justified, to establish whether it is strictly proportionate to the objective pursued.

Breach of the principle of equal treatment

169. The United Kingdom complains that the contested regulation treats two categories of products differently. The first category, consisting of products which were already covered by national safeguard or surveillance measures, is subject to the protective measures imposed by the regulation without any formal investigation procedure being conducted or the parties concerned having any right to be heard. For the second category, consisting of 'other products', the regulation provides for a mandatory Community investigation procedure and for interested third parties to exercise the rights of the defence before any new surveillance or safeguard measure is adopted. In so far as the transformation of a national restriction limited to the Kingdom of Spain into a Community restriction in fact constituted the introduction of a new restriction, it should, according to the applicant, have been subject to the procedural safeguards applicable to the introduction of restrictions on imports of 'other products'.

170. The general principle of equal treatment precludes in particular comparable situations

53 — Case C-280/93 *Germany* v *Council*, cited above, paragraph 94.

from being treated in a different manner, unless the difference in treatment is objectively justified. [54]

171. In establishing the categories it compares, the United Kingdom starts once again from the mistaken premise that the Council was obliged to consider that the toys in dispute had been liberalised *de facto* on the ground that only one Member State had maintained national restrictions at the date on which Regulation No 519/94 was adopted. It seeks to establish that the toys at issue were in a position comparable to that of the other products liberalised by the regulation but were accorded different treatment without justification.

172. As I stated when considering the second ground, the intention expressed by the Community legislature is not the direct result of the assessments that the Member States were able to make earlier. [55] In the circumstances of this case, those assessments were all the less relevant since they had dealt with a situation which subsequently changed and since, in any event, under Article 113 of the Treaty the Community is free to assess the trade protection measures required by its internal market. [56]

54 — See, for example, Joined Cases C-181/88, C-182/88 and C-218/88 *Deschamps and Others* [1989] ECR 4381, paragraph 18, and Joined Cases C-267/88 to C-285/88 *Wuidart*, cited above, paragraph 13.

55 — See section 128 above.

56 — See section 117 above.

173. In practice, a distinction must be drawn between:

— the category of toys in respect of which the Council considered it necessary, in the exercise of its wide discretion, to protect the interests of the Community industry on the basis of the situation prevailing at the time when it adopted the regulation;

— and the category of products in respect of which the Council considered it possible, on the basis of the economic situation as assessed at the same time, to liberalise imports.

174. Those two categories must therefore exist at the date when the contested measure was adopted, that is to say at the very time when the economic situation was appraised for each category by the Community legislature, and not, as regards the toys at issue, at an earlier time when the common commercial policy had not yet been completed.

175. The categories are quite distinct, having been created on the basis of objective criteria identified when the economic situation was assessed at a given time. They cannot be described as 'comparable' in the sense in which the Court has used that term in its above-

mentioned decisions. One comprises non-liberalised products, the other products which have been liberalised.

176. The fact that Regulation No 519/94 actually subjects alterations in the legal position of liberalised products to a specific procedure cannot in the circumstances amount to discrimination which is prohibited. [57] The procedure is simply meant to apply in the future to liberalised products in order to move them, where appropriate, into the — by definition more restrictive — class of non-liberalised products. It presupposes a change in the economic situation which must specifically be reassessed. It was not intended to apply to an economic situation which was already known to, and which had been assessed by, the legislature, at a time moreover when the procedural mechanism in question had been neither adopted nor published.

177. I would note that the legislature was not required to lay down a specific procedure before introducing any new restriction. The legislature could have made provision for such a procedure only in a subsequent measure, in which case it could have applied *ex hypothesi* only to those products liberalised by Regulation No 519/94.

57 — It would be quite different if the legislature had required a specific procedure to be followed before the subsequent introduction of new restrictions on imports of certain products which had previously been liberalised, but had not done so in respect of other products which had also been liberalised.

178. The ground alleging breach of the principle of equal treatment must consequently be rejected, without there being any need to ascertain whether the measure is proportionate to the objective pursued. [58]

Grounds of annulment relating to Regulation No 1921/94

179. The Kingdom of Spain puts forward two grounds of annulment alleging:

— breach of Article 190 of the Treaty;

— breach of the principle of legitimate expectation.

180. I shall consider each of them in turn.

58 — See section 168 above.

Breach of Article 190 of the Treaty

181. The Kingdom of Spain claims that the Council has failed to give adequate reasons for the 28.64% increase in the quota applicable to toys falling under HS/CN Code 9503 41, even though it represents a 'substantial adjustment' in relation to Regulation No 519/94 and there is no indication of any development to justify that adjustment.

182. According to the applicant, since Regulation No 1921/94 significantly affects the position of traders in the sector concerned it ought not only to have identified the factors which influenced the Council's decision but also to have stated their effect, in accordance with the judgment in Case C-358/90 *Compagnia Italiana Alcool* v *Commission*. [59] Furthermore, by merely referring to 'disruptions ... in trade with the People's Republic of China', [60] the regulation makes 'factual observations' which are inadequate where the institution concerned exercises the wide power which it has for the assessment of complex economic situations. [61]

183. Lastly, the Kingdom of Spain quotes the judgment in Case C-181/90 *Consorgan* v *Commission*, [62] in which the Court held [63] that although, in the context of an initial application for assistance from the European Social Fund for a vocational training programme, a statement of reasons in summary form satisfies the requirements of Article 190 of the Treaty, when the initial application has been approved, the decision reducing the amount of assistance originally granted entails more serious consequences for the applicant and must therefore clearly state the grounds justifying that reduction.

184. I would point out that, like Regulation No 519/94, Regulation No 1921/94 is an act of general application and not a decision.

185. Consequently, it had to satisfy the obligation to give reasons as laid down in the *Beus* judgment, cited above in section 39. That obligation could, where appropriate, vary according to the details given in the judgments quoted in sections 40 and 41 above. Therefore the statement of reasons could at first merely have set out, on the one hand, the overall situation which had led to the adoption of the act and, on the other, the general objectives which that act was intended to attain.

59 — Case C-358/90 *Compagnia Italiana Alcool* v *Commission* [1992] ECR I-2457, paragraph 42.

60 — Third recital in the preamble.

61 — Judgment cited above, paragraph 41.

62 — Case C-181/90 *Consorgan* v *Commission* [1992] ECR I-3557.

63 — Paragraphs 15, 16 and 18.

186. The preamble to Regulation No 1921/94 contains the following reasons:

— Regulation No 519/94 subjected imports of a limited number of products to Community quantitative quotas, owing to the sensitivity of certain sectors of Community industry (first recital);

— the Council, in setting the level of these quotas, strove to find a balance between an appropriate level of protection for the sectors of the Community industry concerned and the need to maintain an acceptable level of trade with China, taking into account the various interests involved (second recital);

— however, in the case of toys falling within CN Code 9503 41, the implementation and administration of the quota have revealed that this objective has not been achieved in an entirely satisfactory way in 1994; disruptions have occurred in trade with China that have affected Community economic sectors involved in the import, marketing and processing of those toys originating in that country and caused economic difficulties (third recital);

— in view of this, and without prejudice to a review of the situation, the quota in question should be adjusted upwards for the year 1994, in order to ease the transition between the previous import regime and the regime established by Regulation No 519/94 (fourth recital).

187. The regulation contains, therefore, a perfectly clear description of the overall situation. In particular, it notes the existence of a problem in the transition to the new regime under Regulation No 519/94 which appeared at the time when that measure entered into force. It necessarily follows from the wording of the recitals in the preamble that the quota set for toys falling under HS/CN Code 9503 41 proved insufficient to satisfy the needs of Community traders involved in imports during the period from 15 March to 31 December 1994, taking into account quite clearly the volume of transactions in progress and short-term commitments. As the fourth recital indicates, the regulation simply 'adjusts' the quota in question for that transitional period only.

188. Furthermore, Regulation No 1921/94 explains unambiguously the objective it pursues. It seeks to achieve a balance between an appropriate level of protection for the sectors of the Community industry concerned and the need to maintain an acceptable level of trade with China, taking into account the various interests involved. The objective is the same as that pursued in that respect by Regulation No 519/94, but which the latter

did not fully attain as regards the toys in question.

189. Consequently, the Council did fulfil the obligation to state reasons imposed on it by the judgment in *Beus*, cited above. It did not have to provide in addition specific factual details justifying the extent of the temporary increase in the quota, that is to say the technical choice made. [64]

190. The two judgments specifically relied upon by the Kingdom of Spain are not relevant to the circumstances of this case.

191. They both concern decisions. The obligation to state the reasons for a decision is frequently wider than the obligation to state the reasons for an act of general application.

192. When the Court, in its judgment in Case C-358/90 *Compagnia Italiana Alcool* v *Commission*, cited above, emphasises that a decision must 'state the effect' of the factors which influenced its adoption, it is referring to the amount of further detail which a decision must contain relating to the position of the individual(s) specifically affected by that decision. That requirement is not to be found in the rules concerning the obligation to give reasons for acts of general application. I would add for the sake of completeness that the statements in Regulation No 1921/94 to the effect that '... disruptions have occurred in trade with the People's Republic of China that have affected Community economic sectors involved in the import, marketing and processing of ... toys originating in that country and caused economic difficulties' [65] do not constitute 'factual observations'. Those statements clearly imply that the original quota did not enable the needs of traders involved in imports to be satisfied to a sufficient extent in 1994.

193. Quite apart from the fact that *Consorgan* v *Commission*, cited above, concerns a decision, it relates to a situation in which that decision had overturned an earlier decision which had granted a certain amount of assistance to an individual and thus given rise to a legitimate expectation that the sum in question would actually be paid over. In the present case, the contested regulation, far from depriving a trader of individual rights which had been recognised in principle, merely increases for all traders operating in the sector in question the degree of *competition* liable to be created by Chinese products. To my mind, therefore, there can be no question of applying by analogy the principle laid down in the judgment referred to.

64 — See *Eridania and Others*, cited above, at the end of paragraph 38.

65 — Third recital in the preamble.

194. In those circumstances, the ground alleging breach of Article 190 of the Treaty must be rejected.

Breach of the principle of the protection of legitimate expectation

195. The Kingdom of Spain considers that the Community legislature disregarded the legitimate expectations entertained by traders regarding the level of protection under Regulation No 519/94. In its view, the Council failed to take account of the position of the traders concerned who, in the absence of a change in the original circumstances, saw the *status quo* established by the earlier regulation altered in a very short space of time, without reference to any higher public interest. According to the applicant, any prudent and well-informed trader cannot be required to foresee a change depriving the previous quota of all substance, barely four months after it was introduced. Finally, it maintains, Regulation No 1921/94 caused serious damage to all Community traders who had terminated or delayed their contracts by reason of the initial regulation.

196. Moreover, it claims that in its defence the Council provides no evidence either that the traders had no such expectations or that a higher public interest warranted disregarding those expectations.

197. Before requesting the Court to reject that plea as unfounded, the defendant questions whether it is open to a Member State to plead a breach of traders' legitimate expectations.

198. On that point, I consider that a Member State, as a privileged applicant, may plead a breach of the legitimate expectations of the traders concerned, as it may plead the breach of any other rule of Community law. It is difficult in my view to make a Member State's right to put forward a particular plea depend on the existence of a specific interest. Would such an approach, if applied to other pleas in law, not be likely to cause awkward and unnecessary problems in practice? Above all, it would inevitably restrict the scope for review of the legality of a measure. That would be an unfortunate result for natural and legal persons, whose access to the Community judicature is limited by Article 173 of the Treaty.

199. Before I consider this ground of annulment, I would note that the burden of proving that it is well founded in the circumstances of the case clearly falls on the applicant. In its pleadings, the latter may not therefore seek to reverse the burden of proof by claiming that the Council should provide all relevant evidence, some of it, moreover, negative. [66]

66 — See section 196 above.

200. As the Council points out, the Court has already explained the limits of the principle of the protection of legitimate expectation where Article 113 of the Treaty applies: 'Since Community institutions enjoy a margin of discretion in the choice of the means needed to achieve their policies, traders are unable to claim that they have a legitimate expectation that an existing situation which is capable of being altered by decisions taken by those institutions within the limits of their discretionary power will be maintained.' [67]

201. Competing Community toy producers cannot plead a vested right to the maintenance of an advantage which they derive from the introduction of quotas by Regulation No 519/94. [68] Quota adjustments form part of the actual pursuit of commercial policy. In particular, increasing a quota merely raises the level of competition on the Community market; it does not diminish the positive expectations of Community producers. Ultimately, alterations in quantitative restrictions constitute economic risks inherent in the sectors covered by those restrictions.

202. I would observe that the Kingdom of Spain does not expressly refer to the position of Community producers.

203. Strangely, it refers instead to the position of traders concerned with imports from China when it mentions the serious harm suffered by Community traders who, on account of the original regulation, had terminated or delayed their contracts. By definition, only traders concerned with imports could have been obliged to reduce the volume of their transactions as a result of the introduction of quotas under Regulation No 519/94. Their expectations were not diminished, but on the contrary raised anew, by Regulation No 1921/94. Accordingly, that situation in no way constitutes a breach of the principle of the protection of legitimate expectation.

204. In short, the contested regulation could have adversely affected competing Community producers only as regards some of their prospects, but in a context and from a point of view unrelated to the concept of legitimate expectation.

205. It merely adjusted the level of one of the quotas set by Regulation No 519/94, having regard to information which came to light when that regulation was brought into operation. [69]

67 — Case 52/81 *Faust* v *Commission* [1982] ECR 3745, paragraph 27.

68 — See, by analogy, Case C-350/88 *Delacre and Others* v *Commission* [1990] ECR I-395, paragraph 34.

69 — For a similar case of amendments to safeguard measures within one and the same year, see the *Dürbeck* judgment, cited above, paragraph 36.

206. The second ground of annulment put forward by the Kingdom of Spain must therefore be rejected.

Costs

207. 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. Article 69(4) provides that the Member States and institutions which intervene in the proceedings are to bear their own costs.

208. Those provisions should be applied to the two cases under consideration.

209. In Case C-150/94, the United Kingdom should consequently be ordered to bear, in addition to its own costs, those incurred by the Council, while the Federal Republic of Germany, the Kingdom of Spain and the Commission should as interveners bear their own costs.

210. In Case C-284/94, the Kingdom of Spain should be ordered to bear, in addition to its own costs, those incurred by the Council, while the Commission should as intervener bear its own costs.

Conclusion

211. I therefore propose that the Court give judgment as follows:

In Case C-150/94

(1) The application is dismissed.

(2) The United Kingdom is ordered to pay the costs incurred by the Council, and to bear its own costs.

(3) The Federal Republic of Germany, the Kingdom of Spain and the Commission are to bear their own costs.

In Case C-284/94

(1) The application is dismissed.

(2) The Kingdom of Spain is ordered to pay the costs incurred by the Council, and to bear its own costs.

(3) The Commission is to bear its own costs.