OPINION OF ADVOCATE GENERAL LÉGER

delivered on 17 February 2005 [1]

1. In 1999 and 2000, the Commission of the European Communities adopted safeguard measures in respect of certain sugar and cocoa imports from the overseas countries and territories (OCTs). The Commission took the view that the imports at issue disturbed the operation of the common organisation of the markets in the sugar sector.

2. Those safeguard measures have been the subject of several actions brought, in particular, by the company Rica Foods (Free Zone) NV ('Rica Foods') before the Court of First Instance and by the Kingdom of the Netherlands before the Court of Justice.

3. The actions brought by Rica Foods were dismissed by the Court of First Instance in three judgments of 17 January 2002 [2] and 14 November 2002. [3] Two of those judgments are the subject of an appeal, which is examined in the Opinion which I am delivering today in Joined Cases C-40/03 P and C-41/03 P *Rica Foods* v *Commission*.

4. Examination of the actions brought by the Kingdom of the Netherlands has been suspended by the Court pending the Court of First Instance's delivery of its judgments in the abovementioned cases. Those actions are examined in this Opinion.

I — Legal background

5. The relevant rules for the purposes of examining the cases are the rules on the common organisation of the markets in the sugar sector (Heading A) and those on the arrangements for association of the OCTs with the Community (Heading B).

1 — Original language: French.

2 — Judgment in Case T-47/00 *Rica Foods* v *Commission* [2002] ECR II-113.

3 — Judgments in Joined Cases T-94/00, T-110/00 and T-159/00 *Rica Foods and Others* v *Commission* [2002] ECR II-4677 ('*Rica Foods II*'), and Joined Cases T-332/00 and T-350/00 *Rica Foods and Free Trade Foods* v *Commission* [2002] ECR II-4755 ('*Rica Foods III*').

A — *The common organisation of the markets in the sugar sector*

6. Council Regulation (EC) No 2038/1999 of 13 September 1999 on the common organisation of the markets in the sugar sector [4] consolidated Regulation (EEC) No 1785/81 of 30 June 1981, [5] which had established that common organisation, following its many amendments. The purpose of that organisation is to regulate the Community sugar market in order to increase employment and the standard of living among Community sugar producers.

7. Support for Community production through guaranteed prices is limited to national production quotas (A and B quotas) allocated by the Council to each Member State, which then divides them amongst its producers. Quota B sugar (B sugar) is subject to a higher production levy than quota A sugar (A sugar). Sugar produced in excess of the A and B quotas is termed 'C sugar' and cannot be sold within the Community unless it is transferred to the A and B quotas for the following season.

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

9. The quantity of sugar which can benefit from an export refund and the total annual amount of refunds are governed by the World Trade Organisation (WTO) Agreements ('the WTO Agreements'), to which the Community is a party, in accordance with Council Decision 94/800/EC of 22 December 1994. [6] By the 2000/2001 marketing year at the latest the quantity of sugar exported with refund and the total amount of refunds were to be limited to 1 273 500 tonnes and to EUR 499.1 million, which represents a reduction of 20% and 36%, respectively, in relation to the figures for the 1994/1995 marketing year.

B — *The arrangements for association of the OCTs with the Community*

10. Under Article 3(1)(s) EC, the activities of the Community include the association of the OCTs in order to increase trade and

4 — OJ 1999 L 252, p. 1.

5 — Council Regulation on the common organisation of the markets in the sugar sector (OJ 1981 L 177, p. 4).

6 — Decision concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986-1994) (OJ 1994 L 336, p. 1).

promote jointly economic and social development.

11. Under Article 299(3) EC and Annex II to the EC Treaty, the Netherlands Antilles and Aruba form part of the OCTs.

12. According to Article 182 EC, the purpose of association is to promote the economic and social development of the OCTs and to establish close economic relations between them and the Community as a whole. Article 183(1) EC states that the Member States are to apply to their trade with the OCTs the same treatment as they accord each other pursuant to the Treaty.

13. Pursuant to Article 187 EC, the Council adopted several decisions laying down the detailed provisions and procedures for the association of the OCTs with the Community. The relevant decision in this case is Council Decision 91/482/EEC of 25 July 1991,[7] which, according to Article 240(1) thereof, is to apply for a period of 10 years from 1 March 1990.

14. Various provisions of that decision were amended by Council Decision 97/803/EC of 24 November 1997 amending at mid-term Decision 91/482.[8] Moreover, on 25 February 2000, the Council extended that decision until 28 February 2001.[9]

15. Under Article 101(1) of the OCT Decision, products originating in the OCTs are to be imported into the Community free of import duty. Article 102 of that decision adds that, '[w]ithout prejudice to [Article] 108b, the Community shall not apply to imports of products originating in the OCTs, any quantitative restrictions or measures having equivalent effect'.

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

7 — Decision on the association of the overseas countries and territories with the European Economic Community (OJ 1991 L 263, p. 1).

8 — OJ 1997 L 329, p. 50 (hereinafter, together with Decision 91/482, referred to as 'the OCT Decision').

9 — See Decision 2000/169/EC (OJ 2000 L 55, p. 67).

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

18. Article 6(2) of Annex II, however, provides: '[w]hen products wholly obtained in the Community or in the ACP States undergo working or processing in the OCTs, they shall be considered as having been wholly obtained in the OCTs'. These are known as 'the EC/OCT and the ACP/OCT cumulation of origin rules'.

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

20. Decision 97/803 none the less limited the application of those cumulation rules by inserting Article 108b into Decision 91/482. Paragraph 1 of that article provides that '[t]he ACP/OCT cumulation of origin referred to in Article 6 of Annex II shall be allowed for an annual quantity of 3 000 tonnes of sugar'. Decision 97/803 did not, however, limit application of the EC/OCT cumulation of origin rule.

II — The contested safeguard measures

21. Article 109(1) of the OCT Decision makes it possible for the Commission to take 'the necessary safeguard measures' in two situations. The first is where 'as a result of the application of [the OCT] decision, serious disturbances occur in a sector of the economy of the Community or one or more of its Member States, or their external financial stability is jeopardised'. The second situation is where 'difficulties arise which may result in a deterioration in a sector of the Community's activity or in a region of the Community'.

22. In both cases, however, the Commission must, under Article 109(2) of the OCT Decision, give priority to 'such measures as would least disturb the functioning of the association and the Community'. Moreover, '[t]hese measures shall not exceed the limits of what is strictly necessary to remedy the difficulties that have arisen'.

23. On 15 November 1999, the Commission adopted, on the basis of Article 109 of the OCT Decision, Regulation (EC) No 2423/1999 introducing safeguard measures in respect of sugar falling within CN code

1701 and mixtures of sugar and cocoa falling within CN codes 1806 10 30 and 1806 10 90 originating in the OCTs. [10]

24. The preamble to that regulation reads:

'(1) In recent months difficulties have arisen which may result in a serious deterioration of the Community's sugar sector. These difficulties have been caused by increasing quantities of sugar imported from 1997 onwards under the EC/OCT cumulation of origin procedure and in the form of mixtures of sugar and cocoa ... originating in the overseas countries and territories ... .

(2) These imports may result in a serious deterioration in the operation of the common organisation of the market in the sugar sector and have highly detrimental effects on Community sugar operators.

(3) The operation of the market organisation may be profoundly destabilised: sugar consumption is constant on the Community market, and accordingly any import of sugar into the Community at prices below the intervention price throws onto the export market a corresponding quantity of Community sugar which it cannot absorb. Refunds paid on such sugar are charged to the Community budget (currently at around EUR 520/tonne). Such exports are limited in volume by the GATT agreements, and the imports thus reduce the scope for exporting sugar within quotas. To cope with this problem, consideration should be given to reducing Community production quotas.

(4) Community sugar operators also risk damage as a result of these higher imports. The features of the common market organisation in sugar are the principle of self-financing by the Community's sugar producers, disposal of surplus sugar produced in the Community (particularly through export refunds), and a minimum price which Community sugar manufacturers must pay for their raw material (beet). Such increased imports of sugar, either as such or in the form of products with a high sugar content, at prices below those at which Community producers can sell comparable products, have a profoundly destabilising impact on the activity of Community undertakings which, owing to the common agricultural policy's constraints in favour of farmers, cannot compete with the imported products.

10 — OJ 1999 L 294, p. 11.

(5) An increase in the volume of exports attracting refunds may also entail the risk of a rise in the unit costs of exporting sugar within quotas and consequently in the production levy on Community sugar producers.'

25. The Commission therefore decided to make imports of sugar qualifying for EC/OCT cumulation of origin subject to a minimum price. Accordingly, Article 1(1) of Regulation No 2423/1999 provides:

'Products with EC-OCT cumulation of origin falling within CN code 1701 shall be released for free circulation in the Community free of import duties only if the import price cif of unpacked goods ... is not less than the intervention price of the products in question.'

26. With regard to mixtures of sugar and cocoa falling within CN codes 1806 10 30 and 1806 10 90 ('mixtures'), the Commission decided to make release of them for free circulation in the Community subject to the Community surveillance procedure laid down in Article 308d of Regulation (EEC) No 2454/93, [11] as amended by Commission Regulation (EC) No 1427/97 of 13 July 1997. [12]

27. Article 3 of Regulation No 2423/1999 provided that the regulation was to apply from 16 November 1999 until 29 February 2000.

28. On 29 February 2000, the Commission adopted, also on the basis of Article 109 of the OCT Decision, Regulation (EC) No 465/2000 introducing safeguard measures for imports from the OCTs of sugar sector products with EC/OCT cumulation of origin. [13]

29. The preamble to that regulation reads:

'(1) The Commission has noted that imports of sugar (CN code 1701) and

11 — Commission Regulation of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ 1993 L 253, p. 1).

12 — OJ 1997 L 196, p. 31. The procedure established in Article 308d of that regulation requires the Member States to 'provide to the Commission once each month, or at more frequent intervals ... , details of the quantities of products put into free circulation with the benefit of preferential tariff arrangements during the previous months'.

13 — OJ 2000 L 56, p. 39.

of mixtures ... originating in the [OCTs] have been increasing greatly since 1997, particularly those imports with EC/OCT cumulation of origin, which have gone from zero in 1996 to more than 48 000 tonnes in 1999 ... .

ties. For the 2000/2001 marketing year, which starts on 1 July 2000, it is planned on the basis of the most cautious estimates currently available, to reduce Community producers' quotas by some 500 000 tonnes ... . Any further import of sugar or products with a high sugar content from the OCT will mean a greater reduction in the quota for Community producers and a greater guaranteed income loss for them.'

...

(4) In the past few years difficulties have arisen on the Community sugar market, a market in surplus. Sugar consumption is constant at some 12.7 million tonnes, while production is between 16.7 and 17.8 million tonnes. Any imports into the Community therefore involve a corresponding quantity of Community sugar which cannot be sold on that market having to be exported. Refunds for that sugar — within the limit of certain quotas — are charged to the Community budget (currently at around EUR 520/tonne). However, exports with refund are limited in volume by the Agreement on Agriculture concluded as part of the Uruguay Round and have been reduced from 1 555 600 tonnes for the 1995/96 marketing year to 1 273 500 tonnes for the 2000/2001 marketing year.

(5) The operation of the CMO in sugar may be greatly destabilised by these difficul-

30. The Commission therefore decided to restrict EC/OCT cumulation of origin as referred to in Article 6 of Annex II to the OCT Decision to a quantity of 3 340 tonnes of sugar for sugar and mixtures.

31. Article 3 of Regulation No 465/2000 provided that the regulation was to apply from 1 March until 30 September 2000.

32. On 29 September 2000, the Commission adopted, again on the basis of Article 109 of the OCT Decision, Regulation (EC) No 2081/2000 providing for the continued application of safeguard measures for imports from the OCTs of sugar sector products with EC/OCT cumulation of origin. [14]

14 — OJ 2000 L 246, p. 64.

33. The preamble to that regulation reads:

'(1) The Commission has noted that imports of sugar (CN code 1701) and of mixtures ... originating in the [OCTs] increased greatly between 1997 and 1999 ... , from zero tonnes in 1996 to more than 53 000 tonnes in 1999 ... .

...

(4) In the past few years difficulties have arisen on the Community sugar market, a market in surplus. Sugar consumption is constant at some 12.8 million tonnes per year, while production under quota is around 14.3 million tonnes per year. Any imports of sugar into the Community therefore involve a corresponding quantity of Community sugar which cannot be sold on that market having to be exported. Refunds for that sugar, within the limit of certain quotas, are charged to the Community budget (currently at around EUR 520/tonne). However, exports with refund are limited in volume by the Agreement on Agriculture concluded as part of the Uruguay round ... and have been reduced from 1 555 600 tonnes for the 1995/96 marketing year to 1 273 500 tonnes for the 2000/01 marketing year.

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

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

34. The Commission therefore restricted EC/OCT cumulation of origin to 4 848 tonnes of sugar for sugar and mixtures.

35. Article 3 of Regulation No 2081/2000 provided that the regulation was to apply from 1 October 2000 to 28 February 2001.

III — Procedure and forms of order sought by the parties

36. By applications lodged at the Court Registry on 29 January 2000 (C-26/00), 12 May 2000 (C-180/00) and 6 December 2000 (C-452/00), the Kingdom of the Netherlands brought actions against Regulations Nos 2423/1999, 465/2000 and 2081/2000 ('the contested regulations').

37. The Kingdom of the Netherlands claims that the Court should annul those regulations and order the Commission to pay the costs of the proceedings.

38. The Commission, the defendant, and the Kingdom of Spain, the intervener, contend that the actions should be dismissed and that the Kingdom of the Netherlands should be ordered to pay the costs. The French Republic, which was given leave to intervene in support of the form of order sought by the Commission in Case C-180/00, did not submit any observations.

IV — The actions

39. In the three cases, the Netherlands Government raises three identical pleas in law:

— infringement of Article 109(1) of the OCT Decision;

— infringement of Article 109(2) of the OCT Decision, and

— infringement of the obligation to state reasons laid down in Article 253 EC.

40. In Cases C-180/00 and C-452/00, the Kingdom of the Netherlands raises a further plea, alleging a misuse of powers.

41. I shall examine first the pleas in law relating to the infringement of the provisions of Article 109 of the OCT Decision (Headings A and B), then the plea alleging a misuse of powers (Heading C), and finally the plea relating to the obligation to state reasons (Heading D).

A — *The first plea: infringement of Article 109(1) of the OCT Decision*

42. In its first plea, the Netherlands Government submits that the Commission has committed a manifest error of assessment, by taking the view that the conditions laid down in Article 109(1) of the OCT Decision were satisfied in this case. That plea comprises six parts, which I shall examine in turn.

43. As a preliminary point, it is appropriate to set out briefly the extent of the power to review a decision adopted under Article 109 of the OCT Decision.

44. It is settled case-law that the Community institutions have been given a wide discretion in the application of Article 109 of the OCT Decision. [15] That discretion relates not only to whether it is necessary or advisable to act under that provision, [16] but also to the nature and scope of the measures which are to be adopted. [17]

45. Moreover, as I have pointed out, [18] recognition of such a discretion is justified by the fact that, in the application of Article 109 of the OCT Decision, the institutions must generally reconcile divergent interests and thus select options within the context of the policy choices which are their responsibility. [19] That discretion corresponds to the political responsibilities conferred upon the Community institutions by Article 109 of the OCT Decision. [20]

46. According to case-law, recognition of such a discretion entails a restriction of judicial review. Indeed, the Court takes the view that, in that case, judicial review must be confined to verifying whether the Commission complied with the relevant rules governing procedure and the statement of reasons, whether the facts on which the

15 — See, in particular, judgments in Case C-390/95 P *Antillean Rice Mills and Others* v *Commission* [1999] ECR I-769, paragraph 48, Case C-110/97 *Netherlands* v *Council* [2001] ECR I-8763, paragraphs 61 and 62, and Case C-301/97 *Netherlands* v *Council* [2001] ECR I-8853, paragraphs 73 and 74.

16 — See judgments of the Court of First Instance in Joined Cases T-480/93 and T-483/93 *Antillean Rice Mills and Others* v *Commission* [1995] ECR II-2305, paragraph 122, upheld by the judgment of the Court in *Antillean Rice Mills and Others* v *Commission*, cited above, and Joined Cases T-32/98 and T-41/98 *Netherlands Antilles* v *Commission* [2000] ECR II-201, paragraph 78.

17 — See, in particular, judgment in Case C-110/97 *Netherlands* v *Council*, cited above, paragraph 92, and the case-law cited.

18 — See my Opinion in Joined Cases C-40/03 P and C-41/03 P *Rica Foods* v *Commission*, pending before the Court, points 44, 45 and 50.

19 — See, for example, judgments in Case C-17/98 *Emesa Sugar* [2000] ECR I-675, paragraph 53, Case C-110/97 *Netherlands* v *Council*, cited above, paragraph 63, and Case C-301/97 *Netherlands* v *Council*, cited above, paragraphs 64 to 68 and 75.

20 — See also to that effect, in respect of other Community provisions, judgments in Joined Cases C-267/88 to C-285/88 *Wuidart and Others* [1990] ECR I-435, paragraph 14; Case C-8/89 *Zardi* [1990] ECR I-2515, paragraph 11, and judgment of the Court of First Instance in Case T-162/94 *NMB France and Others* v *Commission* [1996] ECR II-427, paragraph 70.

contested finding was based have been accurately stated and whether there has been any manifest error of assessment or a misuse of powers. [21]

47. As has been pointed out by Advocate General Poiares Maduro, [22] the restriction does not therefore relate to the scope of the judicial review, since, in any event, the review is based on the various infringements set out in Article 230 EC, namely lack of competence, infringement of an essential procedural requirement, infringement of a rule of law and misuse of powers. The restriction relates rather to the *intensity* of the review, in that the court is to be restricted to verifying whether there has been any evident infringement or manifest error in complying with the applicable legislation or in assessing the relevant facts.

48. That said, it seems to me that the intensity of the judicial review depends on whether the nature of the discretion is political or technical. [23] Indeed, even though, in both situations, judicial review is clearly restricted to 'manifest error', it seems to me, in the light of the case-law, that judicial review is less exhaustive where, as in this case, the measure at issue is the result of an institution's exercise of political discretion.

49. It is therefore in the light of those principles that the complaints made by the Netherlands Government should be considered.

50. In the first part of its plea, the Netherlands Government submits that the quantities of sugar and mixtures imported from the OCTs did not justify the adoption of safeguard measures under Article 109 of the OCT Decision. It explains, on the basis of statistics compiled by the Statistical Office of the European Communities (Eurostat), that in 1999 imports of sugars and mixtures amounted, respectively, to 51 618.3 tonnes and 18 021.9 tonnes. However, those quantities are negligible when compared with other statistics. Thus:

— according to an estimate by the Nederlands Economisch Instituut (Netherlands Economic Institute) in 1997, the

21 — See, as a recent example, judgment in Joined Cases C-328/99 and C-399/00 *Italy and SIM 2 Multimedia* v *Commission* [2003] ECR I-4035, paragraph 39. In the specific field of Article 109 of the OCT Decision, the Court generally uses a different form of words. It states that: '[i]n cases involving such a discretion, the Community Courts must restrict themselves to considering whether the exercise of that discretion contains a manifest error or constitutes a misuse of power or whether the Community institutions clearly exceeded the bounds of their discretion' (see, in particular, judgments in *Antillean Rice Mills and Others* v *Commission*, cited above, paragraph 48, Case C-110/97 *Netherlands* v *Council*, cited above, paragraphs 61 and 62, and Case C-301/97 *Netherlands* v *Council*, cited above, paragraph 73 and 74). That form of words seems less precise to me than that set out at point 46 of this Opinion in so far as it fails to cite the review of certain details, such as whether the facts have been accurately stated, or the relevant rules governing procedure and the statement of reasons have been complied with. Furthermore, it is not clear what distinction is being drawn between where there is a 'manifest error' and where an institution has 'clearly exceeded the bounds of its discretion'.

22 — Opinion in Case C-141/02 P *Commission* v *max.mobil*, pending before the Court of Justice, points 77 and 78.

23 — On that distinction, see my Opinion in Joined Cases C-40/03 P and C-41/03 P *Rica Foods* v *Commission*, pending before the Court of Justice, points 45 to 49.

maximum export capacity of the OCTs amounted to between 100 000 and 150 000 tonnes;

— total Community sugar production is between 16.7 million and 17.8 million tonnes, with the result that the imports at issue represented only 0.4% of Community production, and

— preferential imports of sugar from the ACP States and India amount, respectively, to 1.7 million tonnes and 279 000 tonnes, with the result that the imports at issue represented only 3% of such preferential imports.

51. The Netherlands Government takes the view that the quantities at issue could not therefore constitute a risk of disturbance for the common organisation of the sugar market within the meaning of Article 109 (1) of the OCT decision.

52. To a certain extent, that first complaint has already been considered by the Court in the judgment in *Emesa Sugar*, cited above.

53. We know that, in that case, a reference for a preliminary ruling was made to the Court for an assessment of the validity of the provisions of Decision 97/803 introducing the 3 000-tonne quota for sugar with ACP/OCT cumulation of origin.[24] The national court asked, in particular, whether the adoption of that quota, justified by the threat represented by free access for OCT products and the maintenance of the ACP/OCT cumulation of origin rule for the common organisation of the sugar market,[25] was compatible with the principle of proportionality.[26] In that regard, the applicant in the main proceedings had expressly drawn the Court's attention to the fact that the imports of OCT sugar were negligible since they represented, for the OCTs as a whole, less than 4% of the preferential imports from, in particular, the ACP States.[27]

54. That argument was not upheld by Advocate General Ruiz-Jarabo Colomer who, in his Opinion, stated:[28]

'... Figures produced by the Commission ... show that the European market for sugar is now precariously balanced. As a result of the imposition of quotas, Community production of beet sugar is 13.4 million tonnes, which is more than the quantity of sugar consumed in the Community, that is to say, approximately 12.7 million tonnes. Further-

24 — See point 20 of this Opinion.
25 — See Decision 97/803 (seventh recital).
26 — Judgment in *Emesa Sugar*, cited above, paragraph 51.
27 — Ibid., paragraph 52.
28 — Points 86 to 88.

more, the Community imports 1.3 million tonnes of cane sugar from the ACPs in order to meet the specific demand for that variety. In addition, by reason of agreements concluded within the World Trade Organisation (WTO), the Community has an obligation to authorise the importation of 400 000 tonnes of sugar from non-member countries.

As the total demand for sugar in the Community is less than the supply, some of the sugar available is set aside for export. However, as there is a considerable difference between prices on the world market and that in the Community (the Community price is almost three times the world market price), export sales must be subsidised by means of export refunds, which are at present at the rate of 470 euros per tonne. The maximum amount of sugar available for subsidised exports has also been the subject of agreements within the WTO. In the next few years the said maximum is to be reduced by 20%.

...

[Having regard to those factors], I do not think it can be said that the Council's solution was disproportionate. The abovementioned figures show that ... there is a surplus on the Community market and that a balance is achieved only by means of subsidised exports. Any additional quantity of sugar which entered the market would have compelled the Community institutions either to increase the amount of export subsidies (within the abovementioned limits) or to reduce the quotas of European producers. In either case, the result would be serious disruption of the common organisation of the sugar market, contrary to the objectives of the common agricultural policy.'

55. The Court endorsed that reasoning since, in paragraph 56 of the judgment in *Emesa Sugar*, cited above, it held that:

'It is clear from the documents before the Court that at the date of Decision 97/803, first, Community production of beet sugar exceeded the quantity consumed in the Community; in addition cane sugar was imported from the ACP States to cater for specific demand for that product and the Community was under an obligation to import a certain quantity of sugar from non-member countries under WTO Agreements. Second, the Community was also required to subsidise sugar exports by granting export refunds, within the limits laid down in the WTO Agreements. In those circumstances, the Council was entitled to take the view that any additional quantity of sugar reaching the Community market, *even if minimal compared with Community production*, would have obliged the Community institutions to increase the amount of the export subsidies ... or to reduce the quotas of European producers, which would have

disturbed the common organisation of the market in sugar ... and would have been contrary to the objectives of the common agricultural policy'. [29]

56. It should be added that, in 1997, when Decision 97/803 was adopted, imports of sugar and mixtures from the OCTs amounted, respectively, to 10 372.2 tonnes and 877.7 tonnes. [30]

57. However, at the time of the adoption of the contested regulations, in 1999, the same imports amounted, respectively, to 53 519.9 tonnes and 14 020 tonnes. [31]

58. In those circumstances, it is impossible to see how the Netherlands Government's argument could be upheld. Indeed, since, in February 2000, the Court took the view that imports of sugar of the order of 10 000 tonnes constituted a risk of disturbance for the common organisation of the market in sugar, it is all the more necessary to consider, in this case, that the Commission has committed no manifest error of assessment by taking the view that imports five to fifteen times greater constituted 'difficulties' and a risk of 'deterioration' for the same common organisation of the market.

59. The second part is concerned solely with Regulation No 2423/1999. [32] The Netherlands Government challenges the statement that sugar and mixtures from the OCTs were sold in the Community at a price below the intervention price (with regard to sugar) or the price viable for Community producers (with regard to mixtures and comparable products). It submits that the Commission has failed to adduce the slightest evidence of that fact.

60. It is true, as the Kingdom of the Netherlands points out, that the Commission has not established that sugar and mixtures originating in the OCTs were imported at a price below the intervention price on the Community market. In relation to sugar, the Commission pointed out, in its statement in defence, [33] that its case was based on a 'suspicion' in that regard. Furthermore, in relation to mixtures, it is clear from the documents in the file that its case was based on information gathered from Community operators, [34] which was,

29 — Emphasis added.

30 — Eurostat statistics for exports, from the OCTs to the Community, of products falling within CN codes 1806 10 30, 1806 10 90 and 1701 for the years 1991-2000 (annex to the Kingdom of Spain's statement in intervention in Cases C-26/00, C-180/00 and C-452/00).

31 — Ibid.

32 — See application in Case C-26/00, paragraph 52.

33 — Paragraphs 5, 7 and 26.

34 — See documents entitled 'Offres produits d'Aruba' and 'Listado de preparaciones' (Annexes 3a and 3b to the application in Case C-26/00).

however, formally challenged by the Kingdom of the Netherlands during the procedure provided for in Annex IV to the OCT Decision. [35]

61. Nevertheless, it seems to me that that omission, albeit serious, is not such as to require that Regulation No 2423/1999 be annulled. It is clear from the statement of reasons for that regulation, as well as its context, [36] that, in that regulation, the Commission took the view that the increase in the imports at issue had created several sets of 'difficulties'.

62. The first set of difficulties is a risk of deterioration in the operation of the common organisation of the sugar market. [37] The Commission points out that, since sugar consumption in the Community is stable, increasing imports of OCT sugar require a proportionate increase in exports of Community sugar, which are subsidised. However, such subsidised exports are limited in volume by the WTO Agreements. The imports at issue may therefore reduce the scope for exporting Community sugar, and, in due course, lead to a reduction in Community production quotas.

63. The second set of difficulties is the harm that these imports may cause to Community sugar operators. [38] The Commission explains that, where sugar is imported from the OCTs at a price below the intervention price, Community producers are no longer in a position to compete with them since they are themselves obliged to pay a minimum price for the raw material of their products, namely beet. [39] Moreover, the imports at issue may lead to an increase in the volume of subsidised exports and thereby cause a rise in the costs connected with those exports, which, in turn, will entail an increase in the production levy on Community producers. [40]

64. It follows that the fact that the sugar and mixtures were imported from the OCTs at a price below the intervention price constitutes only one of the factors which justified the adoption of Regulation No 2423/1999.

65. In those circumstances, it seems to me that the second part of the plea is of no consequence. Indeed, even supposing that the imports at issue did not take place at a price below the intervention price and that the Commission therefore committed an error on that point, the safeguard measure provided for by Regulation No 2423/1999

35 — See, for example, the letter sent to the Commission by the Permanent Representation of the Netherlands to the European Union on 2 July 1999 (Annex 4 to the application in Case C-26/00).

36 — See, in particular, Communication from the Commission of 23 June 1999, and explanatory note from the Netherlands Government in the light of the deliberations of the Council concerning the safeguard measures adopted by Regulation No 2423/1999 (respectively Annexes 2 and 5a to the application in Case C-26/00).

37 — Regulation No 2423/1999 (second and third recitals).

38 — Ibid. (second recital).

39 — Ibid. (fourth recital).

40 — Ibid. (fifth recital).

would, in any event, still be justified by the fact that those imports might have required the institutions to increase the volume of subsidised exports or to reduce the quotas of European producers, which, according to the judgment in *Emesa Sugar*, cited above, [41] would have constituted a disturbance in the common organisation of the market in sugar.

66. I therefore think that the second part of the plea must be rejected.

67. The third part relates to the Commission's statement that imports of sugar and mixtures from the OCTs oblige the institutions proportionately to increase Community sugar exports.

68. The Netherlands Government points out that both Community sugar production and consumption vary from one year to the next, so that it would be wrong to state, as the Commission does, that any additional import of sugar 'throws onto the export market a corresponding quantity of Community sugar which it cannot absorb'. [42] In any event, even if that were the case, it is not certain that the exports at issue would be subsidised exports, as the Commission suggests in the contested regulations.

69. With regard to mixtures, the Kingdom of the Netherlands adds that the common organisation of the market in sugar could not have been disturbed by the imports of those products since, pursuant to Article 1(1) of Regulation No 2038/1999, cocoa does not fall within the scope of that common organisation.

70. In that regard, it should be borne in mind that the Community sugar market is a market in surplus: Community production of A and B sugars, namely, sugar which the Community market can absorb and which benefits from export refunds, already exceeds Community sugar consumption. [43] Moreover, as the Court pointed out in the judgment in *Emesa Sugar*, cited above, [44] the Community is obliged to import a certain quantity of sugar from non-member countries under the WTO Agreements.

41 — Paragraphs 40 and 56.

42 — Regulation No 2423/1999 (third recital), Regulation No 465/2000 (fourth recital) and Regulation No 2081/2000 (fourth recital).

43 — See, among a number of sources, Special Report No 20/2000 of the Court of Auditors concerning the management of the common organisation of the market for sugar, together with the Commission's replies (OJ 2001 C 50, p. 1, Chart 2).

44 — Paragraph 56.

71. In those circumstances, the fact that sugar production and consumption in the Community may vary slightly from one year to the next is irrelevant. Indeed, so long as Community sugar production is not reduced, any additional import of sugar with EC/OCT cumulation of origin will increase the surplus of sugar on the Community market and lead to an increase in exports. The Commission has not therefore committed a manifest error of assessment by taking the view that any additional import of sugar into the Community 'throws onto the export market a corresponding quantity of Community sugar which it cannot absorb'. [45]

72. In my view, neither has the Commission committed a manifest error of assessment by stating that those exports were subsidised exports. After all, as the Court pointed out at paragraph 119 of its judgment in *Rica Foods II*, it may be assumed that, on account of the surplus on the Community market, imported sugar of OCT origin will be substituted for Community sugar, which must be exported in order to maintain the balance of the common organisation of the markets.

73. With regard more specifically to mixtures, it is true that they do not fall within the scope of the common organisation of the market in sugar, as is clear from Article 1(1) of Regulation No 2038/1999. None the less, contrary to the Netherlands Government's submissions, that fact does not show that imports of mixtures originating in the OCTs do not constitute any risk for the operation of the common organisation of the market in the sugar sector.

74. It is not disputed that those mixtures generally contain a high level of sugar, so that the imports at issue may affect whether Community producers can sell sugar to manufacturers of those mixtures. Moreover, it seems that the Commission has in the past adopted measures to reduce the risk which an increase in imports of products with a high sugar content may constitute for the common organisation of the market in sugar; in that instance the products were soft drinks. [46]

75. In the light of those considerations, the third part of the plea must also be rejected.

45 — Regulation No 2423/1999 (third recital), Regulation No 465/2000 (fourth recital) and Regulation No 2081/2000 (fourth recital).

46 — See, in particular, Agreement in the form of an Exchange of Letters between the European Community, of the one part, and the Swiss Confederation, of the other part, concerning Protocol 2 to the Agreement between the European Economic Community and the Swiss Confederation (OJ 2000 L 76, p. 12).

76. In the fourth part, the Netherlands Government submits that the imports at issue did not raise any problem with regard to the Community's obligations under the WTO Agreements. On the basis of the order of the President of the Court of First Instance of 30 April 1999, in *Emesa Sugar* v *Commission*, [47] the Netherlands Government points out that the Community clearly had sufficient scope to accept the increase in imports of sugar and mixtures originating in the OCTs until the year 2000.

77. I take the view that that fourth complaint cannot be upheld.

78. Firstly, it must be pointed out that the WTO Agreements, even though they do indeed lay down a limit for subsidised exports, do not impose any obligation to exhaust the quantity allocated. The aim of the WTO Agreements is in fact gradually to reduce subsidised exports. In those circumstances, I think that the Commission could very well, without committing a manifest error of assessment, decide to restrict imports of sugar with EC/OCT cumulation of origin, even where the additional exports which those imports might generate remained below the ceiling fixed by the WTO Agreements. [48]

79. Secondly, it has been noted that, in the judgment in *Emesa Sugar*, cited above, the Court held that, having regard to the surplus on the Community market and the Community's commitments, any additional import of sugar was liable to disturb the operation of the common organisation of the market in sugar, since the institutions would have been obliged to increase the amount of export subsidies (within the limits laid down in the WTO Agreements) or to reduce the quotas of European producers. [49] Therefore, even if the WTO Agreements did offer the possibility of accepting the imports at issue, the fact remains that the Netherlands Government has not established that the Commission committed a manifest error of assessment by taking the view that increased imports of sugar and mixtures with EC/OCT cumulation of origin might result in a deterioration in the common organisation of the sugar market. [50]

80. The fifth part is also concerned with the effects of the imports at issue on the operation of the common organisation of the sugar market. In that regard, the Netherlands Government expresses serious doubts as to whether the Commission, when it adopted Regulations Nos 2423/1999 and 465/2000, really intended to reduce production quotas, as it stated in those measures. In any event, the Netherlands Government takes the view that that reduction was not necessitated by the imports at issue.

47 — T-44/98 R II [1999] ECR II-1427, paragraph 107.

48 — See, to that effect, the judgment of the Court of First Instance in Case T-43/98 *Emesa Sugar* v *Council* [2001] ECR II-3519, paragraphs 147 and 148.

49 — Paragraph 56.

50 — See, to that effect, the judgment in *Rica Foods II*, paragraph 139.

81. That fifth complaint must be rejected for lack of evidence. Indeed, the Netherlands Government adduces no evidence that the Commission did not intended to reduce production quotas when Regulations Nos 2423/1999 and 465/2000 were adopted.

82. In any event, what has occurred following the adoption of those measures tends to weaken its argument since, on 29 September 2000, the Commission in fact adopted Regulation (EC) No 2073/2000, [51] reducing, for the 2000/2001 marketing year, production quotas by 498 800 tonnes for A and B sugars. The second recital in the preamble to that measure states that that reduction was made because '[t]he forecasts for the 2000/2001 marketing year indicate[d] an exportable balance exceeding the maximum laid down by the [WTO] Agreement for that year'.

83. Finally, in the sixth part, the Netherlands Government submits that the imports at issue did not in fact cause any harm to Community producers. First, the export refunds were financed by the European Agricultural Guidance and Guarantee Fund (EAGGF), that is to say by the Community budget, and not by Community producers. Secondly, in 1999, C sugar was sold to OCT producers at a price of nearly twice that on the world market, which enabled Community producers to make substantial profits. Finally, the Commission has by no means shown that each tonne of sugar imported from the OCTs led to a corresponding reduction in sales by European producers.

84. I consider that those various arguments do not show that the Commission committed a manifest error of assessment by taking the view that the imports at issue might have detrimental effects on Community sugar operators.

85. Firstly, the Court of Justice [52] and the Court of First Instance [53] have already held that a situation in which a reduction of production quotas is necessary constitutes a risk of 'deterioration in a sector of the Community's activity' within the meaning of Article 109(1) of the OCT Decision, since such a reduction directly affects the income of Community producers.

86. Secondly, we know that, under Article 18 of Regulation No 2038/1999, exports of A and B sugar qualify for export refunds.

51 — Regulation reducing, for the 2000/2001 marketing year, the guaranteed quantity under the production quotas scheme for the sugar sector and the presumed maximum supply needs of sugar refineries under the preferential import arrangements (OJ 2000 L 246, p. 38).

52 — Judgment in *Emesa Sugar*, cited above, paragraphs 40 and 56.

53 — Judgment in *Rica Foods II*, paragraph 124.

Contrary to the Netherlands Government's submission, those refunds are financed in large part by Community producers, by means of production levies fixed each year by the Commission. [54] The Commission has therefore committed no manifest error of assessment by taking the view that the imports at issue might lead to an increase in the volume of subsidised exports, and consequently, an increase in the production levy on Community sugar producers. [55]

87. With regard to the selling price of C sugar, the Netherlands Government has adduced no evidence which would allow the Court to ascertain whether Community producers sold that sugar at a price twice as high as the price on the world market. However, even assuming that that was the case, that evidence could not establish that there was a manifest error of assessment on the part of the Commission. Indeed, the fact that, on an ad hoc basis, certain producers might have made significant profits from the sale of C sugar to OCT operators in no way detracts from the fact that the imports at issue might have disturbed the operation of the whole sector, by leading the institutions to increase the amount of export subsidies or to reduce the quotas of Community producers.

88. Similarly, I consider that it was not necessary for the Commission to show that the imports at issue led to a decline in the sales of Community producers. It has been established that the fact that those imports might lead to an increase in the amount of export subsidies or to a reduction in production quotas was sufficient to allow the Commission to consider, under the discretion granted to it by Article 109 of the OCT Decision, that there were 'difficulties' which might result in a 'deterioration in a sector of the Community's activity' within the meaning of that provision.

89. In the light of all the foregoing considerations, I therefore propose that the Court should reject the first plea in its entirety.

54 — Article 33(8) of Regulation No 2038/1999 and Article 7(1) of Commission Regulation (EEC) No 1443/82 of 8 June 1982 laying down detailed rules for the application of the quota system in the sugar sector (OJ 1982 L 158, p. 17), as subsequently amended. For examples of regulations fixing the amount of the production levy, see Commission Regulation (EC) No 2183/1999 of 14 October 1999 fixing the production levies and the coefficient for calculating the additional levy in the sugar sector for the 1998/1999 marketing year (OJ 1999 L 267, p. 23), and Commission Regulation (EC) No 1993/2001 of 11 October 2001 fixing the production levies in the sugar sector for the 2000/01 marketing year (OJ 2001 L 271, p. 15).

55 — Regulation No 2423/1999 (fifth recital).

B — *The second plea: infringement of Article 109(2) of the OCT Decision*

90. In its second plea, the Netherlands Government argues that the Commission

has infringed the principle of proportionality set out in Article 109(2) of the OCT Decision. [56] That plea comprises five parts, which I shall examine in turn.

91. As a preliminary point, it should be noted that, by virtue of the principle of proportionality, the legality of a safeguard measure is subject to the condition that the means it employs must be appropriate to attain the legitimate objective pursued by the regulation in question and must not go further than is necessary to attain it and, where there is a choice of appropriate measures, it is necessary to choose the least onerous. [57]

92. It should also be borne in mind that in a sphere such as this, in which the Community institutions have a broad discretion, the lawfulness of a measure can be affected only if the measure is manifestly inappropriate having regard to the objective pursued. The Court's review must be limited in particular if the Commission has to reconcile divergent interests and thus select options within the context of the policy choices which are its responsibility. [58]

93. In the first part of the plea, the Netherlands Government submits that Regulations Nos 465/2000 and 2081/2000 disregard the preferential status of products originating in the OCTs. It points out that, under Protocol No 8 to the Lomé Convention, [59] the Community granted the ACP States a quota of approximately 1.7 million tonnes of sugar, which those States may export fully or partially duty-free and for a guaranteed price. [60] By restricting the imports at issue to 3 340 tonnes and then to 4 848 tonnes, the Commission placed products originating in the OCTs in a position that was substantially less favourable than that of products originating in the ACP countries, thereby disregarding the order of preference Member States/OCTs/ACP States/third countries, laid down by the Treaty.

56 — That provision reads: '[P]riority shall be given to such measures as would least disturb the functioning of the association and the Community. These measures shall not exceed the limits of what is strictly necessary to remedy the difficulties that have arisen'.

57 — See, in particular, judgments in Case C-233/94 *Germany* v *Parliament and Council* [1997] ECR I-2405, paragraph 54, Case C-284/95 *Safety Hi-Tech* [1998] ECR I-4301, paragraph 57, and the above-cited judgments in *Antillean Rice Mills and Others* v *Commission*, paragraph 52, Case C-110/97 *Netherlands* v *Council*, paragraph 122, and Case C-301/97 *Netherlands* v *Council*, paragraph 131.

58 — See, in particular, judgments in Case C-280/93 *Germany* v *Council* [1994] ECR I-4973, paragraphs 90 and 91, Case C-44/94 *Fishermen's Organisations and Others* [1995] ECR I-3115, paragraph 37, Case C-150/94 *United Kingdom* v *Council* [1998] ECR I-7235, paragraph 87, and *Emesa Sugar*, cited above, paragraph 53.

59 — Decision 91/400/ECSC, EEC of the Council and the Commission of 25 February 1991 on the conclusion of the fourth ACP-EEC Convention (OJ 1991 L 229, p. 1).

60 — See, in particular, Articles 168 et seq. of the Lomé Convention and Council Regulation (EEC) No 715/90 of 5 March 1990 on the arrangements applicable to agricultural products and certain goods resulting from the processing of agricultural products originating in the ACP States or in the overseas countries and territories (OCT) (OJ 1990 L 84, p. 85).

94. It is true that, in Protocol No 8 annexed to the Lomé Convention, the Community made a commitment to the ACP countries to purchase sugar at guaranteed prices and to import a specific annual quantity of sugar (1.7 million tonnes). Those imports are made totally or partially duty free. Moreover, in order to prevent that guarantee from becoming a dead letter, Article 213 of the Lomé Convention provides that the safeguard clause provided for in Article 177 of that convention is not to apply within the framework of Protocol No 8.

95. In contrast, Article 101(1) of the OCT Decision provides that all products originating in the OCTs, and hence in principle sugar, are to be imported into the Community free of import duties. Sugar originating in the OCTs therefore enjoys preferential status as compared with ACP sugar.

96. Nevertheless, as the Court held in its judgment in *Rica Foods II*,[61] the fact that the Commission has adopted a safeguard measure in respect of certain products originating in the OCTs does not call into question that status. Such a measure is, by nature, exceptional, ad hoc and temporary. It should be added that in this case the contested regulations concern only sugar and mixtures with EC/OCT cumulation of origin. Consequently, they do not impose any ceiling on imports of sugar originating in the OCTs under the ordinary rules of origin, if such production were to exist.

97. The argument alleging infringement of the preferential status of OCT sugar must therefore be rejected.

98. In the second part, the Netherlands Government points out that, under Article 109(2) of the OCT Decision, the Commission must, when adopting safeguard measures, inquire into the effects which its decision might have on the economy of the OCT concerned and for the undertakings concerned. In this instance, the Netherlands Government argues that the Commission adopted Regulations Nos 2423/1999 and 2081/2000 without assessing the negative effects of their application for the OCTs and the industry concerned.

99. It is clear in fact from the case-law[62] that, 'where the Commission intends to adopt safeguard measures on the basis of Article 109(1) of the OCT Decision it must, in so far as the circumstances of the case

61 — Paragraph 205.

62 — Judgments in Case C-451/98 *Antillean Rice Mills* v *Council* [2001] ECR I-8949, paragraph 58, and Case C-452/98 *Nederlandse Antillen* v *Council* [2001] ECR I-8973, paragraph 68. See, also, judgment in *Antillean Rice Mills and Others* v *Commission*, cited above, paragraphs 25 and 26.

permit, inquire into the negative effects which its decision might have on the economy of the OCT concerned as well as on the undertakings concerned'.

100. However, as the Commission has pointed out, [63] that obligation is applicable only 'in so far as circumstances permit'. [64] However, in this case, the Commission explained that the circumstances in this instance did not allow it to carry out an in-depth analysis of the effects that the contested measures might have on the economy of the OCTs and on the industry concerned. The fact remains that, in my view, the Commission was, as it has itself pointed out, [65] perfectly well-informed of the position in the Netherlands Antilles, since, in 1998, a number of legal actions were brought against Decision 97/803 establishing the quota for sugar with ACP/OCT cumulation of origin [66] and Commission Regulation (EC) No 2553/97 of 17 December 1997 on rules for issuing import licences for certain products covered by CN codes 1701, 1702, 1703 and 1704 and qualifying as ACP/OCT originating products. [67]

101. In those circumstances, I think that it has not been established that the Commission committed a manifest infringement of its obligation to make prior inquiries.

102. In the third part, the Netherlands Government submits that the contested regulations infringe the principle of proportionality, in so far as:

— Regulation No 2423/1999 provides that the import price cif of unpacked sugar with EC/OCT cumulation of origin cannot be less than the intervention price, and

— Regulations Nos 465/2000 and 2081/2000 restrict to 3 340 tonnes, then to 4 848 tonnes, the quantity of EC/OCT sugar which can be imported under Article 6 of Annex II.

63 — Statement in defence in Cases C-180/00, paragraph 46, and C-452/00, paragraph 50.

64 — Judgment of the Court of First Instance in *Antillean Rice Mills and Others* v *Commission*, cited above, paragraph 70.

65 — Statements in defence in Cases C-180/00, paragraph 46, and C-452/00, paragraph 50.

66 — See the *Emesa Sugar* cases, cited above; *Emesa Sugar* v *Council* (order of the President of the Court of First Instance in Case T-43/98 R [1998] ECR II-3055, and judgment of the Court of First Instance, cited above), and *Emesa Sugar* v *Commission* (orders of the President of the Court of First Instance in Case T-44/98 R [1998] ECR II-3079, of the President of the Court in Case C-363/98 P (R) [1998] ECR I-8787, and Case C-364/98 P (R) [1998] ECR I-8815; of the President of the Court of First Instance of 30 April 1999 in Case T-44/98 R II, cited above; Case T-44/98 R II [1999] ECR II-2815; and Case T-44/98 R II [2000] ECR II-1941, and judgment of the Court of First Instance in Case T-44/98 [2001] ECR II-3577).

67 — OJ 1997 L 349, p. 26. See order of the Court of First Instance of 17 September 2003 in Case T-54/98 *Aruba* v *Commission* [2003] ECR I-3083.

103. With regard to Regulation No 2423/1999, the Kingdom of the Netherlands takes the view that the aforementioned obligation has the effect of placing OCT operators in an unfavourable position as compared with Community operators. Unlike the latter, OCT operators must add to the 'import' price, that is to say to the intervention price, the costs of transporting the products within the Community as well as the costs of storage and handling. Since those costs are particularly high, OCT operators are no longer in a position to compete with Community operators.

104. With regard to the three contested regulations, the Kingdom of the Netherlands submits that it would have been preferable to impose a minimum selling price, rather than an import price or a quantitative restriction. That was also the condition that the President of the Court of First Instance laid down when authorising the company Emesa Sugar to import an additional quota of 7 500 tonnes of sugar pending the judgment of the Court in *Emesa Sugar*, cited above. The Netherlands Government takes the view, therefore, that a minimum selling price would have constituted a more appropriate and less restrictive measure. [68]

68 — The Netherlands Government adds a third argument concerning Regulation No 2081/2000. It points out that the total volume of EC/OCT sugar imported in 1999 amounted to less than 0.3% of Community production and that, consequently, it was not adequately established that the contested measure was in fact capable of remedying the difficulties identified by the Commission (application in Case C-452/00, paragraph 113). It should be noted, however, that that argument is not concerned with the proportionality of the measure adopted, but with whether there was a risk of 'deterioration in a sector of the Community's activity' within the meaning of Article 109(1) of the OCT Decision. Indeed, it was examined as being such in the first plea (see points 50 to 58 of this Opinion).

105. It does not seem to me that those arguments are well founded.

106. First, with regard to Regulation No 2423/1999, it should be borne in mind that, within the framework of the common organisation of the market in sugar, each year an 'intervention price' is fixed for the areas of the Community where there is surplus production and a 'derived intervention price' is fixed for the areas where there is a production deficit. [69] Moreover, the derived intervention price is higher than the intervention price in so far as it takes into account certain additional costs, such as the costs of transporting the goods. [70]

107. It has been established that, under Regulation No 2423/1999, the import price of sugar with EC/OCT cumulation of origin must be equal to or higher than the intervention price 'of the products in question'. [71] That means that, if OCT sugar is imported into an area of the Community where there is a surplus, the import price must be equal to or higher than the intervention price. Likewise, if the contested sugar is imported into an area of the Community where there is a deficit, the import price must be equal to or higher than the derived intervention price.

69 — Article 3 of Regulation No 2038/1999.

70 — See the Commission's statement in defence in Case C-26/00, paragraph 51.

71 — Article 1(1) of Regulation No 2423/1999.

108. In those circumstances, it is not clear how the obligation at issue could harm OCT operators. Indeed, if an OCT operator decides to export his products to an area of the Community in surplus, he can bring his prices into line with the intervention price. If he decides, subsequently, to sell his products in a deficit area, he must, like any other Community producer, bear the costs of transporting his goods to the deficit area.

109. On the other hand, if an OCT operator decides to export his products to an area of the Community in deficit, he must bring his prices into line with the derived intervention price, which is actually higher than the intervention price. However, in that case, unlike a Community operator, he need no longer bear the costs of transporting the goods to the deficit area. Contrary to the Kingdom of the Netherlands' submissions, the contested measure does not therefore have the effect of placing OCT operators in an unfavourable position as compared with that of Community operators. [72]

110. As for the fixing of a minimum selling price, it should be pointed out that, whilst ensuring that the rights of the OCTs are respected, the Community Court cannot, without running the risk of overriding the wide discretion of the Commission, substitute its assessment for that of the Commission as to the choice of the most appropriate measure to prevent disruption of the Community market in sugar if those measures have not been proved to be manifestly inappropriate for achieving the objective pursued. [73]

111. However, in this instance, it is not established that the introduction of a minimum selling price would have resulted in less disturbance for the economy of the OCTs and would have been as effective for achieving the objectives pursued by the Commission.

112. Moreover, it is clear from the information in the file [74] that Regulation No 2423/1999 did not have the effect of substantially reducing imports of EC/OCT sugar into the Community, which casts doubt on the effectiveness of the measure introduced by that regulation, that is to say, a minimum import price for the product concerned. [75]

72 — The Netherlands Government has also claimed that those considerations were insufficient to ensure equality between OCT operators and Community operators. It takes the view, in fact, that the difference between the intervention price and the derived intervention price is incommensurate with the additional costs that the OCT operators bear for the transportation of their goods within the Community. On that point, I would merely point out that the Netherlands Government has adduced no evidence to establish the merits of its claim.

73 — Judgments in *Germany* v *Council*, cited above, paragraph 94; Case C-189/01 *Jippes and Others* [2001] ECR I-5689, paragraph 83, and Case C-301/97 *Netherlands* v *Council*, cited above, paragraph 135.

74 — Eurostat statistics for exports, from the OCTs to the Community, of products falling within CN codes 1806 10 30, 1806 10 90 and 1701 for the years 1991 to 2000 (annex to the statement in intervention of the Kingdom of Spain in Cases C-26/00, C-180/00 and C-452/00).

75 — See also, to that effect, judgments in *Rica Foods II*, paragraph 172, and *Rica Foods III*, paragraph 157.

113. It should also be added that the contested regulations are intended to limit only duty-free imports of sugar with EC/OCT cumulation of origin under Article 6 of Annex II. Therefore, it is neither their purpose nor their effect to prohibit imports of those products, once the quota is exhausted, as long as the economic operators pay the necessary customs duties. [76]

114. Having regard to those various considerations, [77] I therefore think that the Kingdom of the Netherlands has failed to establish that the measures introduced by the contested regulations were manifestly inappropriate or excessive for achieving the objectives pursued by the Commission.

115. Lastly, in the final part of its plea, the Netherlands Government submits that Regulations Nos 465/2000 and 2081/2000 infringe the principle of proportionality in that they cause Article 3(3) of Regulation No 2553/97 to apply.

116. Article 3(3) of Regulation No 2553/97 provides that the amount of the security, with regard to import licences, is equal to 50% of the Common Customs Tariff duty applicable on the day of submission of the application, which currently amounts to approximately 43.7 euros per 100 kilogrammes. However, until 1 March 2000, the amount of the security for EC/OCT sugar amounted to ECU 0.3 per 100 kilogrammes. To the knowledge of the Netherlands Government, the security to be lodged for OCT sugar and that from non-member countries is also ECU 0.3 per 100 kilogrammes. [78]

117. The Kingdom of the Netherlands therefore takes the view that the amount of the security laid down in Article 3(3) of Regulation No 2553/97 is disproportionate to the amount of the security to be lodged for the import of sugar from the ACP States and non-member countries.

118. In that regard, it should be borne in mind that since Regulations Nos 65/2000 and 2081/2000 laid down a tariff quota limited to 3 340 and then to 4 848 tonnes of sugar, it was foreseeable that that quota would be of considerable interest to exporters.

119. As the Commission has observed, [79] the objective of the contested security was, in

76 — See the judgment in *Emesa Sugar*, cited above, paragraph 45.

77 — See, also, the other points put forward by the Commission in its statements in defence in Cases C-180/00, paragraph 28, and C-452/00, paragraph 30.

78 — Article 8(1) of Commission Regulation (EC) No 1464/95 of 27 June 1995 on special detailed rules for the application of the system of import and export licences in the sugar sector (OJ 1995 L 144, p. 14).

79 — Statement in defence in Cases C-180/00, paragraph 49, and C-452/00, paragraph 55.

that context, to prevent speculative conduct. It was necessary, by means of a substantial guarantee, to avoid the situation in which traders applied for import licences without subsequently using them, thereby causing loss to other traders who did in fact intend to import sugar with EC/OCT cumulation of origin, but who were not able to obtain enough import licences. [80]

120. Moreover, whilst it is true that the amount of guarantee must be paid in order to acquire the import licences, a guarantee of that type does not deprive those undertakings that are genuinely interested in the possibility of exporting sugar to the Community since that sum is reimbursed to the undertaking if the import operation is carried out. [81]

121. In those circumstances, I think that it is not established that the contested measures were manifestly inappropriate or excessive for achieving the objectives pursued by the Commission. The second plea in support of annulment must therefore be rejected in its entirety.

C — *The third plea: misuse of powers*

122. In its third plea, the Netherlands Government submits that Regulations Nos 465/2000 and 2081/2000 are vitiated by a misuse of powers.

123. It points out that when amending Decision 91/482, the Council, following long negotiations, decided to restrict only imports of ACP/OCT sugar and to maintain the possibility of importing, free of customs duties, EC/OCT sugar. By adopting Regulations Nos 465/2000 and 2081/2000, the Commission therefore used its powers for a purpose other than that pursued by Article 109 of the OCT Decision, since it introduced, for the importing of EC/OCT sugar, restrictions which were neither intended nor provided for by the Council.

124. According to settled case-law, [82] a measure is only vitiated by misuse of powers if it appears, on the basis of objective, relevant and consistent evidence, to have

80 — See also, to that effect, judgment in Case C-110/97 *Netherlands* v *Council*, paragraphs 129 to 132, as well as my Opinion in that case (points 139 to 141).

81 — Ibid.

82 — See, in particular, judgments in Case 69/83 *Lux* v *Court of Auditors* [1984] ECR 2447, paragraph 30; Case C-331/88 *Fedesa and Others* [1990] ECR I-4023, paragraph 24; Case C-156/93 *Parliament* v *Commission* [1995] ECR I-2019, paragraph 31; Case C-285/94 *Italy* v *Commission* [1997] ECR I-3519, paragraph 52, and Case C-48/96 P *Windpark Groothusen* v *Commission* [1998] ECR I-2873, paragraph 52.

been taken with the exclusive or main purpose of achieving an end other than that stated by the defendant institution or of evading a procedure specifically prescribed by the Treaty.

125. In this case, it is clear from the examination of the first plea that the Commission could rightly take the view that the imports of sugar with EC/OCT cumulation of origin constituted 'difficulties' that might disturb the operation of the common organisation of the sugar market.

126. Moreover, the Netherlands Government has adduced no evidence to show that Regulations Nos 465/2000 and 2081/2000 were not adopted with the aim of remedying the disturbances noted on the Community market in sugar or of avoiding more serious disturbances. In that regard, the mere fact that the Council introduced, in Article 108b of the OCT Decision, a quantitative restriction for ACP/OCT sugar by no means affects the power of the Commission under Article 109(1) of the OCT Decision to take the necessary safeguard measures in relation to sugar or any other product originating in the OCTs, where the conditions for adopting such a measure are satisfied.

127. In the light of those considerations, the third plea must also be rejected.

D — *The fourth plea: infringement of the obligation to state reasons as provided for in Article 253 EC*

128. In its final plea, the Netherlands Government submits that the Commission has infringed the obligation to state reasons under Article 253 EC. That plea comprises two parts, which I shall consider in turn.

129. In the first part, the Netherlands Government contends that the statement of reasons for Regulation No 2423/1999 is insufficient to allow the Court to exercise its power of review. The wording is, in fact, so brief and lacking in specific details that it would leave any objective reader in ignorance as to the cause and effects of the difficulties identified by the Commission.

130. Moreover, the statement of reasons for that regulation is contradictory. It is not possible at the same time to claim, in the third recital, that the imports at issue lead to additional exports accompanied by export refunds, which are payable from the Community budget, and, in the fourth recital, that the costs of any surpluses which may be attributed to the imports at issue would be payable by the Community's sugar producers in accordance with the principle of 'self-financing'.

131. The Court has consistently held [83] that the statement of reasons required by Article 253 EC must be appropriate to the nature of the measure. It must show clearly and unequivocally the reasoning of the institution which adopted the measure so as to inform the persons concerned of the justification for the measure adopted and to enable the Court to exercise its powers of review. It is not necessary, however, for details of all relevant factual and legal aspects to be given, in so far as the question whether the statement of the grounds for a measure meets the requirements of Article 253 EC must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question. This is a fortiori the case where the Member States have been closely associated with the process of drafting the contested measure and are thus aware of the reasons underlying that measure. [84]

132. In this case, it is clear from the material in the file that the adoption of Regulation No 2423/1999 was preceded by a series of contacts and meetings between the Commission, the Kingdom of the Netherlands and the other Member States. [85]

133. Moreover, with regard to the content of the measure, it has been noted that the Commission has set out, in the first to fifth recitals in the preamble to Regulation No 2423/1999, the difficulties which arose. [86] It explained, in the third to fifth recitals in the preamble to the same regulation, why those difficulties might disturb the operation of the common organisation of the market in sugar and cause damage to Community operators in that sector. Furthermore, the Commission set out, in the eighth and ninth recitals in the preamble to Regulation No 2423/1999, the underlying reasons for its decision to fix a minimum import price for EC/OCT sugar and to make imports of mixtures subject to Community surveillance.

134. As to the statements contained in the third and fourth recitals in the preamble to Regulation No 2423/1999, they do not seem contradictory to me. It is entirely possible that increasing imports of EC/OCT sugar could result in additional costs both for the Community budget (third recital) and for the Community's sugar producers (fourth recital).

135. In those circumstances, I think that the statement of reasons for Regulation No 2423/1999 satisfies the requirements laid down by case-law and that the first part of the plea is therefore unfounded.

83 — See, in particular, judgments in Joined Cases C-63/90 and C-67/90 *Portugal and Spain* v *Council* [1992] ECR I-5073, paragraph 16; Case C-353/92 *Greece* v *Council* [1994] ECR I-3411, paragraph 19, and Joined Cases C-9/95, C-23/95 and C-156/95 *Belgium and Germany* v *Commission* [1997] ECR I-645, paragraph 44.

84 — See, in particular, judgments in Case C-478/93 *Netherlands* v *Commission* [1995] ECR I-3081, paragraphs 49 and 50, and Case C-466/93 *Atlanta Fruchthandelsgesellschaft and Others II* [1995] ECR I-3799, paragraph 16.

85 — See, in particular, Communication from the Commission of 23 June 1999, on sugar imports from the OCTs; letter from the Permanent Representation of the Netherlands to the European Union of 2 July 1999; explanatory note from the Netherlands authorities in the light of the Council's deliberations on safeguard measures concerning imports of sugar and mixtures originating in the OCTs (respectively Annexes 2, 4 and 5 of the application in Case C-26/00).

86 — See points 62 and 63 of this Opinion.

136. In the second part, the Netherlands Government submits that the Commission also infringed its obligation to state reasons in that:

— Regulation No 465/2000 does not explain why the Commission considered it necessary, from 1 March 2000, to adopt more stringent measures as compared with the preceding period;

— Regulations Nos 465/2000 and 2081/2000 do not justify the adoption of identical restrictions for sugar and mixtures originating in the OCTs, since Regulation No 2423/1999 provided for different measures for those two types of product;

— the fixing of the quotas at 3 340 tonnes, and then at 4 848 tonnes, was not supported by an adequate statement of reasons in Regulations Nos 465/2000 and 2081/2000, and

— Regulation No 2081/2000 does not explain why it was necessary to extend, from 1 October 2000 to 28 February 2001, the safeguard measures introduced by Regulation No 465/2000.

137. With regard to the first two complaints, it should be borne in mind that, according to case-law, the statement of reasons for a measure intended to have general application may be limited to indicating the general situation which led to its adoption and the general objectives which it is intended to achieve. [87] Moreover, the Court considers that if the contested measure clearly discloses the essential objective pursued by the institution, it would be excessive to require a specific statement of reasons for the various technical choices made. [88] That is all the more so where, as in the present case, the Community institutions enjoy a wide margin of discretion in their choice of the means necessary to achieve a complex policy. [89]

138. In those circumstances, it is doubtful whether the Commission was obliged to provide a specific statement of reasons for the technical choices which it made.

139. In any event, it follows from Regulations Nos 465/2000 and 2081/2000 that the situation on the Community market was worsening. Indeed, whereas, in Regulation No 2423/1999, the Commission had merely referred to the possibility of reducing Community production quotas, [90] that prospect seemed much more serious in Regulation No

87 — See, in particular, judgments in Case C-284/94 *Spain* v *Council* [1998] ECR I-7309, paragraph 28, and Case C-110/97 *Netherlands* v *Council*, cited above, paragraph 165.

88 — See judgments cited above in *Atlanta Fruchthandelsgesellschaft and Others II*, paragraph 16; *Spain* v *Council*, paragraph 30, and Case C-110/97 *Netherlands* v *Council*, paragraph 166.

89 — See above-cited judgments in *Spain* v *Council*, paragraph 33, and Case C-110/97 *Netherlands* v *Council*, paragraph 167.

90 — Third recital.

465/2000, [91] and even more so in Regulation No 2081/2000, since the proposed reduction was in fact carried out. [92] Moreover, in so far as the Kingdom of the Netherlands was closely associated with the process of drawing up the contested regulations, it seems to me that it is not justified in submitting that it was unaware of the Commission's reasons for adopting more stringent measures than those provided for by Regulation No 2423/1999.

140. With regard to the fixing of the contested quotas, a mere reading of the preambles to the contested regulations is sufficient to show that the Netherlands Government's argument is manifestly unfounded.

141. Indeed, the ninth recital in the preamble to Regulation No 465/2000 states that the 'maximum of 3 340 tonnes of sugar ... represent[s] the sum of the highest annual volumes of imports of the products in question recorded in the three years preceding 1999, the year in which imports recorded an exponential rise, and in respect of which there is currently an OLAF investigation into suspected irregularities'. Similarly, the eighth recital in the preamble to Regulation No 2081/2000 states that the 'maximum of 4 848 tonnes of sugar for the period 1 October 2000 to 28 February 2001 ... represent[s] the sum of the highest annual volumes of imports of the products in question recorded in the three years preceding 1999, the year in which imports recorded a sharp rise'.

142. Contrary to the Netherlands Government's submissions, the Commission has therefore set out the underlying reasons for the fixing of the contested quotas and thereby fulfilled the obligation to provide a statement of reasons laid down in Article 253 EC.

143. Similarly, the Commission has clearly set out, in the first to the sixth recitals in the preamble to Regulation No 2081/2000, why it was necessary to extend the safeguard measure introduced by Regulation No 465/2000. It pointed out that the difficulties which led to the adoption of that latter measure were 'continuing', so that it was necessary 'to continue to apply the safeguard clause provided for in Article 109 of the OCT Decision in respect of [the] imports [at issue]'. [93]

144. In the light of those various arguments, I therefore propose that the Court reject the Netherlands Government's fourth plea.

91 — Fifth recital.

92 — Fifth recital.

93 — Regulation No 2081/2000 (sixth recital).

V — Conclusion

145. Having regard to all the foregoing considerations, I consider that the actions should be dismissed and that the Kingdom of the Netherlands should be ordered to pay the costs, other than the costs incurred by the Kingdom of Spain and by the French Republic, in accordance with Article 69 of the Rules of Procedure of the Court.