JUDGMENT OF THE COURT

22 November 2001 *

In Case C-301/97,

Kingdom of the Netherlands, represented by J.S. van den Oosterkamp and M.A. Fierstra, acting as Agents,

applicant,

v

Council of the European Union, represented by R. Torrent, J. Huber and G. Houttuin, acting as Agents, with an address for service in Luxembourg,

defendant,

supported by

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

* Language of the case: Dutch.

French Republic, represented by K. Rispal-Bellanger and C. Chavance, acting as Agents, with an address for service in Luxembourg,

Italian Republic, represented by U. Leanza, acting as Agent, and F. Quadri, avvocatessa dello Stato, with an address for service in Luxembourg,

and

Commission of the European Communities, represented by P.J. Kuijper and T. van Rijn, acting as Agents, with an address for service in Luxembourg,

interveners,

APPLICATION for the annulment of Council Regulation (EC) No 1036/97 of 2 June 1997 introducing safeguard measures in respect of imports of rice originating in the overseas countries and territories (OJ 1997 L 151, p. 8),

THE COURT,

composed of: G.C. Rodríguez Iglesias, President, P. Jann, F. Macken (Rapporteur) (Presidents of Chambers), C. Gulmann, D.A.O. Edward, A. La Pergola, J.P. Puissochet, L. Sevón, M. Wathelet, R. Schintgen and V. Skouris, Judges,

Advocate General: P. Léger,
Registrar: H. von Holstein, Deputy Registrar,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 7 November 2000,

after hearing the Opinion of the Advocate General at the sitting on 13 March 2001,

gives the following

Judgment

1 By application lodged at the Registry of the Court on 20 August 1997, the Kingdom of the Netherlands applied, under the second paragraph of Article 173 of the EC Treaty (now, after amendment, the second paragraph of Article 230 EC), for the annulment of Council Regulation (EC) No 1036/97 of 2 June 1997 introducing safeguard measures in respect of imports of rice originating in the overseas countries and territories (OJ 1997 L 151, p. 8).

2 By orders of 19 January and 17 March 1998, the Kingdom of Spain, the French Republic, the Italian Republic and the Commission of the European Communities were granted leave to intervene in support of the forms of order sought by the Council of the European Union.

Legal background

EC Treaty

3 Under Article 3(r) of the EC Treaty (now, after amendment, Article 3(1)(s) EC), the activities of the Community are to include the association of the overseas countries and territories ('the OCTs') in order to increase trade and promote jointly economic and social development.

4 Under Article 227(3) of the EC Treaty (now, after amendment, Article 299(3) EC), the arrangements for association set out in Part Four of the Treaty are to apply to the OCTs included in Annex IV to the Treaty (now, after amendment, Annex II EC). The Netherlands Antilles are included in that annex.

5 Article 228(7) of the EC Treaty (now, after amendment, Article 300(7) EC) provides that agreements concluded under the conditions set out in that Article are to be binding on the institutions of the Community and on Member States.

6 Part Four of the EC Treaty, entitled 'Association of the overseas countries and territories' includes in particular, Article 131 (now, after amendment, Article 182 EC), Article 132 (now Article 183 EC), Article 133 (now, after amendment, Article 184 EC), Article 134 (now Article 185 EC) and Article 136 (now, after amendment, Article 187 EC).

7 Pursuant to the second and third paragraphs of Article 131 of the Treaty, the purpose of the association of the OCTs and the European Community 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. In accordance with the principles set out in the preamble to the EC Treaty, association is to serve primarily to further the interests and prosperity of the inhabitants of the OCTs in order to lead them to the economic, social and cultural development to which they aspire.

8 Article 132(1) of the EC Treaty provides that Member States are to apply to their trade with the OCTs the same treatment as they accord each other pursuant to the Treaty.

9 Article 133(1) of the Treaty provides that customs duties on imports into the Member States of goods originating in the OCTs are to be completely abolished in conformity with the progressive abolition of customs duties between Member States in accordance with the provisions of the Treaty.

10 According to Article 134 of the Treaty, if the level of the duties applicable to goods from a third country on entry into an OCT is liable, when the provisions of Article 133(1) have been applied, to cause deflections of trade to the detriment of any Member State, the latter may request the Commission to propose to the other Member States the measures needed to remedy the situation.

11 Article 136 of the Treaty provides that the Council, acting unanimously, on the basis of experience acquired under the association of the OCTs with the Community and of the principles set out in the EC Treaty, is to lay down provisions as regards the details of and procedure for the association of the OCTs with the Community.

Decision 91/482/EEC

12 On 25 July 1991 the Council adopted, on the basis of Article 136 of the Treaty, Decision 91/482/EEC on the association of the overseas countries and territories with the European Economic Community (OJ 1991 L 263, p. 1, 'the OCT Decision').

13 Under Article 101(1) of the OCT Decision, products originating in the OCTs are to be imported into the Community free of customs duties and charges having equivalent effect.

14 Article 102 of the OCT Decision provides that the Community is not to apply to imports of products originating in the OCTs any quantitative restrictions or measures having equivalent effect.

15 Under Article 6(2) of Annex II to the OCT Decision, when products wholly obtained in the Community or in the ACP (African, Caribbean and Pacific) States undergo working or processing in the OCTs, they are to be considered to have been wholly obtained in the OCTs.

16 By way of derogation from the principle established in Article 101(1), Article 109(1) of the OCT Decision empowers the Commission to adopt safeguard measures '[i]f, as a result of the application of [that] Decision, serious disturbances occur in a sector of the economy of the Community or one or more of its Member States, or their external financial stability is jeopardised, or if difficulties arise which may result in a deterioration in a sector of the Community's activity or in a region of the Community'.

17 Under Article 109(2), for the purpose of implementing paragraph 1, priority is to be given to such measures as would least disturb the functioning of the association and the Community. Those measures are not to exceed the limits of what is strictly necessary to remedy the difficulties that have arisen.

18 Pursuant to Article 1(5) and (7) of Annex IV to the OCT Decision, any Member State may refer the Commission's decision introducing safeguard measures to the Council within 10 working days of receiving notification of the decision. In such a case the Council, acting by a qualified majority, may adopt a different decision within 21 working days.

General Agreement on Tariffs and Trade 1994

19 The General Agreement on Tariffs and Trade 1994 ('GATT 1994'), which is set out at Annex 1A to the Agreement establishing the World Trade Organisation ('WTO'), approved on behalf of the European Community by Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986-1994) (OJ 1994 L 336, p. 1), provides, in Article XIX(1)(a), that:

'If, as a result of unforeseen developments and of the effect of the obligations incurred by a contracting party under this Agreement, including tariff concessions, any product is being imported into the territory of that contracting party in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers in that territory of like or directly competitive products, the contracting party shall be free, in respect of such product, and to the extent and for such time as may be necessary to prevent or

remedy such injury, to suspend the obligation in whole or in part or to withdraw or modify the concession.'

Agreement on Safeguards

20 The Agreement on Safeguards, which also appears at Annex 1A to the Agreement establishing the WTO, provides, at Article 7(5) that: '[n]o safeguard measure shall be applied again to the import of a product which has been subject to such a measure, taken after the date of entry into force of the WTO Agreement, for a period of time equal to that during which such measure had been previously applied, provided that the period of non-application is at least two years'.

Regulation (EC) No 764/97

21 In response to the Italian Government's request for an extension of the safeguard measures on imports of rice originating in the OCTs introduced by Council Regulation (EC) No 304/97 of 17 February 1997 (OJ L 1997 51, p. 1), the Commission adopted Regulation No 764/97 of 23 April 1997 introducing safeguard measures in respect of imports of rice originating in the overseas countries and territories (OJ 1997 L 112, p. 3).

22 Article 1 of that Regulation introduced a tariff quota restricting imports of rice originating in the OCTs falling within CN code 1006 and exempt from customs

duties to 10 000 tonnes of rice originating in Montserrat and the Turks and Caicos Islands, and to 59 610 tonnes of rice originating in the other OCTs.

23 Pursuant to the second paragraph of Article 7, Regulation No 764/97 was to apply from 1 May 1997 to 30 September 1997.

24 The Spanish and United Kingdom Governments subsequently referred Regulation No 764/97 to the Council pursuant to Article 1(5) of Annex IV to the OCT Decision, requesting it to increase the quota allocated to Montserrat and the Turks and Caicos Islands.

Regulation No 1036/97

25 On 2 June 1997 the Council adopted Regulation No 1036/97 which, by Article 7, repeals Regulation No 764/97.

26 Essentially the Council Regulation differs from that of the Commission in respect of the share of the quota between the OCTs and the period of its application.

27 Article 1 of Regulation No 1036/97 provides:

'Imports into the Community of rice originating in the OCTs falling within CN code 1006 and benefiting from exemption from customs duties shall be restricted during the period 1 May to 30 November 1997 to the following quantities of husked rice equivalent:

(a) 13 430 tonnes for rice originating in Montserrat and the Turks and Caicos Islands;

and

(b) 56 180 tonnes for rice originating in the other OCTs.'

28 Regulation No 1036/97, which entered into force on 10 June 1997 when it was published in the *Official Journal of the European Communities*, was to apply from 1 May 1997 to 30 November 1997.

The Community market in rice

29 A distinction is made between the Japonica and Indica varieties of rice.

30 The rice producing countries in the Community are essentially, France, Spain and Italy. About 80% of the rice produced in the Community is of the Japonica variety and 20% of the Indica variety. Japonica rice is primarily consumed in the southern Member States whilst Indica rice is primarily consumed in the northern Member States.

31 Since the Community produces surplus Japonica rice it is a net exporter of that variety. On the other hand it does not produce enough Indica rice to meet its own needs and is a net importer of that variety.

32 Rice must be processed before it can be consumed. After harvesting, it is husked and then polished in several stages.

33 The unit value of the rice increases at each stage of processing. The processing of the rice results in a reduction in its initial weight.

34 It is possible to distinguish four stages of processing:

— paddy rice: this is the rice as harvested and is not yet fit for consumption,

— husked rice (also called brown rice): this is rice from which the husk has been removed. It is fit for consumption, but is also capable of further processing,

— semi-milled rice (also called partly-polished rice): this is the rice after part of the pericarp has been removed. It is a semi-finished product, generally sold with a view to further processing rather than for consumption,

— milled rice (also called polished rice): this is the fully-processed rice after both the husk and the pericarp have been removed.

35 The processing of the rice from paddy rice to milled rice can occur either in a single stage, or in several stages. Consequently, paddy rice, husked rice and semi-milled rice can all be used as raw material by producers of milled rice.

36 The Community only produces milled rice, whilst the Netherlands Antilles only produce semi-milled rice. Semi-milled rice originating in the Netherlands Antilles must therefore undergo final processing before it is consumed in the Community.

37 Several companies established in the Netherlands Antilles process husked rice from Surinam and Guyana into semi-milled rice in that OCT.

38 That processing operation is sufficient to confer on that rice the status of a product originating in the OCTs, according to the rules contained in Annex II to the OCT Decision.

The action

39 The Netherlands Government claims that the Court should annul Regulation No 1036/97 and order the Council to pay the costs.

40 In support of its action the Netherlands Government invokes seven pleas in law as follows: (i) breach of the principle of legal certainty; (ii) breach of Article 7(5) of the Agreement on Safeguards and Article 228(7) of the Treaty; (iii) breach of Article 109(1) of the OCT Decision; (iv) breach of Article 109(2) of the OCT Decision; (v) misuse of powers; (vi) breach of Annex IV to the OCT Decision; and (vii) infringement of Article 190 of the EC Treaty (now Article 253 EC).

41 The Council contends that the Court should dismiss the action as inadmissible or unfounded and order the Kingdom of the Netherlands to pay the costs.

The first plea: breach of the principle of legal certainty

42 The Netherlands Government submits that, by failing to determine what the legal position would be after exhaustion of the tariff quota provided by Article 1 of

Regulation No 1036/97, the Council breached the principle of legal certainty. The undertakings and other interested parties were not in a position to ascertain their rights and obligations after the exhaustion of that quota.

43 It should be pointed out in this respect that Community legislation must be certain and its application foreseeable by those subject to it (see, to that effect, Case 325/85 *Ireland* v *Commission* [1987] ECR 5041, paragraph 18).

44 In the present case, Article 1 of Regulation No 1036/97 introduced a tariff quota allowing duty-free imports of rice originating in the OCTs falling within CN code 1006 but limited to 13 430 tonnes of rice originating in Montserrat and the Turks and Caicos Islands and 56 180 tonnes of rice originating in the other OCTs.

45 It is apparent from reading that provision that, contrary to the applicant's claim, Regulation No 1036/97 was sufficiently clear and precise as to the consequences of the introduction of a tariff quota and its likely exhaustion. That Regulation was not intended to prohibit imports of rice originating in the OCTs in excess of the quota fixed between 1 May and 30 November 1997. It fixed a limit to the tonnage of rice imported during that period which could benefit from the exemption of customs duties. Once that quota was exhausted, imports of rice originating in the OCTs could continue, but without benefiting from that exemption.

46 After exhaustion of a tariff quota such as that in the present case, the products concerned can still be imported but against payment of customs duties (see, to that effect, Case C-17/98 *Emesa Sugar* [2000] ECR I-675, paragraph 45).

47 It also appears from the seventh, eighth and fourteenth recitals of the preamble to Regulation No 1036/97 that, in order to remedy the unfavourable situation on the Community market in rice the Council intended simply to suspend for a limited period, over a certain volume of imports, the preferential terms accorded to rice originating in the OCTs, namely the admission of duty-free imports into the Community.

48 In the light of those considerations Regulation No 1036/97 has not breached the principle of legal certainty which forms part of the Community legal order.

49 The applicant's first plea must therefore be rejected as unfounded.

The second plea: breach of Article 7(5) of the Agreement on Safeguards and Article 228(7) of the Treaty

50 The Netherlands Government claims that, in adopting Regulation No 1036/97 a few months after the expiry of Regulation No 304/97, the Council failed to comply with either Article 7(5) of the Agreement on Safeguards or, therefore, Article 228(7) of the Treaty. Since the obligation laid down in Article 7(5) of the Agreement on Safeguards is clear, precise and unconditional it is directly effective and it is for the Community court, on the basis of Article 173 of the Treaty, to review compliance with it.

51 As regards judicial review of the legality of a Community act with regard to the rules of the WTO, the Council and the Commission contend that the reasons for which the GATT of 1947 did not have direct effect still apply — namely, to allow for the standard of the obligations it lays down to be adjusted downwards, and

the relatively liberal rules and procedure for the resolution of disputes — even though the GATT of 1947 has been replaced by the WTO rules. Article 7(5) of the Agreement on Safeguards does not therefore have direct effect, and so the applicant cannot rely on it.

52 They claim, in the alternative, that that provision of the Agreement on Safeguards has not in any case been breached for the simple reason that that Agreement does not apply to relations between the OCTs and the Community. The OCTs and the Community constitute, under Article 133 of the Treaty, a free trade area and Article XXIV of the 1994 GATT provides for the possibility of derogation from the provisions of Article XIX of the same agreement as regards safeguards.

53 As regards application of the Agreement establishing the WTO and the agreements and memorandums annexed to it ('the WTO agreements') within the Community legal order, it follows from the judgment in Case C-149/96 *Portugal* v *Council* [1999] ECR I-8395, paragraphs 42 to 47, that, having regard to their nature and structure, the WTO agreements are not in principle among the rules in the light of which the Court is to review the legality of measures adopted by the Community institutions.

54 It also follows from that judgment that it is only where the Community intended to implement a particular obligation assumed in the context of the WTO, or where the Community measure refers expressly to the precise provisions of the WTO agreements, that it is for the Court to review the legality of the Community measure in question in the light of the WTO rules (see *Portugal* v *Council*, cited above, paragraph 49).

55 However that is not case here. It is not in dispute that Regulation No 1036/97 was not intended to ensure the enforcement in the Community legal order of a particular obligation assumed in the context of the WTO, and nor does it refer expressly to precise provisions of the WTO agreements. Its purpose was, pursuant

to Article 109 of the OCT Decision, only to introduce safeguard measures in respect of imports of rice originating in the OCTs in order to eliminate serious disturbances to the Community market in rice or the risk of such disturbances.

56 It follows that the Netherlands Government cannot maintain that Regulation No 1036/97 was adopted in breach of Article 7(5) of the Agreement on Safeguards, nor consequently, that it was adopted in breach of Articles 228(7) of the Treaty.

57 The second plea must therefore be rejected.

The third plea: breach of Article 109(1) of the OCT Decision

The first part

58 By the first part of that plea, the Netherlands Government claims that the Council wrongly considered that Article 109 of the OCT Decision conferred a power to introduce safeguard measures for reasons relating to the quantities of products originating in the OCTs imported into the Community.

59 It points out that Article 132 of the Treaty sets as an objective for the Member States that they apply the same treatment to their trade with the OCTs as they accord to each other pursuant to the Treaty. Furthermore the growth in trade with the OCTs is, under Article 3(r) of the Treaty, one of the purposes of the OCT

arrangements. In those circumstances, the volume of imports of cheap rice originating in the OCTs cannot be a ground for adopting safeguard measures.

60 The Netherlands Government acknowledges that the Council may adopt safeguard measures, but only when the conditions laid down by Article 134 of the Treaty are met. It adds that the fact that Regulation No 1036/97 is the second safeguard measure adopted in a short space of time shows that it is a structural rather than an incidental problem that is being addressed here. However, a safeguard measure is not an instrument designed for that purpose.

61 It is useful to begin by recalling the nature of the association with the OCTs laid down by the Treaty. That association is the subject of arrangements defined in Part Four of the Treaty (Articles 131 to 136), with the result that, failing express reference, the general provisions of the Treaty do not apply to the OCTs (see Case C-260/90 *Leplat* [1992] ECR I-643, paragraph 10).

62 Pursuant to Article 131 of the Treaty, the purpose of that 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.

63 Article 132 of the Treaty defines the objectives of the association, providing, *inter alia*, that the Member States are to apply to their trade with the OCTs the same treatment as they accord each other, whilst each OCT is to apply to its trade with Member States and with the other OCTs the same treatment as it applies to the European State with which it has special relations.

64 The scheme of association with the OCTs confers advantages on those countries and territories in order to further their economic and social development. Those advantages are reflected, in particular, in the customs exemptions applicable to products originating in the OCTs when they are imported into the Community (see Case C-430/92 *Netherlands* v *Commission* [1994] ECR I-5197, paragraph 22).

65 However, it is also apparent from the Court's case law that, when the Council adopts measures under the second paragraph of Article 136 of the Treaty, it must take account not only of the principles in Part Four of the Treaty but also of the other principles of Community law, including those relating to the common agricultural policy (Case C-390/95 P *Antillean Rice Mills and Others* v *Commission* [1999] ECR I-769, paragraph 37, and *Emesa Sugar*, cited above, paragraph 38).

66 That conclusion is, moreover, consistent with Article 3(r) and Article 131 of the Treaty, which provide that the Community is to promote the economic and social development of the OCTs, but without that promotion implying an obligation to give them privileged treatment (see Case C-390/95 P *Antillean Rice Mills and Others* v *Commission*, cited above, paragraph 38).

67 In weighing the various objectives laid down by the Treaty, the Council, which enjoys for that purpose a considerable margin of discretion reflecting the political responsibilities entrusted to it by Treaty articles such as Article 136, may be prompted, in case of need, to curtail certain advantages previously granted to the OCTs (see Case C-17/98 *Emesa Sugar*, cited above, paragraph 39).

68 It follows that, when it considers that imports of rice originating in the OCTs, particularly owing to their volume, cause or risk causing serious disturbances on the Community market in rice, the Council may be prompted, by derogation

from the principle laid down in Articles 132(1) of the Treaty and Article 101(1) of the OCT Decision, to curtail certain advantages previously granted to the OCTs.

69 The argument of the Netherlands Antilles that, under Article 132 of the Treaty, the advantages accorded to the OCTs in the context of the progressive realisation of the association may not be undermined for reasons relating to the quantities of products originating in the OCTs imported into the Community, cannot be upheld.

70 Moreover, contrary to the Netherlands Government's claim, the competence of the Council to adopt safeguard measures is not limited to the situation set out in Article 134 of the Treaty, that provision concerns only one particular situation. It is not intended to restrict the Council's general competence, contained in the second paragraph of Article 136 of the Treaty, to lay down the details of and procedure for the implementation of the association having regard to all of the principles set out in the Treaty (see, to that effect, Case C-390/95 P *Antillean Rice Mills and Others* v *Commission*, cited above, paragraph 41).

71 Accordingly, the first part of the third plea must be rejected.

The second part

72 By the second part of this plea, the Netherlands Government maintains that it is obviously wrong to state, as does the preamble to Regulation No 1036/97, that rice originating in the OCTs was imported in such high quantities as to cause or risk causing disturbances to the Community market in rice.

73 It should first be borne in mind that it is apparent from the Court's case-law that the Community institutions have been given a wide discretion in the application of Article 109 of the OCT Decision (see, to that effect, Case C-390/95 P *Antillean Rice Mills and Others* v *Commission*, cited above, paragraph 48).

74 In 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 Case C-390/95 P *Antillean Rice Mills and Others* v *Commission*, cited above, paragraph 48; see also, to that effect, Case 11/82 *Piraiki-Patraiki and Others* v *Commission* [1985] ECR 207, paragraph 40, and Case C-189/01 *Jippes and Others* [2001] ECR I-5689, paragraph 80).

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

The quantities of rice originating in the OCTs imported into the Community

76 The Netherlands Government points out that the Community's production of Indica rice in the years 1992/93 to 1996/97 was insufficient to meet Community demand and that it was necessary to overcome this structural deficit by means of imports. In those circumstances the volume of imports of rice originating in the OTCs could not, in its view, disturb or threaten to disturb the Community market in rice.

77 The Netherlands Government adds that, when Regulation No 764/97 was adopted, the Commission did not provide the committee made up of representatives of the Member States and chaired by a Commission representative, as laid down by Article 1(2) of Annex IV to the OCT Decision ('the committee') with any information to suggest that imports of rice originating in the OCTs were of such a volume as to cause or risk causing serious disturbances to the Community market in rice. Nor did the Council state, in adopting Regulation No 1036/97 that the volume of imports of rice originating in the OCTs caused or risked causing such disturbances. The Council accepted the Commission's findings, it is claimed, without examining them.

78 Furthermore, the Netherlands Government claims that there are other demonstrable causes for the disturbances to the Community market in rice. Most of the Indica rice imported into the Community came from third countries other than the OCTs and, from 1995/96, imports from those countries increased still further.

79 The Commission states that, during 1995/96, imports of rice originating in the OCTs doubled by comparison with the previous year, while Community consumption, even if it increased, did not do so at the same rate. It contends that the Council could, with good reason, take the view that the increase in imports of rice originating in the OCTs was the cause of the disturbances in the Community rice sector or threatened to cause such disturbances.

80 For its part the Italian Government points out that the principle of cumulation of ACP/OCT origin that ensued from the OCT Decision had the effect of deflecting significant quantities of rice produced in the ACP States to the OCTs for processing there, even in a minor way, which were then exported duty-free, to the Community market.

81 It should first be noted that, as the Council was able to find on the basis of data supplied by the Statistical Office of the European Communities (Eurostat) in respect of the years 1992/93 to 1995/96, imports of rice originating in the OCTs increased very significantly and rapidly during those years, from 77 000 tonnes in 1992/93 to more than 212 000 tonnes in 1995/96.

82 Furthermore, the Netherlands Government has acknowledged that, since the application of the OCT Decision, imports of Indica rice originating in the OCTs have increased at a constant rate, even if it considers that, given the shortfall in the Community's production of Indica rice to meet the Community's demand, that increase did not warrant the adoption of safeguard measures.

83 Second, in the context of the common agricultural policy, the Community encouraged farmers to switch production from Japonica rice to Indica rice, in order to diversify the rice-growing sector. To that end it adopted Council Regulation (EEC) No 3878/87 of 18 December 1987 on production aid for certain varieties of rice (OJ 1987 L 365, p. 3), amended several times, then replaced, with effect from 1996/97 by Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice (OJ 1995 L 329, p. 18). As is apparent from the eighth recital to the preamble, Regulation No 304/97 was expressly intended to limit imports of cheap rice originating in the OCTs so as not to undermine that diversification.

84 In those circumstances, the Council could reasonably take the view that the orientation of the common agricultural policy, which has not been challenged by the Netherlands Government, would have been compromised if the OCTs had been permitted to supply all of the Community's demand for Indica rice.

85 The Netherlands Government has not therefore established that the Council committed a manifest error of assessment in taking the view that imports of rice originating in the OCTs had increased considerably and that that increase necessitated the introduction of a tariff quota to ensure that imports into the Community of rice originating in the OCTs remained within limits compatible with the stability of the Community market.

The price of rice originating in the OCTs imported into the Community

86 In the alternative, the Netherlands Government claims that the fact that the prices of Indica rice on the Italian and Spanish markets began to fall in October 1996 and, in spite of a modest recovery on the Italian market since January 1997, have remained below the Community intervention price does not in any way show that the conditions for the application of Article 109(1) of the OCT Decision were met.

87 The Netherlands Government claims that the information put forward by the Council to show that the price of rice originating in the OCTs was markedly lower than the price of Community rice is irrelevant. It claims that Community rice and rice originating in the OCTs does not compete at the paddy stage.

88 The Council, for its part, refers to the data supplied by Eurostat to show that the price of Indica paddy rice fell sharply on the Italian and Spanish markets from October 1996, before settling at a level considerably below that of the intervention price.

89 The Council contends that that reference to changes in the price of Community paddy rice is relevant, since that rice is in competition with semi-milled rice originating in the OCTs and processed by Community producers into milled rice. That reference does not moreover involve comparing the price of Community rice and rice originating in the OCTs at any particular stage of production.

90 As stated at paragraph 36 above, the rice originating in the Netherlands Antilles, which is exported to the Community where it is processed into milled rice, is semi-milled rice.

91 It follows that it is in competition with Community paddy rice processed by Community producers of milled rice and that the increase in imports of rice originating in the OCTs is for that reason such as to affect the price of Community paddy rice.

92 Contrary to the Netherlands Government's submission, it does therefore appears that the Council's reference to the price of Community paddy rice is relevant.

93 In that respect it is apparent from the file that Indica rice on the Spanish market, after falling from ECU 351 per tonne (October 1996) to ECU 320 per tonne (November 1996), being ECU 30 below the intervention price, was again offered at the price of ECU 320 per tonne at the end of May 1997, being ECU 35 below the intervention price which, itself, had risen. As for the price on the Italian market, this fell from ECU 364 per tonne (October 1996) to ECU 319 per tonne (December 1996), and, whilst it recovered to ECU 344 per tonne, it still remained ECU 11 below the intervention price.

94 In the light of those factors, the Netherlands Government has not shown that the Council committed a manifest error of assessment in considering that mass imports of rice originating in the OCTs were such as to seriously disturb the Community market in rice.

The existence of a causal link between imports of rice originating in the OCTs and disturbances on the Community market

95 Finally, the Netherlands Government claims that the Council has not proved the existence of a causal link between imports of rice originating in the OCTs and disturbances on the Community market.

96 Prices on the world market are markedly lower than that of rice originating in the OCTs and, accordingly, duty free imports of rice from third countries (in particular, from the United States of America and Egypt) had a considerable influence on the Community market in rice. The crisis in that market cannot be attributed to imports into the Community of rice originating in the OCTs, but is instead due to the importation of significant quantities of Indica rice at a lower price from third countries, in respect of which the Commission opened tariff quotas.

97 The Netherlands Government considers, in the light of those factors, that the Council has not shown that imports of rice originating in the OCTs threatened, by reason of their volume, to cause serious disturbances on the Community market in rice.

98 In reply, the Council and the interveners point out that, under Article 109 of the OCT Decision, the Council enjoys a wide discretion, and that, in the present case, it was reasonably able to conclude that, without any restriction, the imports of Indica rice originating in the OCTs were still causing or risked causing disturbances on the Community market in rice.

99 They consider that, in order to adopt safeguard measures on the basis of Article 109(1) of the OCT Decision, it suffices that there is reliable evidence to suggest that imports of products originating in the OCTs cause or risk causing problems in the Community.

100 To begin with, it should be noted that the Commission may, under Article 109(1) of the OCT Decision adopt safeguard measures if the application of the OCT Decision causes serious disturbances to occur in a sector of the economy of the Community or one or more of its Member States, or their external financial stability is jeopardised, or if difficulties arise which may result in a deterioration in a sector of the Community's activity or in a region of the Community.

101 First, as regards the argument of the Netherlands Government that the risk of disturbances to the Community market in rice was not attributable to imports of rice originating in the OCTs, but by the tariff quotas opened under Council Regulation (EC) No 1522/96 of 24 July 1996 opening and providing for the administration of certain tariff quotas for imports of rice and broken rice (OJ 1996 L 190, p. 1), it should be stressed that, when the Council adopted Regulation No 1036/97, Regulation No 1522/96, allowing duty free imports into the Community of Indica rice from third countries, was not for the most part in force. As the Commission pointed out in its observations, the WTO quota levels of milled and semi-milled rice reserved by Regulation No 1522/96 for the United States, representing more than half of the total quota introduced by that Regulation had not yet been released, there being no agreement with the United States on the terms and conditions of exports.

102 Nor can the Netherlands Government's argument that the Commission contributed to disturbances on the Community market in stimulating exports of rice from certain third countries to the Community market be upheld. With regard to Egypt, for example, it should be pointed out, as the Commission has rightly done, that an Egyptian quota in respect of Japonica rice has existed since 1973, and that, in any case, there were no imports because, notwithstanding the reduction in customs duties, that rice was not competitive on the Community market.

103 Second, even if imports of rice from third countries had an effect on the Community market in rice, the fact nevertheless remains that the Council could reasonably find, in the light of the data concerning the increase in imports of rice originating in the OCTs and the price of that rice, that there was a link between those imports and the disturbances or the risk of disturbances on the Community market in rice.

104 The significant reduction in the price of Community rice together with a significant increase in imports of rice originating in the OCTs did constitute reliable evidence to suggest that those imports caused or risked causing serious problems on the Community market in rice.

105 Given the Community institutions' wide discretion in the application of Article 109 of the OCT Decision, and the fact that that discretion can be exercised not only in relation to the nature and scope of the provisions which are to be adopted but also, to a certain extent, to the findings as to the basic facts (see, to that effect, Case C-150/94 *United Kingdom* v *Council* [1998] ECR I-7235, paragraph 55, and Case C-289/97 *Eridania* [2000] ECR I-5409, paragraph 48), it cannot be concluded that the Council committed a manifest error in its assessment of the information available to it when Regulation No 1036/97 was adopted.

106 The second part of the third plea is therefore unfounded.

107 It follows from the foregoing that the third plea must be rejected as unfounded.

The fourth plea: breach of Article 109(2) of the OCT Decision

108 By its fourth plea, which is divided into five parts, the Netherlands Government claims that the Council breached Article 109(2) of the OCT Decision.

The first part

109 By the first part of this plea, the Netherlands Government claims that Regulation No 1036/97 breaches Article 109(2) of the OCT Decision by infringing the order of preference of Member States/OCTs/ACP States/third countries. That Regulation placed the OCTs in an unfavourable position compared with the ACP States and third countries by enabling the latter to export more rice to the Community than could the OCTs.

110 According to the Netherlands Government, whilst Article 1 of Regulation No 1036/97 limited duty free imports to the Community of husked rice equivalent originating in the OCTs to 69 610 tonnes during the period in

question, Regulation No 1522/96 allowed imports from third countries over the same period far in excess of that volume.

111 The Council and the Commission object that the Netherlands Government's comparison is made on the wrong basis. The Council points out that the quota provided by Regulation No 1522/96 is 63 000 tonnes of milled rice or semi-milled rice on an annual basis, which is 91 000 tonnes of husked rice equivalent. By comparison the quotas provided for by Regulations Nos 304/97 and 1036/97 reached 114 338 tonnes of husked rice equivalent in the first eleven months of 1997 alone. The Council adds that, even if the quota set by the safeguard measures was lower than that applicable for the same period under Regulation No 1522/96, it must not be forgotten that that only concerned an occasional limitation of imports of rice originating in the OCTs wholly free of customs duties.

112 As stated at paragraphs 73 to 75 of the present judgment, the Community court must restrict itself to considering whether the Council, which has a wide discretion in the present case, committed a manifest error of assessment in adopting Regulation No 1036/97.

113 Contrary to the Netherlands Government's claim, it does not appear from the file that the implementation of Regulations Nos 1036/97 and 1522/96 had the effect of placing the ACP States and third countries in a more favourable position by comparison with the OCTs.

114 As stated at paragraph 101 of the present judgment, when the Council adopted Regulation No 1036/97, Regulation No 1522/96, allowing imports into the Community of Indica rice from third countries exempt from customs duties, was not for the most part in force.

115 Furthermore, the data produced by the Council at the hearing and referred to at paragraph 111 of the present judgment show that, far from being placed in an unfavourable position by comparison with imports of rice from third countries, imports of rice originating in the OCTs were in an indisputably advantageous position.

116 In the light of those considerations, the Court finds that Regulation No 1036/97 did not have the effect of placing the ACP States and third countries in a manifestly more advantageous competitive position than that of the OCTs.

117 It follows that the first part of the fourth plea is unfounded.

The second part

118 By the second part of the fourth plea, the Netherlands Government claims that the Council, in adopting Regulation No 1036/97 did not consider the consequences that that Regulation might have on the economy of the Netherlands Antilles.

119 Under Article 109(2) of the OCT Decision, any safeguard measure must satisfy the condition of inflicting minimal disturbance on the functioning of the association and of the Community, requiring the Community institutions to inquire into the consequences of the intended measures. However, when Regulation No 764/97 was adopted, the Commission did not inquire into the negative repercussions that its decision could have on the economy of the OCTs and the undertakings concerned, nor had the Council taken those effects into account in drafting Regulation No 1036/97.

120 In particular, the possible consequences of Regulation No 764/97 were not considered at the committee meeting which took place on 11 April 1997. As for the partnership meeting held on 15 April 1997 at the request of the Netherlands Antilles, this took place even though the committee had already been consulted and the Commission already had a well established opinion on the adoption of safeguard measures.

121 Furthermore, the Council did not consider the reason why Regulation No 1036/97 should apply until 30 November 1997 inclusive without the tariff quota for rice originating in the OCTs being increased.

122 The Council replies that since the case in which the Court of First Instance gave judgment in *Antillean Rice Mills and Others* v *Commission*, cited above, it is perfectly aware of the situation in the rice-milling industry in the Netherlands Antilles and Aruba.

123 The Council denies the allegation that it did not consider the reason why Regulation No 1036/97 should apply until 30 November 1997. It states that in order to reconcile the objectives of the association of the OCTs with the Community and the common agricultural policy, it decided, given that the harvest is in October in Guyana and that the Community harvest actually arrives on the market from the second fortnight of October, to give effect to the safeguard measure until 30 November 1997 without increasing the tariff quota. It states that during the Council's examination of Regulation No 764/97, the Netherlands did not even challenge the volume of the quota.

124 The Council claims that it can and must, as a matter of institutional balance, proceed on the basis of the safeguard measures adopted by the Commission, which constitute the basis for its own decision and in the drafting of which the

Commission's *travaux préparatoires* as well as the competence of the various Member States naturally play an important role. It points out that the procedure laid down by Article 1(5) and (7) of Annex IV to the OCT Decision is a sort of appeal procedure, in which the Council neither can nor should repeat all of the work to verify the validity of the Commission's Regulation, but may if necessary confine itself to examining the points referred to it by the Member States.

125 First, as regards the partnership meeting of 15 April 1997, the Court notes that the Netherlands Government adduces no evidence to show that the Commission's decision to introduce safeguard measures had already been taken by the time of that meeting, and that the meeting was a mere formality.

126 Furthermore, it does not appear from the information supplied by the parties that the Council failed in its obligation to consider the consequences of the safeguard measures on the economy of the Netherlands Antilles before adopting Regulation No 1036/97. It should be observed in that respect, as the Council has done, that when a Member State, pursuant to Article 1(5) of Annex IV to the OCT Decision, refers to the Council a decision of the Commission introducing safeguard measures, the Council is not required to carry out a completely independent inquiry before adopting its decision under Article 1(7) of Annex IV to the OCT Decision, but is entitled to take account of the information on the basis of which the Commission adopted its decision.

127 The Court therefore finds that the second part of the fourth plea is unfounded.

The third, fourth and fifth parts

128 By the third, fourth and fifth parts of the fourth plea, the Netherlands Government claims that the principle of proportionality, as formulated by Article 109(2) of the OCT Decision, was not complied with in the adoption of Regulation No 1036/97.

129 First, the Netherlands Government points out that, under Article 109(2) of the OCT Decision, measures adopted pursuant to paragraph 1 of the same provision are not to exceed the limits of what is strictly necessary to remedy the difficulties that have arisen.

130 However, it submits that Regulation No 1036/97 did not comply with that requirement. According to the Netherlands Government, a safeguard measure laying down a minimum price would have been quite sufficient to achieve the objective pursued and would have been less restrictive for the OCTs and undertakings concerned, in that it would not have entailed the complete cessation of rice exports to the Community.

131 It should be recalled in that respect that, according to settled case-law, in order to establish whether a provision of Community law complies with the principle of proportionality, it must be ascertained whether the means which it employs are suitable for the purpose of achieving the desired objective and whether they do not go beyond what is necessary to achieve it (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 Case C-390/95 P *Antillean Rice Mills and Others* v *Commission*, cited above, paragraph 52).

132 It is apparent from the fourteenth recital to the preamble to Regulation No 1036/97 that the Council considered that the introduction of a tariff quota would guarantee OCT rice access to the Community market within the limits compatible with the stability of that market while preserving preferential treatment for that product in a manner consistent with the objectives of the OCT Decision.

133 Regulation No 1036/97 was intended simply to limit duty-free imports of rice originating in the OCTs. Neither its purpose nor its effect was to prohibit imports of that product. As noted at paragraphs 45 and 46 of the present judgment, once the tariff quota for Indica rice originating in the OCTs was exhausted, the Netherlands Antilles could still export additional quantities subject to the payment of the necessary customs duties.

134 The safeguard measures adopted under Regulation No 1036/97 which only exceptionally, partially and temporarily limited the free importation into the Community of rice originating in the OCTs were therefore suitable for the objective pursued by the Community institutions as it appears from that Regulation and from the OCT Decision.

135 As for the argument of the Netherlands Government that the introduction of a minimum price would have inflicted less disturbance on the economy of the OCTs and would have been just as effective in achieving the objectives pursued, 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 Council, substitute its assessment for that of the Council as to the choice of the most appropriate measure to prevent disruption of the Community market in rice if those measures have not been proved to be manifestly inappropriate for achieving the objective pursued (see, to that effect, Case C-280/93 *Germany* v *Council* [1994] ECR I-4973, paragraph 94 and *Jippes and Others*, cited above, paragraph 83).

136 However, the Netherlands Government has not established that the Council adopted measures that were manifestly inappropriate or that it carried out a manifestly erroneous assessment of the information available to it at the time when Regulation No 1036/97 was adopted.

137 Given the limited consequences of the introduction of a tariff quota for imports of rice originating in the OCTs for only seven months, it was reasonable for the Council to decide, in reconciling the objectives of the common agricultural policy and of the association of the OCTs with the Community, that Regulation No 1036/97 was suitable for the purpose of achieving the desired objective and that it did not go beyond what was necessary to achieve it.

138 Second, the Netherlands Government alleges a violation of Article 109(2) of the OCT Decision in that the amount of the guarantee requested of Antillean importers under Article 3(4) of Regulation No 1036/97 is disproportionate to the amount of the guarantee required for imports of rice from third countries under Commission Regulation (EC) No 1162/95 of 23 May 1995 laying down special detailed rules for the application of the system of import and export licences for cereals and rice (OJ 1995 L 117, p. 2) or under Regulation No 1522/96.

139 It should be borne in mind in this respect that Regulation No 1036/97 laid down a tariff quota limited to 56 180 tonnes of rice originating in the OCTs other than Montserrat and the Turks and Caicos Islands, and that it was foreseeable that that quota would be of considerable interest to exporters.

140 As the Commission rightly observes, it was necessary, by means of a substantial guarantee, to avoid the situation in which traders applied for import licences and did not subsequently use them, thereby causing loss to other traders who did in

fact intend to import rice originating in the OCTs but who were not able to obtain enough import licences.

141 Contrary to the applicant's claim, 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 of the possibility of exporting rice to the Community since that sum is reimbursed to the undertaking if the import operation is carried out.

142 The Council was therefore entitled to consider that the amount of the guarantee as provided for by Article 3(4) of Regulation No 1036/97 was required to ensure that the commitment to import was respected.

143 Finally, the Netherlands Government claims that Regulation No 1036/97 breached the principle of proportionality in that the successive adoption of Regulations Nos 304/97 and 1036/97 show that the Council's actions cannot be regarded as exceptional and temporary.

144 It should first be borne in mind in that respect that the Community institutions have been given a wide discretion in the application of Article 109 of the OCT Decision which corresponds to the policy responsibilities entrusted to them by Articles 131 to 136 of the Treaty.

145 Second, as stated at paragraph 74 of the present judgment, in cases involving such a discretion, the Community court must restrict itself 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.

146 In the present case, the applicant has not shown that the Council's exercise of discretion in adopting, by Regulation No 1036/97, a second series of safeguard measures was vitiated by manifest error.

147 Having regard to the fact that, notwithstanding the adoption of Regulation No 304/97, significant quantities of rice originating in the OCTs continued to be imported into the Community, those quantities were likely to rise and the market price in the Community remained significantly below the intervention price, it is apparent that the Council could reasonably take the view that there was a continuing risk of serious disturbances on the Community market.

148 In any case, as has already been pointed out at paragraph 134 of the present judgment, Regulation No 1036/97 only exceptionally, partially and temporarily limited duty-free imports of rice originating in the OCTs into the Community. That Regulation, which imposed a tariff quota allowing the free entry of rice from the OCTs to the Community market within limits compatible with the stability of that same market, whilst retaining preferential treatment for that product in a manner consistent with the objectives of the OCT Decision, was therefore suitable for achieving the objective sought by the Council and did not go beyond what was necessary to achieve it.

149 It follows that the third, fourth and fifth part of the fourth plea must also be rejected.

150 Consequently, the fourth plea must be rejected in its entirety.

The fifth plea: misuse of powers

151 According to the Netherlands Government, the Council has made use of the power conferred on it by Article 109 of the OCT Decision for a purpose other than that authorised.

152 It maintains that the Community always wanted to oppose the development of trade with the OCTs which the OCT Decision entails, and that the safeguard measures introduced against rice originating in the OCTs serve that purpose. The safeguard measures cannot, however, be used for that purpose. The Commission and the Council ought rather to have amended the OCT Decision in accordance with the procedure laid down, which requires a unanimous vote of the Council. In resorting to the use of safeguard measures, the Council and the Commission are therefore guilty of a misuse of the power conferred on them by Article 109(1) of the OCT Decision.

153 As the Court has repeatedly held, a measure is only vitiated by misuse of powers if it appears, on the basis of objective, relevant and consistent evidence to have been taken with the exclusive or main purpose of achieving an end other than that stated or evading a procedure specifically prescribed by the Treaty for dealing with the circumstances of the case (see 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, and Case C-48/96 P *Windpark Groothusen* v *Commission* [1998] ECR I-2873, paragraph 52).

154 As for the objectives pursued by the Council in adopting Regulation No 1036/97, there is nothing in the file to support the Netherlands Government's claim that the Council was pursuing an aim other than that of remedying the disturbances noted on the Community market in rice or of avoiding more serious disturbances than those already existing.

155 As regards the fact that, in deciding on the safeguard measures, the Council resorted to the mechanism under Article 109 of the OCT Decision rather than amending the OCT Decision, it should be noted that the objective of the mechanism laid down by that article is precisely to enable the Council to end or prevent serious disturbances in a sector of the economy of the Community. There is nothing requiring the Council to have recourse to another mechanism on the ground that the intended safeguard measures would substantially limit imports. It is for the Council alone, in accordance with Article 109(2) of the OCT Decision, to ensure that those measures which least disturb the functioning of the association and of the Community are adopted, and that they do not exceed the limits of what is strictly necessary to remedy those difficulties.

156 The Netherlands Government's fifth plea must therefore be rejected.

The sixth plea: breach of Annex IV to the OCT Decision

157 In its application the Netherlands Government claims that the Council used its power under Article 1(7) of Annex IV to the OCT Decision in a manifestly incorrect way. In adopting Regulation No 1036/97, the Council adopted a new measure replacing the safeguard measures decided upon by the Commission. However, it did not itself consider whether the conditions for the application of Article 109 were actually met, but relied on the assertions of the Commission to that effect.

158 The Netherlands Government thus claims that the Council did not in any way consider how much rice originating in the OCTs was imported into the Community, at what price, what the serious disturbances were, or the risk of such disturbances on the Community market in rice. Furthermore, it claims, the

Council did not have all of the information provided by the Commission that would have enabled it to verify the accuracy of the Commission's conclusions.

159 In its reply, the Netherlands Government adds that Annex IV of the OCT Decision was also breached in that, first, the committee was not consulted in accordance with the procedure laid down by Article 1(2) of that annex, and second, the Commission neglected to give a hearing to the Netherlands Antilles and Aruba as to the proposed safeguard measures.

160 As regards, first, the Netherlands Government's criticism of the assessment carried out by the Council prior to the adoption of Regulation No 1036/97, it should be borne in mind that, pursuant to Article 1(5) and (7) of Annex IV to the OCT Decision, any Member State may refer to the Council the Commission's decision adopting appropriate measures for the implementation of Article 109 of the OCT Decision and the Council may adopt a different decision within the time there stated.

161 As has already been pointed out at paragraph 126 of the present judgment, those provisions of the OCT Decision do not require the Council to carry out a completely independent inquiry before adopting its decision under Article 1(7) of Annex IV to the OCT Decision.

162 Given the nature of the Council's review in this context, as well as the fact that a safeguard measure must normally be adopted as soon as possible, it is entirely logical and reasonable that the Council took into account the data on which the Commission relied in adopting Regulation No 764/97.

163 Furthermore, as stated at paragraph 73 above, the Council enjoys a wide discretion in the application of Article 109 of the OCT Decision. It is, in those circumstances, for the applicant to show that the Council's exercise of that power is vitiated by a manifest error or by a misuse of powers or even that the Council manifestly exceeded the limits of that power.

164 The Netherlands Government has not shown that to be the case here.

165 As regards, second, the alleged breach of Annex IV to the OCT Decision in that, first, the committee was not consulted in accordance with the procedure laid down by Article 1(2) of that annex and, second, the Commission neglected to give a hearing to the Netherlands Antilles and Aruba as to the proposed safeguard measures, the Commission contends, at least as regards the first part, that the applicant is putting forward a fresh plea, which is not allowed at this stage of the proceedings.

166 It should be borne in mind in that respect that, pursuant to Article 42(2) of the Rules of Procedure of the Court of Justice, no new plea in law may be introduced in the course of the proceedings unless it is based on matters of law or of fact which come to light in the course of the procedure.

167 In respect of an action for annulment, the requirements of that provision are satisfied if the application contains a sufficiently precise statement of the facts and the pleas in law so as, first, to enable the Community court to review the legality of the Community act in question and, second, to ensure that the defendant is able to defend effectively its interests.

168 In the present case, whilst it is true that, in the application, the applicant confined itself to two grounds on which it claimed that Annex IV of the OCT Decision had been breached, the fact remains that the applicant was entitled to develop that plea and to set out any relevant further details in the reply, which is exactly what it did in introducing arguments concerning the consultation of the committee, provided for by Article 1(2) of that annex, and of the OCTs (see, to that effect, Case 74/74 *CNTA* v *Commission* [1975] ECR 533, paragraph 4).

169 Furthermore, as is apparent from the case-law of the Court, a plea which may be regarded as amplifying a plea made previously, whether directly or by implication, in the original application must be considered admissible (Case 306/81 *Verros* v *Parliament* [1983] ECR 1755, paragraphs 9 and 10).

170 It must also be stated that the alleged shortcomings of the application are not such as to hinder the Community court in the exercise of its judicial review or to prevent the Council from effectively defending its interests.

171 It follows from all of the foregoing factors that the Commission's claim that part of the sixth plea is inadmissible must be rejected.

172 As to the merits of those additional arguments introduced by the applicant in its reply, it should be pointed out, first that, contrary to its allegation, the OCTs, and in particular the Netherlands Antilles and Aruba, were consulted by the Commission as to the proposed safeguard measures.

173 As the Netherlands Government itself stated in the application, a partnership meeting with the OCTs was held on 15 April 1997.

174 Second, it is apparent from the file that the committee was convened, by letter of 4 April 1997, for 11 April 1997.

175 However, according to the Netherlands Government, the committee was convened in breach of Article 3 of the internal rules of the committee for consulting the Member States referred to in Annex IV to the OCT Decision, which provides that 'the notification to attend, the agenda and the working papers will be forwarded by the president to the members of the committee...: those documents shall include in particular the documentation received from the Member State requesting the Commission to adopt safeguard measures'. In the present case, no documentation was supplied to the Netherlands Government.

176 It should be borne in mind in this respect that consultation of the committee is intended to enable the Commission to submit to it reasons why it is appropriate to apply safeguard measures in accordance with Article 109 of that decision and to set out the factual grounds for doing so.

177 Whilst it is true that, in the present case, the members of the committee did not receive a copy of the Italian Government's request to the Commission to extend the safeguard measures adopted under Regulation No 304/97 with the notification to attend, it should be noted that only a breach of essential procedural requirements renders the measure in question unlawful. The fact that the Netherlands Government did not receive a copy of the Italian Government's request concerning the application of safeguard measures cannot be regarded as such a breach.

178 Further, the Netherlands Government has not shown that that documentation was such as would have further enlightened the committee as to the Commission's intentions and the underlying factual grounds nor that it was prevented from effectively defending its interests.

179 It should in particular be pointed out that the statistics on the situation in the Community market in rice were supplied at the meeting of the committee and that the grounds for the Commission's adoption of the safeguard measures were explained in detail during that meeting.

180 It should also be noted that, given the earlier adoption of Commission Regulations (EC) Nos 21/97 of 8 january 1997 (OJ 1997 L 5, p. 24), and 304/97, introducing safeguard measures in respect of imports of rice originating in the OCTs, it is clear that, not long before, the Member States had been closely involved in the process of drafting similar safeguard measures in respect of the Community market in rice and therefore were aware of the reasons underlying the Council's proposed action.

181 The Netherlands Government's argument that Annex IV to the OCT Decision was breached by the Commission's failure to consult the committee in accordance with the procedure laid down by Article 1(2) of Annex IV to the OCT Decision cannot therefore be upheld.

182 It follows that the sixth plea must also be rejected.

The seventh plea: infringement of Article 190 of the Treaty

183 According to the applicant, Regulation No 1036/97 infringes Article 190 of the Treaty in that it does not include a sufficient statement of the reasons on which it is based.

184 In that regard, the Netherlands Government points out that the statement of reasons must show clearly and unequivocally the reasoning of the institution which enacted 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.

185 The Netherlands Government considers that the allegations in the recitals to the preamble to Regulation No 1036/97 that, first, imports of rice originating in the OCTs were causing, in particular as a result of the quantities involved, a disturbance on the Community market and, second, massive imports of rice from the OCTs under preferential conditions might undermine the Community's attempts to diversify Community production from Japonica rice to Indica rice, were unsubstantiated.

186 It claims that the Council did not carry out an assessment of market trends and could not therefore have concluded that those imports were causing serious disturbances to that market. Furthermore, the Council failed to give reasons why Regulation No 1036/97 was applicable for two months longer than Regulation No 764/97. Those gaps in the statement of reasons cannot be compensated for by the fact that the Netherlands Government, having been involved in the implementation of the contested safeguard measures, had information at its disposal that would have enabled it to fill those gaps.

187 In that regard, it must be borne in mind that the statement of reasons required by Article 190 of the Treaty must be appropriate to the nature of the measure in question. It must show clearly and unequivocally the reasoning of the institution which enacted 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 (see 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).

188 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 grounds for a decision meets the requirements of Article 190 of the Treaty 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 (see 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).

189 Furthermore, in the case of a measure intended to have general application the preamble may be limited 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 (Case C-284/94 *Spain* v *Council* [1998] ECR I-7309, paragraph 28).

190 Moreover, the Court has repeatedly held 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 (see, in particular, *Atlanta Fruchthandelsgesellschaft and Others II*, paragraph 16, and *Spain* v *Council*, paragraph 30).

191 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 (see, to that effect, *Spain* v *Council*, cited above, paragraph 33).

192 Regulation No 1036/97 is a measure of general application which forms part of a series of Regulations enacted by the Community institutions to implement and reconcile two complex policies, namely the common agricultural policy in the rice sector, and the economic policy formulated in the context of the association with the OCTs.

193 It is apparent from the file that the adoption by the Commission of safeguard measures under Regulation No 764/97 was preceded by a series of contacts and meetings between the Commission, the Member States and the OCTs.

194 As regards Regulation No 1036/97 the Council set out in the recitals of the preamble, first, the context in which it decided that there was a risk of disturbance on the Community market in rice caused, in particular, by the quantities of rice originating in the OCTs imported into the Community. It referred in particular in the seventh and eighth recitals to the fragile state of the Community market caused by a normal harvest of Indica rice after two years of drought and by a deficit in the production of Indica rice in the Community.

195 Second, it explained that massive imports of rice from the OCTs under preferential conditions might undermine attempts to diversify Community production from Japonica rice to Indica rice and that the quantities of rice from

the OCTs imported into the Community were likely to increase still further owing to the potential of the producer regions.

196 That statement of reasons contains a clear description of the factual situation and of the objectives pursued and, given the circumstances of the present case, appears to have been sufficient to enable the Netherlands Government to verify its content and to consider whether to challenge the legality of the decision in question if need be.

197 It follows from this that the seventh plea must be rejected as unfounded.

198 Accordingly, the action of the Kingdom of the Netherlands must be dismissed in its entirety.

Costs

199 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Council has applied for costs against the Kingdom of the Netherlands, and that Member State has been unsuccessful in its action, it must be ordered to pay the costs. Pursuant to Article 69(4) of the Rules of Procedure, the Kingdom of Spain, the French Republic, the Italian Republic and the Commission of the European Communities, as interveners, shall bear their own costs.

On those grounds,

THE COURT,

hereby:

1. **Dismisses the action as unfounded;**

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

3. **Orders the Kingdom of Spain, the French Republic, the Italian Republic and the Commission of the European Communities to bear their own costs.**

Rodríguez Iglesias	Jann	Macken
Gulmann	Edward	La Pergola
Puissochet	Sevón	Wathelet
Schintgen		Skouris

Delivered in open court in Luxembourg on 22 November 2001.

R. Grass

Registrar

G.C. Rodríguez Iglesias

President