JUDGMENT OF THE COURT OF FIRST INSTANCE (Third Chamber)
14 November 2002 *

In Joined Cases T-94/00, T-110/00 and T-159/00,

Rica Foods (Free Zone) NV, established in Oranjestad (Aruba), represented by G. van der Wal, lawyer, with an address for service in Luxembourg,

Free Trade Foods NV, established in Curaçao (Netherlands Antilles),

Suproco NV, established in Curaçao,

represented by M. Slotboom and J. Coumans, avocats, with an address for service in Luxembourg,

applicants,

* Language of the case: Dutch.

supported by

Kingdom of the Netherlands, represented by J. van Bakel and H.G. Sevenster, acting as Agents, with an address for service in Luxembourg,

intervener,

v

Commission of the European Communities, represented by T. van Rijn, acting as Agent, 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,

intervener in all three cases,

and by

French Republic, represented by G. de Bergues and L. Berheim, acting as Agents, with an address for service in Luxembourg,

intervener in Cases T-94/00 and T-110/00,

APPLICATION, first, for annulment of Commission Regulation (EC) No 465/2000 of 29 February 2000 introducing safeguard measures for imports from the overseas countries and territories of sugar sector products with EC/OCT cumulation of origin (OJ 2000 L 56, p. 39), and secondly for damages,

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (Third Chamber),

composed of: M. Jaeger, President, K. Lenaerts and J. Azizi, Judges,

Registrar: J. Plingers, Administrator,

having regard to the written procedure and further to the hearing on 14 March 2002,

gives the following

Judgment

Common organisation of the markets in the sugar sector

1 By Regulation No 2038/1999 of 13 September 1999 on the common organisation of the markets in the sugar sector (OJ 1999 L 252, p. 1), the Council consolidated Regulation (EEC) No 1785/81 of 30 June 1981, which had established that common organisation (OJ 1981 L 177, p. 4), 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 producers of Community sugar.

2 Support for Community production through guaranteed prices is limited to national production quotas (A and B quotas) allocated by the Council, in the present case under Regulation No 2038/1999, 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 European Community unless it is transferred to the A and B quotas for the following season.

3 Extra-Community exports apart from C sugar benefit from export refunds under Article 18 of Regulation No 2038/1999, to make up for the difference

between the price on the Community market and the price on the world market.

4 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 [Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986-1994), OJ 1994 L 336, p. 1]. By the 2000/2001 marketing year at the latest the quantity of sugar exported with refund and the total amount of refunds were to be limited to 1 273 500 tonnes and to EUR 499.1 million, which represents a reduction of 20% and 36% respectively in relation to the figures for the 1994/1995 marketing year.

Relations with the OCTs

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

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

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

8 The Council adopted on the basis of Article 187 EC several decisions concerning the association of the OCTs with the Community. On 25 July 1991 the Council adopted Decision 91/482/EEC (OJ 1991 L 263, p. 1), which according to Article 240(1) thereof is to apply for a period of 10 years from 1 March 1990.

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

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

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

11 Article 102 of the same decision provides:

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

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

13 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.

14 Article 6(2) of Annex II, however, provides:

'When products wholly obtained in the Community or in the ACP States undergo working or processing in the OCTs, they shall be considered as having been wholly obtained in the OCTs.' These are known as 'the EC/OCT and the ACP/OCT cumulation of origin' rules.

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

16 Decision 97/803 (see paragraph 9 above) inserted into the OCT Decision *inter alia* Article 108b, paragraph 1 of which provides: '[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.

Safeguard measures taken against imports of sugar and mixtures of sugar and cocoa qualifying for EC/OCT cumulation of origin

17 On 15 November 1999 the Commission adopted 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 (OJ 1999 L 294, p. 11), on the basis of Article 109 of the OCT Decision. By that regulation, applying until 29 February 2000, the Commission made imports of sugar qualifying for EC/OCT cumulation of origin subject to a system of minimum prices and made imports of mixtures of sugar and cocoa ('mixtures') originating in the OCTs subject to Community surveillance in accordance with the rules laid down in Article 308d of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ 1993 ECR L 253, p. 1).

18 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 (OJ 2000 L 56, p. 39, 'the contested regulation').

19 Article 1 of the contested regulation reads:

'For products falling within tariff headings CN 1701, 1806 10 30 and 1806 10 90, EC/OCT cumulation of origin as referred to in Article 6 of Annex II to [the OCT Decision] shall be permitted for a quantity of 3 340 tonnes of sugar during the period of validity of this Regulation.

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

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

21 Lastly, Article 3 provides that the contested regulation is to enter into force on the day of its publication in the *Official Journal of the European Communities*, that is to say, 1 March 2000, and is to apply until 30 September 2000.

Procedure

22 By applications lodged at the Registry of the Court of First Instance on 19 and 28 April and on 9 June 2000, respectively, the applicants in Cases T-94/00, T-110/00 and T-159/00, which are sugar processing undertakings established in the OCTs (Aruba and the Netherlands Antilles) brought actions, first for the annulment of the contested regulation and secondly for damages.

23 By separate documents lodged at the Registry of the Court of First Instance on 22 and 28 April 2000, respectively, the applicants in Cases T-94/00 and T-110/00 also applied for an order suspending the operation of the contested regulation or any other interim measure that would safeguard their interests.

24 By applications lodged at the Registry of the Court of First Instance on 11 May and 15 June 2000 the Kingdom of Spain and the Kingdom of the Netherlands applied, pursuant to Article 115 of the Rules of Procedure of the Court of First Instance, for leave to intervene in Cases T-94/00 and T-110/00, respectively, in support of the forms of order sought by the Commission and the applicants. By orders of 11 and 12 July 2000 the President of the Third Chamber of the Court of First Instance granted those applications in Cases T-94/00 and T-110/00 respectively.

25 By order of 12 July 2000, in Case T-94/00 R and Case T-110/00 R *Rica Foods and Free Trade Foods* v *Commission* (not published in the European Court Reports), the President of the Court of First Instance, on the one hand, suspended the operation of the contested regulation with regard to the applicants in Cases T-94/00 R and T-110/00 R and, on the other hand, ordered the Commission to determine, up to a limit of 4 995 tonnes, the quantity of products of the sugar sector with EC/OCT cumulation of origin which might still be imported into the Community up until 30 September 2000 by each of the applicants in the interim proceedings, and the rules to which imports of those products would be subject.

26 By separate application lodged at the Registry of the Court of First Instance on 14 July 2000 the applicant in Case T-159/00 also applied for an order suspending the operation of the contested regulation, or any other interim measure that would safeguard its interests.

27 By order of 8 August 2000 in Case T-159/00 R *Suproco* v *Commission* (not published in the European Court Reports) the President of the Court of First Instance, on the one hand, suspended the operation of the contested regulation with regard to the applicant in Case T-159/00 R and, on the other hand, ordered the Commission to allow the applicant to import 400 tonnes of sugar sector products with EC/OCT cumulation of origin up until 30 September 2000 and to determine the rules to which imports of those products would be subject.

28 The Kingdom of Spain submitted a statement in intervention in Cases T-94/00 and T-110/00 on 10 August 2000 on which the original parties to the proceedings were requested to submit their observations.

29 The same day the Kingdom of Spain applied, pursuant to Article 115 of the Rules of Procedure of the Court of First Instance, for leave to intervene in Case T-159/00 in support of the form of order sought by the Commission. By order of 22 September 2000 the President of the Third Chamber of the Court of First Instance granted that application.

30 By applications lodged at the Registry of the Court of First Instance on 22 September 2000 the French Republic applied for leave to intervene in Cases T-94/00 and T-110/00 in support of the form of order sought by the Commission.

31 The Kingdom of the Netherlands submitted a statement in intervention in Cases T-94/00 and T-110/00 on 6 October 2000 on which the original parties to the proceedings were requested to submit their observations.

32 By orders of 16 October 2000 the President of the Third Chamber of the Court of First Instance granted the French Republic leave to intervene in Cases T-94/00 and T-110/00. The French Republic has not however submitted a statement in intervention.

33 By letters of 16 and 23 October 2000 respectively the applicants in Case T-110/00 and T-159/00 requested that parts of the reply should be treated as confidential so far as the interveners were concerned.

34 The Kingdom of Spain submitted a statement in intervention in Case T-159/00 on 10 November 2000 on which the original parties to the proceedings were requested to submit their observations.

35 By application lodged at the Registry of the Court of First Instance on 22 November 2000 the Kingdom of the Netherlands applied, pursuant to Article 115 of the Rules of Procedure, for leave to intervene in Case T-159/00 in support of the form of order sought by the applicant.

36 By orders of 5 March 2001 the President of the Third Chamber of the Court of First Instance granted the French Republic leave to intervene in Case T-159/00 and granted the applications for confidentiality lodged in Cases T-110/00 and T-159/00.

37 The Kingdom of the Netherlands submitted a statement in intervention in Case T-159/00 on 8 May 2001 on which the original parties to the proceedings were requested to submit their observations.

38 Upon hearing the report of the Judge-Rapporteur, the Third Chamber of the Court of First Instance decided to open the oral procedure. By way of measures of organisation of procedure under Article 64 of the Rules of Procedure, a number of written questions were addressed to the parties, which answered them within the time allowed for that purpose.

39 The parties presented oral argument and their replies to the questions from the Court at the hearing, which took place on 14 March 2002. At the hearing the applicant in Case T-94/00 withdrew the plea of illegality which it had relied on in its application against Regulation No 2553/97.

40 By letters of 26 March 2002 the applicants in Cases T-110/00 and T-159/00 withdrew the plea of infringement of the (WTO-GATT 1994) Agreement on Safeguards adopted during the Uruguay Round of Multilateral Trade Negotiations (1986-1994) (OJ 1994 L 336, p. 184 ('the Safeguards Agreement')), which they had raised in their applications. In addition, the same applicants withdrew, as regards the plea of breach of the principle of proportionality, the argument that the contested regulation infringed that principle since it is not deemed to be confronted, on a temporary and exceptional basis, with exceptional difficulties. The same applicants also withdrew the argument alleging infringement of the principle of proportionality, which was raised in the context of the plea of illegality against Regulation No 2553/97.

41 After hearing the parties with regard to the possibility of joining the cases, the Court of First Instance decided to join Cases T-94/00, T-110/00 and T-159/00 for the purposes of the judgment.

Forms of order sought

42 In Case T-94/00 the applicant and the Kingdom of the Netherlands claim that the Court should:

— annul the contested regulation;

— declare that the Community is liable for the damage suffered by the applicant as a result of the fact that since 1 March 2000 imports of the products referred to in the contested regulation have been prevented or restricted by

that regulation, and order that the parties are to seek to reach agreement subsequently concerning the extent of that damage and that, in the absence of agreement in that regard, the proceedings are to be resumed within a time-limit to be fixed by the Court in order for the extent of the damage to be determined; in any event order the Community to pay damages in a sum assessed provisionally and yet to be assessed;

— in the alternative, order the Community to pay such amount of damages as the Court shall deem fair and equitable, together with interest at the annual rate of 8% from the date of the present application to the date of payment in full;

— order the Commission to pay the costs.

43 In Cases T-110/00 and T-159/00 the applicants and the Kingdom of the Netherlands claim that the Court should:

— declare the application admissible;

— annul the contested regulation;

— declare that the Community is liable for the damage suffered by the applicants as a result of the adoption of the contested regulation, order that the parties are to seek to reach agreement concerning the extent of that damage and that, in the absence of agreement in that regard, the proceedings are to be resumed within a time-limit to be fixed by the Court in order for the extent of the damage to be determined; or in any event, order the Community to pay damages in a sum assessed provisionally and yet to be assessed;

— in the alternative, order the Community to pay such amount of damages as the Court shall deem fair and equitable, together with interest at the relevant rate from the date of the present application until the date of payment in full;

— order the Commission to pay the costs.

44 The Commission and the Kingdom of Spain in Cases T-94/00, T-110/00 and T-159/00 and the French Republic in Cases T-94/00 and T-110/00 contend that the Court should:

— dismiss the application;

— order the applicants to pay the costs.

Claims for annulment

1. Admissibility

45 The Commission, supported by the Kingdom of Spain and the French Republic, contends that the actions for annulment are inadmissible. It claims that the applicants are not individually concerned by the contested regulation within the

meaning of the fourth paragraph of Article 230 EC. The contested regulation does not affect the applicants by reason of certain attributes which are peculiar to them or by reason of circumstances which distinguish them from all other undertakings now or in the future producing sugar or mixtures of sugar and cocoa in the OCTs (Case 25/62 *Plaumann* v *Commission* [1963] ECR 197, p. 223; Joined Cases T-480/93 and T-483/93 *Antillean Rice Mills and Others* v *Commission* [1995] ECR II-2305, paragraph 66).

46 In that regard, the Court points out that under the fourth paragraph of Article 230 EC, natural or legal persons may institute proceedings against a decision addressed to them or against a decision which, although in the form of a regulation or a decision addressed to another person, is of direct and individual concern to them.

47 The contested regulation must be regarded as being of general application. The safeguard measure in the contested regulation applies in a general manner to imports into the Community of sugar, in the unaltered state or in the form of mixtures qualifying for EC/OCT cumulation of origin.

48 None the less, the fact that a measure applies generally does not *per se* preclude it from being potentially of direct and individual concern to certain natural or legal persons (see Case C-309/89 *Codorniu* v *Council* [1994] ECR I-1853, paragraph 19; and Joined Cases T-480/93 and T-483/93 *Antillean Rice Mills and Others* v *Commission*, cited in paragraph 45 above, paragraph 66, and Joined Cases T-481/93 and T-484/93 *Exporteurs in Levende Varkens and Others* v *Commission* [1995] ECR II-2941, paragraph 50).

49 The contested regulation is of direct concern to the three applicants, which export to the Community the products referred to in that regulation. The contested regulation leaves no discretion to the national authorities of the Member States responsible for implementing it.

50 As regards the question whether the contested regulation is of individual concern to the applicants, it must be borne in mind that natural or legal persons can be considered to be individually concerned by a measure of general application only if the measure in question affects them because of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons (*Plaumann*, cited in paragraph 45 above; Case T-47/00 *Rica Foods* v *Commission* [2002] ECR II-113, paragraph 38).

51 The applicants maintain that they are individually concerned by the contested regulation because the Commission was bound by law to examine their specific situation before adopting the contested regulation (Joined Cases T-480/93 and T-483/93 *Antillean Rice Mills and Others* v *Commission*, cited in paragraph 45 above, paragraph 70).

52 The Commission argues that despite that obligation the applicants are not individually concerned by the contested regulation. It maintains in that connection that the contested regulation did not prevent the applicants from wholly or partly executing certain contracts (Case 11/82 *Piraiki-Patraiki and Others* v *Commission* [1985] ECR 207, paragraph 19). At the hearing the Commission again referred to Case C-451/98 *Antillean Rice Mills and Others* v *Council* [2001] ECR I-8949.

53 It must be pointed out that where the Commission is, by virtue of specific provisions, under a duty to take account of the consequences of a measure which it envisages adopting for the situation of certain individuals, that fact distinguishes them individually (Case C-390/95 P *Antillean Rice Mills and Others* v *Commission* [1999] ECR I-769, paragraphs 25 to 30, and *Antillean Rice Mills* v *Council*, cited in paragraph 52 above, paragraph 57; Joined Cases T-480/93 and T-483/93 *Antillean Rice Mills and Others* v *Commission*, cited in paragraph 45 above, paragraph 67, and *Rica Foods* v *Commission*, cited in paragraph 50 above, paragraph 41).

54 In that regard, the Court of Justice and the Court of First Instance have held that Article 109(2) of the OCT Decision makes clear that when adopting safeguard measures under Article 109(1) of the OCT Decision the Commission must, in so far as the circumstances of the case permit, inquire into the negative effects which its decision might have on the economy of that Member State as well as on the undertakings concerned (Case C-390/95 P *Antillean Rice Mills and Others* v *Commission*, cited in paragraph 53 above, paragraph 25 and Joined Cases T-480/93 and T-483/93 *Antillean Rice Mills and Others* v *Commission*, cited in paragraph 45 above, paragraph 70).

55 Since the contested regulation was adopted under Article 109(1) of the OCT Decision, the Commission was obliged to take into account the consequences which the proposed safeguard measures might have on the OCTs and the undertakings concerned.

56 However, the finding of the existence of that obligation is not sufficient to establish that those OCTs and those undertakings affected by a safeguard measure adopted under Article 109(1) of the OCT Decision are individually concerned by that measure within the meaning of the fourth paragraph of Article 230 EC (*Antillean Rice Mills and Others* v *Council*, cited in paragraph 52 above, paragraph 60). In order for their actions to be admissible, the undertakings concerned are required to prove that they are affected by the safeguard measure by reason of a factual situation which differentiates them from all other persons (*Antillean Rice Mills and Others* v *Council*, cited in paragraph 52 above, paragraph 62).

57 It is clear from case-law that undertakings which had already entered into contracts which were due to be performed during the period of application of the safeguard measure but which had been prevented from being performed, in part or at all, by that measure were individually concerned within the meaning of the fourth paragraph of Article 230 EC (*Piraiki-Patraiki and Others* v *Commission*, cited in paragraph 52 above, paragraphs 28, 31 and 32 and *Antillean Rice Mills and Others* v *Council*, cited in paragraph 52 above, paragraph 61).

58 The three applicants, which are undertakings affected by the contested regulation since they are established in the OCTs and are operating in the sector referred to in the contested regulation, claim that that regulation prevented them from performing certain contracts.

59 At the request of the Court, the applicant in Case T-94/00 produced on 7 December 2001 two contracts dated 2 December 1999, the first for delivery of 6 000 tonnes of sugar for the period December 1999 to May 2000 and the second for the delivery of 12 000 tonnes for the period January to December 2000. It also produced a contract dated 18 August 1999 for the delivery of 7 500 tonnes during the period from January to June 2000.

60 The Commission contends, however, that those are framework contracts which do not mention any specific delivery date. In the absence of evidence that it was impossible to meet specific orders as a result of the contested regulation, the applicant has failed to show that it was individually concerned by that regulation.

61 The Court finds that is clear from the contracts produced by the applicant in Case T-94/00 that those contracts related to specific quantities of sugar to be delivered during the period the contested regulation was in force although the shipping schedule was still to be established. The contract of 2 December 1999 for 12 000 tonnes stated that delivery was to take place at a rate of 1 000 tonnes per month. That contract should therefore have given rise to delivery of 7 000 tonnes during the period from 1 March to 30 September 2000 when the contested regulation was in force. The contract of 18 August 1999 for 7 500 tonnes stated that the deliveries were to be spread evenly over the period from January to June 2000.

62 In the light of the foregoing, the Court finds that the quantities of sugar which the applicant in Case T-94/00 was required to deliver under the contracts referred to in paragraph 59 above greatly exceeded the overall ceiling of 3 340 tonnes imposed by the contested regulation during the period that regulation was in force.

63 In those circumstances, the Court considers that the applicant in Case T-94/00 had entered into contracts, performance of which had been prevented, in whole or in part, by the contested regulation.

64 The applicant in Case T-110/00 attached two contracts to its reply. One, concluded for an indefinite term, is dated 1 October 1998 and is for the sale by the applicant of a minimum annual quantity of 28 500 tonnes of sugar to an undertaking established in Germany. The other contract, concluded for a minimum term of five years, is dated 18 February 2000 and is for the delivery to the Community of a minimum annual quantity of 24 000 tonnes of sugar.

65 That applicant shows, by means of bills of lading annexed to its letter of 20 June 2000 lodged in the context of the interim relief proceedings, that it dispatched 2 500 tonnes of sugar in March/April 2000 and that an import licence was granted on 25 April 2000 for 236 tonnes, although the order was for 2 500 tonnes. As a result of the contested regulation 2 264 tonnes of sugar with EC/OCT cumulation of origin coming from the applicant stayed blocked in Community ports.

66 The Commission acknowledges in paragraph 18 of its defence that the contested regulation prevented the applicant from performing a contract in respect of a quantity of 2 500 tonnes of sugar.

67 The Court considers that it follows that the applicant in Case T-110/00 also concluded contracts, performance of which was prevented in whole or in part by the contested regulation.

68 The Commission states, however, that the applicant in Case T-110/00 was only temporarily prevented from performing its contracts. Sugar is a commodity which does not perish quickly so the deliveries could have been made after the date on which the contested regulation ceased to apply.

69 The Commission's argument is based on a misinterpretation of the case-law cited in paragraph 57 above. Whether the products to which a safeguard measure, which is by its nature temporary, relates are perishable or not is irrelevant as regards assessing the admissibility of an action for annulment brought by an undertaking concerned against such a measure. It should, moreover, be stated that the safeguard measures in *Piraiki-Patraiki and Others* v *Commission*, cited in paragraph 52 above and Joined Cases T-480/93 and T-483/93 *Antillean Rice Mills and Others* v *Commission*, cited in paragraph 45 above, related to products which would not perish quickly either, namely cotton and rice.

70 The Court finds that the situation of the applicant in Case T-110/00 *Free Trade Foods* v *Commission* is fully comparable to that of the applicants whose action was declared admissible in *Piraiki-Patraiki and Others* v *Commission*, cited in paragraph 52 above, and the applicants in Joined Cases T-480/93 and T-484/93 *Antillean Rice Mills and Others* v *Commission*, cited in paragraph 45 above. That applicant must therefore be regarded as being individually concerned by the contested regulation.

71 Lastly, the applicant in Case T-159/00 produced, at the request of the Court, a record dated 26 January 2000 of telephone conversations between the applicant and a Netherlands company, which show that the applicant had undertaken to deliver to that company 700 tonnes of white lump sugar under that company's trade mark annually, starting in April/May 2000.

72 In a letter from the Netherlands company concerned dated 30 May 2000 the company complains to the applicant that the latter has not complied with its obligations concerning the delivery of white lump sugar under the abovementioned trade mark.

73 Since the letter was sent during the period in which the contested regulation was in force, the Court considers that it may properly be concluded that the contested regulation also prevented the applicant in Case T-159/00 from performing at least one contract.

74 The Commission, however, observed at the hearing that the record of 26 January 2000 referred to the conclusion of a formal contract between the applicant and the Netherlands company concerned during the sixth week of 2000. Since the applicant in Case T-159/00 did not produce that contract, or any other formal contract, it has failed to show that the contested regulation prevented it from performing a contract.

75 That argument must be rejected. It is clear from the record of the telephone conversations in question and from the letter of 30 May 2000 that there was an agreement between the two parties regarding the delivery of 700 tonnes of sugar, which could not be honoured as a result of the adoption of the contested regulation. Those facts show that the applicant in Case T-159/00 is individually concerned within the meaning of the fourth paragraph of Article 230 EC.

76 Lastly, at the hearing the Commission maintained that the three actions should be declared inadmissible because the applicants had not taken the necessary steps to obtain import licences before the entry into force of the contested regulation.

77 In *Antillean Rice Mills and Others* v *Council*, cited in paragraph 52 above (paragraph 65), the Court held that the contested safeguard measure had not prevented the applicant in that case from performing contracts which it had concluded before the adoption of the safeguard measures because 'more than fifteen days [had] elapsed between the date of signature of the contracts and the safeguard measures taking effect' and the applicant in that case, 'which was informed of the imminent adoption of those measures, was perfectly able, for the purposes of performing the contracts pending, to take the necessary steps to obtain import licences'.

78 The Court points out that, under Article 2(2) of the contested regulation, the issuing of import licences for products referred to in the contested regulation is governed by Articles 2 to 6 of Regulation No 2553/97, which are to apply *mutatis mutandis*.

79 Article 6 of Regulation No 2553/97 provides:

'The term of validity of import licences shall expire on the last day of the second month following that of their issue'.

80 Even if the applicants had been aware of the imminent adoption of the contested regulation and its content, obtaining import licences before the entry into force of the contested regulation would not have enabled them to perform all of their contractual obligations during the period of validity of the contested regulation, from 1 March to 30 September 2000.

81 The Court concludes from this that the applicants in Cases T-94/00, T-110/00 and T-159/00 are individually concerned by the contested regulation.

82 Hence the applications for annulment in all three cases are admissible.

2. *The merits*

83 The applicants put forward in support of their actions three pleas common to them all. The first alleges various infringements of Article 109(1) of the OCT Decision. The second alleges breach of the principle of proportionality. The third alleges infringement of the preferential status accorded to the OCTs under the EC Treaty.

84 The applicant in Case T-94/00 puts forward four other pleas, namely, infringement of the Safeguards Agreement, breach of the principle of the protection of legitimate expectations, abuse of powers and finally infringement of Article 253 EC.

85 The applicants in Cases T-110/00 and T-159/00 raise a plea of illegality against Regulation No 2553/97, to which the contested regulation refers.

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

Preliminary observations

86 The Court observes that the Community institutions have a wide discretion in the application of Article 109 of the OCT Decision, which entitles them to take or authorise safeguard measures where certain conditions are met. 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 (Case C-110/97 *Netherlands* v *Council* [2001] ECR I-8763, paragraph 61 and case-law cited therein).

87 Under Article 109(1) of the OCT Decision the Commission 'may' take safeguard measures '[i]f, as a result of the application of [the OCT Decision] serious disturbances occur in a sector of the economy of the Community or one or more of its Member States, or their external financial stability is jeopardised', or 'if difficulties arise which may result in a deterioration in a sector of the Community's activity or in a region of the Community'. The Court of Justice held in Case C-390/95 P *Antillean Rice Mills and Others* v *Commission*, cited in

paragraph 53 above (paragraph 47) that, in the first hypothesis, 'the existence of a causal link must be established because the purpose of the safeguard measures must be to iron out or reduce the difficulties which have arisen in the sector concerned. In the second hypothesis, on the other hand, it is not a requirement that the difficulties which justify the imposition of a safeguard measure result from the application of the OCT Decision'.

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

89 The first plea comprises in essence two parts. In the first part the applicants submit that there are no difficulties within the meaning of Article 109(1) of the OCT Decision. In the second part they submit that there is no risk that a sector of Community activity will deteriorate and they cast doubt on the existence of any link between imports of sugar and mixtures under the EC/OCT cumulation of origin regime, on the one hand, and the situation on the Community market, on the other.

The first part of the plea, concerning the alleged absence of 'difficulties' within the meaning of Article 109(1) of the OCT Decision

— The contested regulation

90 In the contested regulation the Commission noted the existence of various difficulties within the meaning of Article 109(1) of the OCT Decision.

91 First of all, in the first recital it notes that 'imports of sugar (CN code 1701) and mixtures of sugar and cocoa falling within CN codes 1806 10 30 and 1806 10 90 originating in the [OCT]... in particular those imports with EC/OCT cumulation of origin' had been 'increasing greatly since 1997'. It explains that such imports 'have gone from zero in 1996 to more than 48 000 tonnes in 1999'.

92 The Commission goes on to explain in the fourth recital in the preamble to the contested regulation that:

'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 [WTO Agreements] and have been reduced from 1 555 600 tonnes for the 1995/96 marketing year to 1 273 000 tonnes for the 2000/2001 marketing year'.

93 In the light of the applicants' arguments, it is necessary to consider first of all the accuracy of some of the information given by the Commission in the first and fourth recitals in the preamble to the contested regulation and to assess whether that information, taken altogether, shows the existence of difficulties within the meaning of Article 109(1) of the OCT Decision.

— The accuracy of the information given by the Commission in the first and fourth recitals in the preamble to the contested regulation

94 With regard to the increase in imports referred to in the first recital in the preamble to the contested regulation, the applicants observe, first of all, that in the OCTs the production of sugar and mixtures qualifying for EC/OCT cumulation of origin is a fairly recent industrial activity which developed after Decision 97/803 made it practically impossible to export sugar qualifying for ACP/OCT cumulation of origin to the Community from 1 December 1997. They explain that after the launch of an infant industry growth is observed during the first years of activity up to a certain level of profitability, following which the volume stabilises. Imports of sugar and mixtures into the Community therefore stabilised during the second half of 1999. In those circumstances it is misleading to speak of imports of the products concerned increasing greatly.

95 In that regard, the Court observes that it is clear from statistics from the Statistical Office of the European Communities (Eurostat) produced by the Commission that in 1996 imports of sugar originating in the OCTs amounted to 2 251.1 tonnes and there were no imports of mixtures originating in the OCTs. The applicants do not deny that the 2 251.1 tonnes of sugar imported was sugar with ACP/OCT cumulation of origin. On the one hand, they do not deny the statement made in the contested regulation that in 1996 there were no imports of sugar into the Community under the EC/OCT cumulation of origin regime. On the other hand, the applicants expressly acknowledge that the production of sugar qualifying for EC/OCT cumulation of origin is an industrial activity which grew up when Decision 97/803 made exports of sugar qualifying for ACP/OCT cumulation of origin practically impossible.

96 Next, it is clear from the Eurostat statistics that in 1999 sugar imports into the Community under the EC/OCT cumulation of origin regime amounted to 35 791.8 tonnes whilst imports of mixtures amounted to 12 420 tonnes.

97 The Commission was therefore correct in finding in the first recital in the preamble to the contested regulation that imports into the Community of sugar falling within CN code 1701 and of mixtures of sugar and cocoa falling within CN codes 1806 10 30 and 1806 10 90 originating in the OCTs with EC/OCT cumulation of origin went 'from zero in 1996 to more than 48 000 tonnes in 1999'. Irrespective of whether those imports came from an infant industry, they had, as the Commission rightly states, 'been increasing greatly' (first recital in the preamble to the contested regulation).

98 Secondly, the applicants challenge the statement made in the fourth recital in the preamble to the contested regulation that imports into the Community of sugar under the EC/OCT cumulation of origin regime lead to exports with refund of a corresponding quantity of Community sugar. Various factors could affect the level of exports, such as changes in Community consumption or poor harvests in the Community. The applicant in Case T-94/00 adds that sugar qualifying for EC/OCT cumulation of origin imported from the OCTs cannot claim export refunds on re-export. Consequently all the OCT sugar is sold on the European market and cannot be exported a second time.

99 In that regard, the Court observes first of all that the applicants acknowledge that there is a surplus on the Community sugar market. Community production of A and B sugar, that is to say, sugar which may be sold on the Community market and which receives a refund on export, already exceeds the Community sugar consumption. The applicants are merely stating that the surplus on the Community sugar market is structural and has existed for several decades now (see paragraph 112 below).

100 In addition, as the Court held in Case C-17/98 *Emesa Sugar* [2000] ECR I-675, paragraph 56, the Community is under an obligation to import a certain quantity of sugar from non-member countries under the WTO Agreements.

101 In those circumstances, if the production of Community sugar is not reduced, any additional imports of sugar under the EC/OCT cumulation of origin regime will increase the amount of surplus sugar on the Community market and will lead to an increase in subsidised exports (see *Emesa Sugar*, cited in the preceding paragraph, paragraph 56).

102 The Court therefore finds that the Commission was right in stating in the fourth recital in the preamble to the contested regulation that 'any imports into the Community therefore involve a corresponding quantity of Community sugar which cannot be sold on that market having to be exported'.

103 Contrary to what the applicant in Case T-94/00 states, the Commission does not claim in the contested regulation that sugar imported into the Community under the EC/OCT cumulation of origin regime is re-exported. However, sugar with EC/OCT cumulation of origin imported into the Community is competing with Community sugar. A fall in demand for Community sugar will, in view of the production surplus, lead to an increase in subsidised exports.

104 Third, the applicant in Case T-94/00 points out that it is stated in the footnote to 'Schedule CXL — European Communities' annexed to the WTO Agreements that Community exports of a quantity equivalent to the quantities of preferential imports of sugar originating in the ACP States and India are not taken into account when calculating the ceiling for subsidised exports. According to the applicant, imports of sugar originating in the OCTs should be regarded as preferential imports in the same way as imports from ACP States and India. The Commission is therefore not entitled to rely on its obligations under the WTO Agreements as grounds for restricting sugar imports into the Community under the EC/OCT cumulation of origin regime.

105 The Court considers that that argument must be rejected. Unlike the provision it makes in respect of imports of sugar originating in the ACP States and India, Schedule CXL does not make any exception for imports of sugar from the OCTs. Since sugar imports into the Community under the EC/OCT cumulation of origin regime involve a corresponding amount of Community sugar having to be exported, such imports must be taken into account in order to check whether the ceilings laid down in Schedule CXL can be complied with. Negotiations should be entered into under Article XXVIII of GATT in order to amend the footnote to Schedule CXL so that it will also apply to sugar from the OCTs, and compensation should be offered by the Community in exchange for amendments to its own concessions and commitments.

106 The Court finds in the light of the foregoing that the applicants put forward nothing to show that the Commission committed errors of fact or of law in the first and fourth recitals in the preamble to the contested regulation.

— The existence of difficulties within the meaning of Article 109(1) of the OCT Decision with regard to the information given in the first and fourth recitals in the preamble to the contested regulation

107 The applicants claim that neither the increase in imports into the Community of sugar and mixtures under the EC/OCT cumulation of origin regime, nor surplus production, nor obligations under the WTO Agreements constitute difficulties within the meaning of Article 109(1) of the OCT Decision which would justify the adoption of a safeguard measure.

108 The Court observes, by way of a preliminary point, that the Commission has never claimed that each of the difficulties it has identified could on its own justify the adoption of a safeguard measure. On the contrary, it is clear from the

contested regulation that the difficulties cited by the Commission are all closely linked. According to the Commission, the effect of the market surplus is that each additional imported tonne leads to an increase in export subsidies, an increase which in turn is likely to run up against the limits laid down in the WTO Agreements.

109 As regards the increase in imports, the applicants point out that the sugar industry in the OCTs is an infant industry. Imports of sugar and mixtures into the Community stabilised during the second half of 1999 and there was no real risk of those imports increasing again after 1999. In those circumstances, the increase in imports since 1997 referred to in the first recital in the preamble to the contested regulation does not constitute a difficulty within the meaning of Article 109(1) of the OCT Decision.

110 In that regard, the Court observes that imports into the Community of sugar and mixtures with EC/OCT cumulation of origin increased greatly. They went from zero in 1996 to more than 48 000 tonnes in 1999 (see paragraphs 95 to 97 above). The fact that the increase in imports of sugar and mixtures under the EC/OCT cumulation of origin regime resulted from the fact that the industry was an infant industry and not fully mature is irrelevant as regards assessing whether the imports in question, on the date on which the contested regulation was adopted, together with the surplus on the Community market and the obligations under the WTO Agreements, constituted 'difficulties' within the meaning of Article 109(1) of the OCT Decision.

111 The assertion that there was no risk of imports of sugar and mixtures into the Community from the OCTs increasing after 1999 must also be rejected. In that regard, it should be observed that as early as 1997, at the time of the adoption of Decision 97/803 (see paragraph 9 above), sugar producing capacity in the OCTs was estimated to be between 100 000 and 150 000 tonnes per annum (see Case T-43/98 *Emesa Sugar* v *Council* [2001] ECR II-3519, paragraph 137).

112 As regards the surplus production and the obligations under the WTO Agreements, the applicants observe, first, that there has been surplus production for some 30 years and, second, that the WTO Agreements, which lay down ceilings for subsidising sugar exports, were concluded in 1994. These are not therefore 'difficulties' within the meaning of Article 109(1) of the OCT Decision.

113 The Court observes that the volume of sugar exports which may be subsidised was reduced under the WTO Agreements, in particular by Schedule CXL. Although in the 1995/1996 marketing year the volume of exports which could be subsidised was 1 555 600 tonnes, that volume was reduced to 1 273 500 tonnes for the 2000/2001 marketing year.

114 In view of the surplus on the Community sugar market, any additional sugar imports into the Community involve a corresponding quantity of Community sugar having to be exported (see paragraphs 99 to 102 above). An increase in imports of sugar or mixtures qualifying for EC/OCT cumulation of origin is therefore likely to raise difficulties with regard to the obligations under the WTO Agreements.

115 Even though the ceiling for the 2000/2001 marketing year had been known since 1994 and even though the surplus on the Community market had existed for decades, it was still reasonable for the Commission to consider that the fact that imports of sugar and mixtures under the EC/OCT cumulation of origin regime increased greatly constituted, in the light of the surplus on the Community market, a 'difficulty' within the meaning of Article 109(1) of the OCT Decision, all the more since the ceiling laid down in the WTO Agreements already necessitated a substantial reduction in Community production quotas for the 2000/2001 marketing year (see paragraphs 125 to 128 below).

116 Lastly, the applicants observe that, in the context of the generous export subsidy scheme and in view of the purpose of the provisions of Part Four of the Treaty, the quantities of sugar imported from the OCTs could not be regarded as a 'cost factor' for the Community. According to the applicants, sugar imports from the OCTs do not constitute a drain on the Community budget. In so far as such imports involve a corresponding quantity of Community sugar having to be exported, the export refunds for such exports are borne by the European beet sugar producers under the self-financing system and so ultimately by European consumers. The applicant in Case T-94/00 adds that only the export refunds for re-exports of preferential sugar (see paragraph 104 above) are chargeable to the budget of the European Agricultural Guidance and Guarantee Fund (EAGGF) and have budget implications. However, since sugar imported into the Community under the EC/OCT cumulation of origin regime is not preferential sugar, imports of sugar from the OCTs will have no budgetary implications.

117 The applicant in Case T-94/00 calculates that even if there were a connection between the 50 000 tonnes of sugar imported under the ACP/OCT and EC/OCT cumulation of origin regimes in 1999 and the corresponding increase in subsidised exports, the imports in question would have generated expenditure on export refunds of EUR 26 million (EUR 520 × 50 000), an amount which would represent only 0.006% of the EAGGF budget (or 3.5% of the EAGGF budget for preferential sugar imports). The situation is therefore not one which could have justified the adoption of a safeguard measure under Article 109(1) of the OCT Decision.

118 The Court notes that the difficulties mentioned in the contested regulation are the fact that imports of sugar or mixtures qualifying for EC/OCT cumulation of origin increased greatly, the surplus on the Community sugar market giving rise to subsidised exports, and the obligations arising under the WTO Agreements (see paragraphs 90 to 92 above).

119 In view 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.

120 Even if exports of Community sugar are to a large extent financed by the Community sugar industry and hence by the consumer, the Court finds that the WTO Agreements limit export subsidies irrespective of who ultimately bears the cost of those subsidies, and that each additional import aggravates the situation on a market which is already in surplus.

121 It follows from the foregoing that none of the arguments put forward in connection with the first part of the plea can be upheld.

The second part of the plea, concerning the deterioration in a sector of Community activity, or the threat of this, and regarding the link between imports of sugar and mixtures under the EC/OCT cumulation of origin regime and the situation on the Community market

122 In the fifth recital in the preamble to the contested regulation the Commission explains that:

'[t]he operation of the [common organisation of the markets] in sugar may be greatly destabilised by these difficulties. 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 OCTs will mean a greater reduction in the quota for Community producers and a greater guaranteed income loss for them.'

123 The applicants claim that if there were a fall in prices on the sugar market or a radical deterioration in the situation in the sugar sector which is translated into losses, redundancies, etc. there would be a deterioration or threat of deterioration within the meaning of Article 109(1) of the OCT Decision. However, the European sugar industry is in good health. Sugar prices are not falling.

124 The Court considers that the circumstances to which the applicants refer are such as to show that there is deterioration or the threat of deterioration in a sector of the Community's activity within the meaning of Article 109(1) of the OCT Decision. However, a situation in which a reduction in the production quotas of Community producers is necessary is also indicative of a deterioration in a sector of the Community's activity. Such a reduction directly affects the incomes of Community producers.

125 The applicants contest the need to reduce Community sugar production quotas by 500 000 tonnes as a result of the WTO Agreements. They refer to a Commission press release of 4 October 2000 which mentioned a reduction of 115 000 tonnes. Moreover, the effect of a reduction of 500 000 tonnes in production quotas, and *a fortiori* of 115 000 tonnes, is less significant than the effect of the variations in volume (some of them more than 15%) which had already occurred naturally as regards beet sugar production in the Community during the period from 1997/1998 to 1999/2000. The 500 000 tonne reduction in production suggested by the Commission is equivalent to approximately 3% of

Community production and of areas under cultivation. Whilst taking into account the fact that in reality only a reduction of 115 000 tonnes is necessary, the applicants maintain that the reduction in production quotas cannot be regarded as resulting in a deterioration or a significant threat of deterioration in the Community sugar sector within the meaning of Article 109(1) of the OCT Decision.

126 The Court notes in that regard that Community sugar production exceeds sugar consumption within the Community, irrespective of the annual fluctuations in sugar production. Moreover, as the Court pointed out in *Emesa Sugar*, cited in paragraph 100 above (paragraph 56), the Community is obliged 'to import a certain quantity of sugar from non-member countries under agreements concluded within the [WTO]'. Added to all this are 'imports of cane sugar from ACP States to meet the specific demand for that product' (*Emesa Sugar*, cited in paragraph 100 above, paragraph 56).

127 The applicants do not dispute that there is a link between compliance with the obligations under the WTO Agreements, on the one hand, and the reduction of the Community production quotas announced in the contested regulation, on the other. They do, however, dispute the figure of 500 000 tonnes contained in the contested regulation.

128 It is clear from Commission Regulation (EC) No 2073/2000 of 29 September 2000 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), that the Commission did in fact reduce the production quotas for the 2000/2001 marketing season by 478 277 tonnes for A and B sugar. The announced reduction of 115 000 tonnes to which the applicants refer relates to a structural reduction, and therefore not one limited to a particular marketing year, which is stated in the Commission proposal submitted on 16 October 2000

for a new Council Regulation on the common organisation of the market in the sugar sector (OJ 2001 C 29 E, p. 315). That proposed structural adaptation does not, however, show that a single reduction of approximately 500 000 tonnes for the 2000/2001 marketing year would not have been necessary.

129 The applicants next submit that the level of imports of sugar and mixtures into the Community under the EC/OCT cumulation of origin regime is negligible, when the volume of imports of sugar originating in the OCTs is compared with the Community production of sugar and the quantities of sugar imported from some non-member countries.

130 The applicant in Case T-94/00 calculates that in 1999 imports of sugar and mixtures qualifying for ACP/OCT and EC/OCT cumulation of origin represented 0.320% (CN code 1701) and 0.102% (CN code 1806) of Community production. In 1999 imports with EC/OCT cumulation of origin represented 40 000 tonnes, that is to say, less than a single ACP State like Barbados (49 300 tonnes) can import into the Community each year.

131 That argument cannot succeed. The Court notes in that regard that it was reasonable for the Commission to consider that the fact that imports of sugar and mixtures under the EC/OCT cumulation of origin regime increased greatly in the specific context of the surplus Community sugar market and the obligations under the WTO Agreements constituted 'difficulties' within the meaning of Article 109(1) of the OCT Decision.

132 Taking into account the obligations under the WTO Agreements, which limit export subsidies, it is reasonable to consider that '[a]ny further import of sugar or products with a high sugar content from the OCTs will mean a greater reduction in the quota for Community producers and a greater guaranteed income loss for

them' (fifth recital in the preamble to the contested regulation). The Court makes clear in that regard that imports of sugar or mixtures qualifying for EC/OCT cumulation of origin represented at the time when the contested regulation was adopted approximately 10% of the reduction in Community production quotas announced in the contested regulation and that the capacity for sugar production in the OCTs was between 100 000 and 150 000 tonnes per annum (see paragraph 111 above).

133 The Court of Justice has held that a reduction in Community production in order to meet an increase in imports of sugar originating in the OCTs 'disturbs the common organisation of the market[s] in sugar... and is... contrary to the objectives of the common agricultural policy' (*Emesa Sugar*, cited in paragraph 100 above, paragraph 56).

134 In that context, it was reasonable for the Commission to consider in the fifth recital in the preamble to the contested regulation that the common organisation of the markets in sugar could be greatly destabilised by increased imports of sugar originating in the OCTs.

135 The applicant in Case T-94/00 points out, however, that the financial and quantity ceilings provided for in the WTO Agreements apply from the start of each sugar marketing year. In the context of the WTO Agreements, the 2000/2001 sugar marketing year ran from 1 October to 30 September as regards the quantity ceilings and from 1 July to 30 June as regards the financial ceilings. In those circumstances, the Community had, during the period until 1 July 2000 or until 1 October 2000, respectively, adequate room for manœuvre with regard to the limits laid down in the WTO Agreements. The Community was in fact exporting less sugar with refund than the WTO Agreements allowed it to export.

136 The Commission stated in the sixth recital in the preamble to the contested regulation, however:

'Imports occur in a period of some three months following applications for the issue of licences as a result of their period of validity. As a result, all imports taken together, including those in the months preceding the start of the 2000/2001 marketing year, dictate the situation on the market during that marketing year and generate the detrimental effects mentioned in recital (5) above'.

137 The Court observes that Article 6 of Regulation No 2553/97, declared applicable *mutatis mutandis* by Article 2(2) of the contested regulation, restricts to about three months the period of validity of import licences for imports of sugar and mixtures under the EC/OCT cumulation of origin regime. In those circumstances, it was reasonable for the Commission to consider that the safeguard measure should enter into force as early as 1 March 2000.

138 Furthermore, the increase in exports caused by the growth in imports of sugar and mixtures under the EC/OCT cumulation of origin regime in any event increased the total of export subsidies which the Community budget would have had to bear and the cost of which would have been indirectly borne by Community producers through production levies.

139 Even assuming the WTO Agreements still offered the possibility of accepting the increase in imports of sugar and mixtures under the EC/OCT cumulation of origin regime until 1 July 2000, the fact remains that the applicant in Case T-94/00 has not shown that the Commission committed a manifest error of

assessment in considering that increased imports of sugar or mixtures qualifying for EC/OCT cumulation of origin already risked destabilising the Community sugar sector before that date.

140 The applicant in Case T-94/00 goes on to calculate that the reduction in production of 500 000 tonnes per annum announced in the fifth recital in the preamble to the contested regulation creates, at the current level of prices on the world market and of refunds per tonne, an export capacity of approximately 150 000 tonnes, which is amply sufficient to allow imports of sugar from the OCTs.

141 However, the Court considers that the capacity to which the applicant refers must enable the Community both to counteract a negative trend in prices on the world market and to comply with the obligations under the WTO Agreements. In addition, it would be contrary to the objectives of the common agricultural policy to reduce Community production quotas in order to allow an increase in sugar imports (*Emesa Sugar*, cited in paragraph 100 above, paragraph 56).

142 In any event, the applicant concerned has not shown that the Commission committed a manifest error in its assessment of the information available to it at the time when the contested regulation was adopted, when it considered that the situation on the Community sugar market, which already made significant reductions in production quotas necessary, was in danger of deteriorating further owing to the fact that imports into the Community of sugar and mixtures under the EC/OCT cumulation of origin regime had increased greatly.

143 The applicants in Cases T-110/00 and T-159/00 further understand that an importation of 110 000 tonnes of sugar originating in the OCTs had already been

taken into account when it was decided to reduce production quotas by approximately 500 000 tonnes. The applicant in Case T-94/00 states that the Commission, in its EU sugar balance sheet for the 1999/2000 marketing year, took into account imports of 110 000 tonnes of sugar originating in the OCTs. It is therefore a fallacy on the part of the Commission to suggest, in the fifth recital, that importing sugar and mixtures under the EC/OCT cumulation of origin regime 'will mean a greater reduction in the quota for Community producers' in addition to the reduction of 500 000 tonnes announced in the contested regulation.

144 The Court finds that the applicants in Cases T-110/00 and T-159/00 have adduced no evidence in support of their last argument, which must therefore be rejected. The reference made by the applicant in Case T-94/00 to the planning for the 1999/2000 marketing year is totally irrelevant since the contested regulation only mentions the production quotas for the 2000/2001 marketing year, which are to be reduced. Moreover, even though in 1999 the Commission had taken into account for the 1999/2000 marketing year an importation of 110 000 tonnes of sugar qualifying for EC/OCT cumulation of origin, that does not show that the Commission committed a manifest error of assessment when it considered, at the time when the contested regulation was adopted in February 2000, that difficulties had arisen which might greatly destabilise the common organisation of the markets in sugar and which justified the adoption of a safeguard measure.

145 The applicant in Case T-94/00 further observes that imports of non-preferential sugar in processed products amount to 520 000 tonnes per annum. Even if customs duties are payable on the sugar component of such processed products, the fact remains, in the applicant's submission, that those imports affect demand for Community sugar within the Community. No action has been taken against such imports under Article 134 EC.

146 The Court finds, however, that the fact that customs duties are payable on the sugar component of processed products necessarily leads to a different assessment

of the possible destabilising effects of such imports in comparison with sugar imports under the EC/OCT cumulation of origin regime, which are exempt from customs duties under Article 101(1) of the OCT Decision. In any event, inaction on the part of the Commission with regard to imports from third countries is not a matter that could affect the legality of the contested regulation.

147 The applicant in Case T-94/00 states that, in order to assess the effects of the alleged 'difficulties' within the meaning of Article 109(1) of the OCT Decision, the Commission should also have taken into account the level of the opening and closing stocks and of exports in the form of processed products. It refers in that respect to the EU sugar balance sheet.

148 That argument must be rejected for lack of specification. The applicant does not explain how the alleged failure to take into consideration the factors mentioned in the preceding paragraph shows that the Commission committed a manifest error of assessment when it considered that the difficulties identified in paragraphs 91 and 92 above might greatly destabilise the common organisation of the markets in sugar.

149 The applicants and the Netherlands Government also comment that, owing to a shortage which arose in Spain, the Commission decided in July 1999 to release the stock of 66 000 tonnes held by the Spanish undertakings (Commission Decision 1999/444/EC of 7 July 1999 providing for the release of the minimum stocks and the partial release of the carryover stocks held by the sugar undertakings established in Spain, in order to ensure supplies to the southern region of Spain during the period from 1 July to 30 November 1999, OJ 1999 L 174, p. 25). In addition, in Case T-82/96 *ARAP and Others* v *Commission*

[1999] ECR II-1889, in the context of an action for annulment against the Commission's decision of 11 January 1996 not to raise objections to State aids N11/95 for DAI, the Court of First Instance held that the increase in subsidised sugar production of 70 000 tonnes in Portugal had no significant effect on the common market. Therefore, reduced imports of sugar and mixtures under the EC/OCT cumulation of origin regime would not disturb the market either.

150 That argument must be rejected. The circumstance relied upon does not show that the Commission committed a manifest error of assessment when it found at the time when the contested regulation was adopted, in February 2000, that difficulties had arisen which might greatly destabilise the common organisation of the markets in sugar. There is nothing from which it may be concluded that the situation on the Community sugar market at the time when the Commission took the decisions referred to in the preceding paragraph was comparable to that existing on the market at the time when the contested regulation was adopted.

151 The applicants in Cases T-110/00 and T-159/00 observe that Community suppliers sell C sugar to sugar processing undertakings in the OCTs at a high price. That price is well above the world sugar price. Community producers therefore also benefit under the EC/OCT cumulation of origin rule. There is no risk of a loss of income for those producers as a result of imports of sugar qualifying for EC/OCT cumulation of origin.

152 That argument must be rejected for lack of specification. The applicants do not provide any information regarding the prices charged by Community producers for C sugar. Moreover, even if the price asked for C sugar exceeded the world sugar price that would not necessary mean that it was a profitable price for Community producers.

153 Lastly, the applicants contend that the Commission, by presenting imports of sugar qualifying for EC/OCT cumulation of origin as causing 'difficulties', recognised that the safeguard measure falls within the first hypothesis identified by the Court of Justice in paragraph 47 of its judgment in Case C-390/95 P *Antillean Rice Mills and Others* v *Commission*, cited in paragraph 53 above (see also Joined Cases T-32/98 and T-41/98 *Netherlands Antilles* v *Commission* [2000] ECR II-201). In those circumstances, the Commission should have demonstrated the existence of a causal link between the imports of OCT products and the disturbances on the Community sugar market, which, however, it failed to do.

154 That argument must be rejected. First, it is clear from the contested regulation that it was based on the second hypothesis described in Article 109(1) of the OCT Decision. The Commission took the safeguard measure when 'as a result of the difficulties there [was] a risk that a sector of Community activity [would] deteriorate' (seventh recital in the preamble to the contested regulation). Second, even though the growth in imports of sugar and mixtures resulted from the application of the OCT Decision, that by no means meant that the Commission should have based the contested regulation on the first hypothesis described in Article 109(1) of the OCT Decision. The characteristics of the two separate hypotheses set out in Article 109(1) may come together in one situation (Opinion of Advocate General Léger in *Netherlands* v *Council*, cited in paragraph 86 above [2001] ECR I-8768, and in *Antillean Rice Mills* v *Council*, cited in paragraph 52 above [2001] ECR I-8951, point 85 of the Opinion).

155 It follows from the foregoing that the second part of the first plea also cannot be upheld.

156 The first plea must therefore be rejected in its entirety.

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

157 The applicants claim, under this plea, that in adopting the contested regulation the Commission failed to respect the principle of proportionality set out in Article 109(2) of the OCT Decision. That provision reads:

'... priority shall be given to such measures as would least disturb the functioning of the association and the Community. These measures shall not exceed the limits of what is strictly necessary to remedy the difficulties that have arisen'.

158 The Court observes, by way of a preliminary point, 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 (Case C-390/95 P *Antillean Rice Mills and Others* v *Commission*, cited in paragraph 53 above, paragraphs 51 and 52; Case T-162/94 *NMB France and Others* v *Commission* [1996] ECR II-427, paragraph 69 and Case T-87/98 *International Potash Company* v *Council* [2000] ECR II-3179, paragraph 39).

159 First, the applicant in Case T-94/00 claims that the Council knew when it adopted Decision 91/482 in 1991 that imports of agricultural products from the OCTs into the Community might lead to additional expenditure chargeable to the budget for the common agricultural policy. The growth in imports is the direct consequence of the OCT Decision. Where agricultural products are

authorised to penetrate the Community market so that they are able to benefit from the high level of prices prevailing on it, supply will necessarily increase. In those circumstances, the Community interest justifying the application of Article 109(1) of the OCT Decision would have to be particularly strong, which is not so in the present case.

160 In that regard, the Court points out that it is clear from the analysis made in paragraphs 94 to 121 above that it was reasonable for the Commission to consider that the fact that imports of sugar and mixtures under the EC/OCT cumulation of origin regime increased greatly, in the specific context of the surplus Community sugar market and the obligations under the WTO Agreements, constituted 'difficulties' within the meaning of Article 109(1) of the OCT Decision. Moreover, it is clear from the analysis made in paragraphs 122 to 155 above that it was reasonable for the Commission to consider that those difficulties might greatly destabilise the common organisation of the markets in sugar.

161 That being so, the Commission was entitled to adopt a safeguard measure on the basis of Article 109(1) of the OCT Decision directed against imports of sugar and mixtures under the EC/OCT cumulation of origin regime.

162 The applicant's present argument does not, moreover, concern the proportionality of the measure taken. The fact that an increase in imports was already foreseeable in 1991 is irrelevant when it comes to determining whether the measure adopted in February 2000 constituted an appropriate and proportionate response 'to remedy the difficulties that ha[d] arisen' within the meaning of Article 109(2) of the OCT Decision.

163 Secondly, the applicants claim that a safeguard measure must be a temporary measure. By adopting in succession Regulation No 2423/1999, followed by the contested regulation, the Commission infringed Article 109(2) of the OCT Decision.

164 In that regard, the Court points out, first, that, in the application of Article 109 of the OCT Decision the Community institutions enjoy a wide discretion, which corresponds to the policy responsibilities entrusted to them by Articles 182 to 188 EC (Case C-301/97 *Netherlands* v *Council* [2001] ECR I-8853, paragraph 144).

165 Second, in cases involving such a discretion, the Community judicature 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 (Case C-301/97 *Netherlands* v *Council*, cited in the preceding paragraph, paragraph 145).

166 In the present case, the applicants have failed to show that the exercise by the Commission of its discretion in adopting, by the contested regulation, a second safeguard measure directed against imports of sugar and mixtures qualifying for EC/OCT cumulation of origin was vitiated by a manifest error.

167 The analysis made in paragraphs 94 to 155 above shows that it was reasonable for the Commission to consider that difficulties involving the risk that a sector of Community activity would deteriorate did exist at the time when the contested regulation was adopted.

168 In any event, the contested regulation, which was applicable from 1 March until 30 September 2000, only imposed an exceptional, partial and temporary restriction on the importation into the Community, free of customs duty, of sugar or mixtures under the EC/OCT cumulation of origin regime. That regulation, which limited duty-free access to the Community market for sugar originating in the OCT, within limits compatible with the situation on that

market, whilst retaining preferential treatment for that product in a manner consistent with the objectives of the OCT Decision (see paragraphs 198 to 211 below), was a suitable instrument for attaining the objective sought by the Commission and did not go beyond what was necessary to do so (see, to that effect, Case C-301/97 *Netherlands* v *Council*, cited in paragraph 164 above, paragraph 148).

169 Thirdly, the applicants point out that Regulation No 2423/1999 imposed a minimum price for imports of sugar under the EC/OCT cumulation of origin regime. The eighth recital in the preamble to that regulation provides that the imposition of a minimum price would ensure attainment of the objective of avoiding the destabilising effects of sugar imports. The Commission does not explain in the contested regulation why the introduction of a minimum price was no longer considered appropriate for attaining the objective sought.

170 The Court observes that, whilst ensuring that the rights of the OCTs are respected, the Community Courts cannot, without running the risk of overriding the wide discretion of the Commission, substitute this 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 the measure has not been proved to be manifestly inappropriate for attaining the objective pursued (see, to that effect, Case C-280/93 *Germany* v *Council* [1994] ECR I-4973, paragraph 94, Case C-189/01 *Jippes and Others* [2001] ECR I-5689, paragraph 83, Case C-301/97 *Netherlands* v *Council*, cited in paragraph 164 above, paragraph 135).

171 The applicants have not established that the Commission, by restricting imports into the Community of sugar or mixtures qualifying for EC/OCT cumulation of origin to 3 340 tonnes for the period during which the contested regulation was in force, 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 the contested regulation was adopted (see, to that effect, Case C-301/97 *Netherlands* v *Council*, cited in paragraph 164 above, paragraph 136).

172 In any event, it is clear from the Eurostat statistics that at the time when the contested regulation was adopted imports of sugar qualifying for EC/OCT cumulation of origin were higher than at the time when Regulation No 2423/1999 was adopted, which casts doubt on the effectiveness of the measure introduced by the latter regulation, that is to say, a minimum import price for the product concerned.

173 In those circumstances it was reasonable for the Commission to take the view, in seeking to reconcile the objectives of the common agricultural policy and of the association of the OCTs with the Community, that the temporary restriction of imports of sugar and mixtures under the EC/OCT cumulation of origin regime was an appropriate means of attaining the objective pursued and that it did not go beyond what was necessary to do so (see, to that effect, Case C-301/97 *Netherlands* v *Council*, cited in paragraph 164 above, paragraph 137).

174 Fourthly, the applicants maintain that the ceiling laid down for sugar which may be imported under the EC/OCT cumulation of origin regime, namely 3 340 tonnes of sugar over seven months, infringes the principle of proportionality.

175 Thus, in the first place, the Commission infringed Article 109(2) of the OCT Decision by excluding imports made in 1999 from its calculation of the import quota for sugar or mixtures qualifying for EC/OCT cumulation of origin. The applicants explain in that regard that imports into the Community of sugar qualifying for ACP/OCT cumulation of origin had been made virtually impossible by Decision 97/803 from 1 December 1997. The Commission is not entitled to discount imports made in 1999 on the ground that they are exponential, since they correspond to the normal sugar production of producers established in the OCTs. Since the figures for 1997 and 1998 come from an infant industry they are not representative. As for the investigation by the European Anti-Fraud Office

(OLAF) mentioned in the ninth recital in the preamble to the contested regulation, the applicants contend that that investigation did not concern producers established in the OCTs but European sugar exporters. No irregularity was found. The OLAF investigation therefore provided no justification for the Commission to take into account imports made in 1999 when it fixed the import quota for sugar or mixtures qualifying for EC/OCT cumulation of origin.

176 In that regard, the Court notes that, in the ninth recital in the preamble to the contested regulation the Commission explained, with regard to the exclusion of 1999 as a reference year, that it was 'the year in which imports recorded an exponential rise, and in respect of which there is currently an OLAF investigation into suspected irregularities'.

177 The Commission rightly noted an exponential rise in imports of sugar and mixtures into the Community under the EC/OCT cumulation of origin regime in 1999. It is clear from the Eurostat statistics that, although sugar imports under the EC/OCT cumulation of origin regime amounted to 2 528.93 tonnes in 1998, they rose to 35 791.8 tonnes in 1999. As for mixtures originating in the OCTs, there was a rise in imports from 1 260.9 tonnes in 1998 to 12 420 tonnes in 1999.

178 It was also reasonable for the Commission to consider, in the specific context of the surplus Community market and the obligations under the WTO Agreements, that the exponential rise in imports created a risk of deterioration in the Community sugar sector. If the Commission was required to take into consideration, for the purposes of determining an import quota, a level of imports which might result in the sector concerned deteriorating, there would be a risk that the safeguard measure in question would have no practical effect.

179 It follows that, irrespective of the OLAF investigation, it was reasonable for the Commission to discount 1999 as a reference year for calculating the import quota in the contested regulation.

180 Secondly, the applicants contend that the calculations made by the Commission in order to arrive at the quota of 3 340 tonnes for seven months are incomprehensible. The Commission is not in a position to explain why the figures it used in order to establish the import quota of 3 340 tonnes differ considerably from those prepared by Eurostat.

181 In any event, the quota of 3 340 tonnes over seven months is too low to allow for profitable exploitation of even one sugar processing factory during the period of validity of the contested regulation. Even if the restriction on imports of sugar and mixtures qualifying for EC/OCT cumulation of origin had been necessary, the applicants contend that the Commission should have taken into account in the contested regulation the interests of the undertakings in the sugar sector in the OCTs and should have established a quota at a level enabling those undertakings to remain on the market.

182 The Court points out that the Commission explained in the ninth recital in the preamble to the contested regulation:

'... the EC/OCT cumulation of origin for products falling within CN codes 1701, 1806 10 30 and 1806 10 90 should be restricted to a maximum of 3 340 tonnes of sugar, that figure representing the sum of the highest volume of imports of the products in question recorded in the three years preceding 1999...'.

183 The Eurostat statistics show that imports of sugar originating in the OCTs amounted to 2 251.1 tonnes in 1996 and 10 372.2 tonnes in 1997. There are, however, no accurate statistics for 1996 and 1997 as regards imports under the EC/OCT cumulation of origin regime. Before the entry into force of Regulation No 2553/97 on 17 December 1997, which introduced a special import licence for sugar qualifying for ACP/OCT cumulation of origin, it was not possible to distinguish between sugar imports qualifying for ACP/OCT cumulation of origin and imports qualifying for EC/OCT cumulation of origin.

184 As regards imports of mixtures originating in the OCTs, the Eurostat statistics show that they amounted to zero in 1996 and 877.7 tonnes in 1997.

185 In 1998 sugar imports under the EC/OCT cumulation of origin regime amounted to 2 528.93 tonnes and imports of mixtures with EC/OCT cumulation of origin were 1 260.9 tonnes.

186 The Commission explains that in order to calculate the quota of 3 340 tonnes established in Article 1 of the contested regulation it took as its basis the volume of imports of sugar with EC/OCT cumulation of origin for 1997, estimated, in the absence of accurate statistics, at 4 465 tonnes. That figure is equivalent to the quantity of C sugar exported to Aruba and the Netherlands Antilles in 1997. As regards imports of mixtures, imports in 1998 provided the reference figure, namely 1 260.9 tonnes. In relation to the number of months corresponding to the period of validity of the safeguard measure, the volumes mentioned do indeed correspond to 3 340 tonnes.

187 In the light of the foregoing, the Court finds that the Commission could properly state in the ninth recital in the preamble to the contested regulation that the quota of 3 340 tonnes was established on the basis of the highest annual volumes of imports of the products in question recorded in the three years preceding 1999.

188 The applicants cannot criticise the Commission's calculation of sugar imports under the EC/OCT cumulation of origin regime for 1997. On the one hand, there are no statistics for imports of sugar under the EC/OCT cumulation of origin regime for 1997. The applicants' contention that the figure of 4 465 tonnes given by the Commission differs from the Eurostat statistics is therefore unfounded. On the other hand, it is reasonable to calculate the volume of sugar imports under the EC/OCT cumulation of origin regime on the basis of the volume of C sugar exported to Aruba and the Netherlands Antilles. In order to qualify for EC/OCT cumulation of origin, undertakings established in the OCTs must purchase Community sugar.

189 In any event, the estimate of the volume of imports into the Community under the EC/OCT cumulation of origin regime for 1997 is advantageous for the applicants. It may properly be considered that almost all of the 10 372.2 tonnes of sugar of OCT origin, — EC/OCT and ACP/OCT combined — imported into the Community in 1997 was sugar qualifying for ACP/OCT cumulation of origin. As the applicants point out, moreover, the production of sugar qualifying for EC/OCT cumulation of origin is an industrial activity which grew up after the adoption of Decision 97/803 on 24 November 1997, which made exports of sugar qualifying for ACP/OCT cumulation of origin virtually impossible.

190 Furthermore, calculation of the volume of imports into the Community of sugar qualifying for EC/OCT cumulation of origin on the basis of the quantity of C sugar exported to Aruba and the Netherlands Antilles in 1997 is advantageous for the applicants since it does not take into account the fact that some of the C sugar imported into the OCTs is intended for local consumption. It should, moreover, be noted that for 1998, for which there are official statistics concerning imports into the Community of sugar with EC/OCT cumulation of origin, the quantities imported only amounted to 2 528.93 tonnes and are therefore considerably below the Commission's estimates for 1997.

191 The applicant in Case T-94/00 explains, however, that the link between C sugar exported to the OCTs and sugar imported under the EC/OCT cumulation of origin regime is not certain. It points out in that connection that Community sugar suppliers, in order to avoid reprisals on the part of Community producers who had decided no longer to supply C sugar to Aruba, often altered the destination of exported C sugar while it was in transit.

192 The Court, however, finds that the date of the decision allegedly taken by Community producers was 15 October 1999 according to the applicant in Case T-94/00. That decision could clearly not have affected exports of C sugar to the OCTs in 1997, on which the quota contained in the contested regulation was calculated.

193 Lastly, it must be observed that the Commission took into account the interests of the OCT sugar producers by not fully suspending imports of sugar under the EC/OCT cumulation of origin regime. On the contrary, it established the quota of 3 340 tonnes in Article 1 of the contested regulation on the basis of the highest level of imports of sugar and mixtures during the period 1996-1998.

194 In the light of the foregoing and taking into account the fact that limitation of review by the Community Court is particularly necessary where the Commission is called upon to arbitrate between differing interests — in the present case, protection of the common organisation of the markets in sugar, on the one hand, and protection of the interests of the OCTs and undertakings established in the OCTs on the other — the Court finds that the Commission did not infringe the principle of proportionality by restricting imports of sugar or mixtures under the EC/OCT cumulation of origin regime to 3 340 tonnes for the period during which the contested regulation was in force.

195 Fifthly and lastly, the applicants submit that Article 2(3) of the contested regulation, which provides that 'applications for import licences shall be

accompanied by a copy of the export licence', infringes the principle of proportionality. That provision prevents the applicants from benefiting in practice from the quota imposed by that regulation. Under that provision the applicants are obliged to purchase sugar of Community origin (at above the world price as a result of the 'golden premium' granted on account of that origin) and to export it from the Community at a time when the applicants still have not the slightest assurance that that quantity can be sold and imported into the Community after working or processing into sugar and mixtures qualifying for EC/OCT cumulation of origin.

196 The Court finds that that argument must be rejected. It was reasonable for the Commission to impose the condition laid down in Article 2(3) of the contested regulation since that condition makes it possible to ensure that import applications made in the context of the contested regulation relate to sugar which actually qualifies for EC/OCT cumulation of origin.

197 It follows from the foregoing that the second plea must be rejected.

The third plea: infringement of the preferential status of products originating in the OCTs

198 The applicants contend that under Article 3(1)(s) EC and the provisions of Part Four of the EC Treaty (in particular Article 183(1)), Community institutions must abide by the principle of the order of preferences. According to that principle, institutions cannot place goods originating in the OCTs in a less favourable position than that of goods coming from the ACP countries or other third countries (Joined Cases T-480/93 and T-483/93 *Antillean Rice Mills and Others* v *Commission*, cited in paragraph 45 above, paragraphs 91 and 142).

199 First, the applicants point out that Article 213 of the Lomé Convention totally excludes the adoption of safeguard measures for sugar. The adoption of the contested regulation thus infringes, they claim, the preferential status enjoyed by the OCTs in relation to the ACP countries.

200 The applicant in Case T-94/00 also compares Article 109(1) of the OCT Decision with other safeguard provisions. It states that Article 25(1) of Regulation No 2038/1999, which does not apply to trade with the OCTs, requires the existence of a causal link between imports coming from third countries and disturbances on the Community market in order for the Commission to be able to adopt a safeguard measure. Agreements with third countries like Morocco also require a causal link between imports coming from the country in question and Community issues (Association Agreement with Morocco of 26 February 1996, OJ 2000 L 70, p. 2). The same applicant concludes that since the OCTs enjoy the highest level of preference the Commission should avoid adopting safeguard measures under Article 109(1) of the OCT Decision against imports coming from the OCTs where the conditions for taking such measures are not met as regards imports from less privileged third countries.

201 Second, the applicants observe that under Protocol No 8 to the Lomé Convention the Community granted the ACP countries a quota of over 1.7 million tonnes of sugar, which those countries may fully or partially import duty-free into the Community and for a guaranteed price. By restricting sugar imports originating in the OCTs under the EC/OCT cumulation of origin regime to 3 340 tonnes for seven months the Commission infringed the principle that goods originating in the OCTs cannot be placed in a position that is less favourable than that of goods coming from the ACP countries or other third countries.

202 The Court observes that, in the context of its review, it must, as the Community Court, restrict itself to considering whether the Commission, which had a wide

discretion in the present case, committed a manifest error of assessment in adopting the contested regulation (Case C-301/97 *Netherlands* v *Council*, cited in paragraph 164 above, paragraph 112).

203 Even though the products originating in the OCTs enjoy preferential status under Part Four of the Treaty, the Court of Justice and the Court of First Instance have already held that Article 109 of the OCT Decision, which authorises the Commission to take safeguard measures, does not *per se* in any way infringe the principles of Part Four of the Treaty (Case C-390/95 P *Antillean Rice Mills and Others* v *Commission*, cited in paragraph 53 above, paragraph 40). It cannot therefore be inferred merely from the mere adoption of a safeguard measure under Article 109 of the OCT Decision that the preferential status of products originating in the OCTs has been infringed.

204 As regards the status of sugar in the Lomé Convention, the Court notes that in Protocol No 8 annexed to that Convention the Community makes 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. In order to prevent that guarantee from becoming a dead letter, Article 213 of the Lomé Convention provides that the safeguard clause (Article 177 of the Lomé Convention) is not to apply within the framework of Protocol No 8.

205 In contrast, under Article 101(1) of the OCT Decision, all products originating in the OCTs, and hence in principle sugar also, are to be imported into the Community free of import duties. Sugar originating in the OCTs therefore clearly enjoys preferential status as compared with ACP sugar. The fact that the Commission adopts a safeguard measure — a measure which is by nature temporary — does not change that state of affairs. The Court repeats in that regard that the contested regulation concerns only sugar and mixtures imported under the EC/OCT cumulation of origin regime. It does not impose any ceiling on imports of sugar originating in the OCTs under the ordinary rules of origin, if such production were to exist.

206 The argument deriving from the preferential status of sugar originating in the OCTs as compared with sugar originating in the ACP States must therefore be rejected.

207 On the same grounds, the applicants cannot base an argument on the safeguard clauses contained in the agreements the Community has concluded with certain third countries.

208 In any event, Article 109 of the OCT Decision is not fundamentally different from the other safeguard clauses which may require a link between the imports in question and the difficulties which have arisen. When the Court of Justice held in Case C-390/95 P *Antillean Rice Mills and Others* v *Commission*, cited in paragraph 53 above (paragraph 47), that 'in the second hypothesis [in Article 109(1) of the OCT Decision] it is not a requirement that the difficulties which justify the imposition of a safeguard measure result from the application of the OCT Decision', it did not discount the requirement that the safeguard measures should be such as to iron out or reduce the difficulties which have arisen. If there were no connection between the difficulties and the safeguard measures the latter would be disproportionate and would be contrary to the second sentence of Article 109(2) of the OCT Decision (Opinion of Advocate General Alber in Case C-390/95 P *Antillean Rice Mills and Others* v *Commission* [1999] ECR I-773, point 67 of the Opinion).

209 In the present case, the Commission has adequately demonstrated the existence of a link between the exponential increase in imports into the Community of sugar and mixtures under the EC/OCT cumulation of origin regime and the threat of deterioration in the Community sugar sector (see paragraphs 122 to 155 above). Restriction of those imports is therefore likely to iron out or reduce the difficulties that have arisen.

210 In the light of those considerations, it must be found that the contested regulation did not result in the ACP countries and third countries being placed in a competitive position which was manifestly more advantageous than that of the OCTs.

211 The third plea is therefore unfounded.

The fourth plea: infringement of the Safeguards Agreement

212 The applicant in Case T-94/00 claims that the contested regulation infringes Article 2 of the Safeguards Agreement, which provides:

'1. A Member may apply a safeguard measure to a product only if that Member has determined, pursuant to the provisions set out below, that such product is being imported into its territory in such increased quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or indirectly competitive products.

...'

213 The applicant concerned maintains that Article 109 of the OCT Decision must be interpreted in the light of the obligations under the Safeguards Agreement. Accordingly, an infringement of Article 2 of that agreement would also entail an infringement of Article 109 of the OCT Decision.

214 At the hearing the applicant in Case T-94/00 also argued that Aruba and the Netherlands Antilles are members of the WTO and that, as regards the obligations under the WTO Agreements, the OCTs constitute third countries in relation to the Community. The Safeguards Agreement therefore applies in relations between the OCTs and the Community.

215 The Court notes, however, that it is settled case-law 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 (Case C-149/96 *Portugal* v *Council* [1999] ECR I-8395, paragraph 47 and Case C-301/97 *Netherlands* v *Council*, cited in paragraph 164 above, paragraphs 53). The same holds true where the Community measure referred for review by the Community Court restricts trade between the Community and the OCTs (see Case C-310/97 *Netherlands* v *Council*, cited in paragraph 164 above, paragraphs 53 to 56), irrespective of the status of the OCTs within the WTO. 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 specific provisions of the WTO agreements, that it is for the Community 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 and Case C-301/97 *Netherlands* v *Council*, cited in paragraph 164 above, paragraph 54).

216 The contested regulation is not designed to ensure implementation within the Community legal system of a particular obligation assumed in the context of the WTO, nor does it refer explicitly to specific provisions of the WTO Agreements. Its sole purpose is to introduce, pursuant to Article 109 of the OCT Decision, safeguard measures with regard to imports of sugar and mixtures originating in the OCTs in order to remedy the difficulties which have arisen.

217 It follows that the applicant in Case T-94/00 cannot validly claim that the contested regulation was adopted in breach of Article 2 of the Safeguards Agreement.

218 Even if Article 109 of the OCT Decision were, so far as possible, to be interpreted in the light of the text and purpose of the Safeguards Agreement (see to that effect Case C-53/96 *Hermès* [1998] ECR I-3603, paragraph 28, and Joined Cases

C-300/98 and C-392/98 *Dior and Others* [2000] ECR I-11307, paragraph 47), it would be necessary to find that the Commission has adequately shown the existence of a correlation between the exponential increase in imports of sugar and mixtures under the EC/OCT cumulation of origin regime and the threat of deterioration in the Community sugar sector (see paragraphs 122 to 155 above).

219 It follows from the foregoing that the fourth plea must be rejected.

The fifth plea: infringement of the principle of protection of legitimate expectations

220 The applicant in Case T-94/00 observes that the contested regulation did not lay down any transitional arrangements for sugar and mixtures qualifying for EC/OCT cumulation of origin which were in transit to the Community at the time when the contested regulation was adopted. According to the applicant and the Netherlands Government, there is no overriding public interest which could have justified the contested regulation not containing any transitional measures for goods in transit to the Community (Case C-183/95 *Affish* [1997] ECR I-4315, paragraph 57).

221 The applicant in Case T-94/00 states that at the time when the contested regulation entered into force it had goods in transit from Aruba to customers in the Community. On their arrival those goods encountered the restrictions imposed by the contested regulation. By failing to take into account the interests of the applicant at the time when the contested regulation was adopted the Commission infringed the principle of the protection of legitimate expectations (*Piraiki-Patraiki and Others* v *Commission*, cited in paragraph 52 above, and Case C-152/88 *Sofrimport* v *Commission* [1990] ECR I-2477).

222 The Court points out that economic operators are justified in relying on a legitimate expectation that their goods already in transit to the Community will not, in the absence of an overriding public interest, be turned back on arrival on Community territory (*Sofrimport* v *Commission*, cited in the preceding paragraph, paragraph 16, and *Affish*, cited in paragraph 220 above, paragraph 57).

223 Following a written question put by the Court, the applicant explained, in a letter dated 5 December 2001, that at the time when the contested regulation was adopted it had a total of 2 580 tonnes of sugar with EC/OCT cumulation of origin in transit to the Community.

224 The fact remains, however, that the contested regulation did not prevent the applicant from importing the goods concerned. The applicant acknowledged in its letter of 5 December 2001 that it was able to import a total volume of 3 035.9 tonnes of sugar qualifying for EC/OCT cumulation of origin during the period of validity of the contested regulation.

225 In those circumstances, the plea alleging breach of the principle of protection of legitimate expectations must be rejected.

The sixth plea: misuse of powers

226 The applicant in Case T-94/00 points out that Article 108b of the OCT Decision, which was inserted into that decision by the Council in 1997 (see paragraph 16 above) excludes almost entirely imports into the Community of sugar qualifying for ACP/OCT cumulation of origin. The Council did not, however, wish to

restrict EC/OCT cumulation of origin for sugar. In adopting the contested regulation the Commission hindered the effects of the OCT Decision which the Council had sought. Article 109 of the OCT Decision does not in fact grant the Commission the discretion to 'correct' a Council Decision.

227 The same applicant also points out that Regulation No 2423/1999 had a limited period of validity linked to the expiry of the OCT Decision on 29 February 2000. In November 1999 the Commission envisaged proposing to the Council the insertion into the decision extending the OCT Decision restrictions on imports into the Community of sugar qualifying for EC/OCT cumulation of origin. The applicant contends that when it became apparent that the Council would not be able to adopt a decision extending the OCT Decision which included the restrictions sought by the Commission the latter decided to achieve its ends by means of safeguard measures, although the circumstances at the end of February 2000 were no different from those that had existed in November 1999.

228 The Court points out that a measure is vitiated by misuse of powers only 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 (Case C-285/94 *Italy* v *Commission* [1997] ECR I-3519, paragraph 52 and Case T-143/89 *Ferriere Nord* v *Commission* [1995] ECR II-917, paragraph 68).

229 It must be observed first of all that Article 109(1) of the OCT Decision grants the Commission the power to take safeguard measures against imports originating in the OCTs in particular where 'difficulties arise which may result in a deterioration in a sector of the Community's activity'.

230 Secondly, it is clear from the analysis made in the context of the first plea that the Commission could properly consider that the difficulties which had arisen might result in deterioration of the Community sugar sector.

231 The applicant adduces no evidence to show that the contested regulation was not adopted in order to avoid deterioration of the Community sugar sector.

232 Moreover, the fact that the Council introduced a quantitative restriction in Article 108b of the OCT Decision for sugar qualifying for ACP/OCT cumulation of origin by no means affects the power which the Commission has under Article 109(1) of the OCT Decision to take the necessary safeguard measures in respect of sugar or of any other product originating in the OCTs if the conditions for adopting such a measure are met.

233 The sixth plea must therefore also be rejected.

The seventh plea: infringement of Article 253 EC

234 The applicant in Case T-94/00 submits that the statement of reasons in the contested regulation is inadequate. The contested regulation does not provide adequate explanations regarding the difficulties that have arisen and the deterioration or the risk of deterioration in the sugar sector. Nor does the Commission explain how it reached a different assessment of those difficulties in the contested regulation from that reached in Regulation No 2423/1999. Lastly, the contested regulation does not explain why 1999 was not taken as a reference year for establishing the import quota.

235 The Court recalls that it is settled case-law that the statement of reasons required by Article 253 EC must be appropriate to the act at issue and must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in question in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the competent Community Court to exercise its power of review (see in particular Joined Cases C-63/90 and C-67/90 *Portugal and Spain* v *Council* [1992] ECR I-5073, paragraph 16; Case T-82/00 *BIC and Others* v *Council* [2001] ECR II-1241, paragraph 24). It is not necessary for the reasoning to go into all the relevant facts and points of law, since the question whether the statement of reasons meets the requirements of 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 (Case C-367/95 P *Commission* v *Sytraval and Brink's France* [1998] ECR I-1719, paragraph 63; *BIC and Others* v *Council*, cited above, paragraph 24).

236 The contested regulation was based on the second hypothesis described in Article 109(1) of the OCT Decision. A safeguard measure taken on that basis meets the requirements of Article 253 EC if it identifies the 'difficulties' which have arisen and if it explains how those difficulties entail the risk of 'a deterioration in a sector of the Community's activity or in a region of the Community', and if it contains information from which it is possible to assess whether the principle of proportionality provided for in Article 109(2) of the OCT Decision has been observed.

237 In the first and fourth recitals in the preamble to the contested regulation the Commission identifies the difficulties which have arisen. It explains in the fifth to the seventh recitals why those difficulties might greatly destabilise the common organisation of the markets in sugar. In the ninth recital the Commission sets out the underlying reasons for establishing a quota of 3 340 tonnes. As regards excluding 1999 as a reference year, the Commission explains in the ninth recital that it was 'the year in which imports recorded an exponential rise, and in respect of which there is currently an OLAF investigation into suspected irregularities'.

238 The seventh plea is therefore unfounded.

The plea of illegality raised against Regulation No 2553/97

239 The applicants in Cases T-110/00 and T-159/00 point out that Article 2(2) of the contested regulation makes imports into the Community of sugar and mixtures qualifying for EC/OCT cumulation of origin subject to the rules contained in Articles 2 to 6 of Regulation No 2553/97. If the latter regulation is unlawful, then, the applicants claim, Article 2(2) of the contested regulation is also unlawful.

240 The Commission replies that the plea of illegality is inadmissible since the contested regulation does not implement the regulation which the applicants in Joined Cases T-110/00 and T-159/00 claim is unlawful.

241 The Court points out that Regulation No 2553/97 does not constitute the legal basis for the contested regulation. However, since Articles 2 to 6 of Regulation No 2553/97 are declared applicable *mutatis mutandis* to imports of sugar and mixtures under the EC/OCT cumulation of origin regime, if Articles 2 to 6 of Regulation No 2553/97 were unlawful, this would affect the legality of Article 2(2) of the contested regulation. Those provisions may therefore form the subject of a plea of illegality under Article 241 EC (Joined Cases T-305/94 to T-307/94, T-313/94 to T-316/94, T-318/94, T-325/94, T-328/94, T-329/94 and T-335/94 *Limburgse Vinyl Maatschappij and Others* v *Commission* [1999] ECR II-931, paragraphs 285 and 286).

242 The applicants in Cases T-110/00 and T-159/00 submit that Regulation No 2553/97 is *ultra vires* since neither primary nor secondary Community law grant the Commission the power to implement Article 108b of the OCT Decision.

243 It must first be observed, that the applicants do not claim specifically that the conditions imposed by Articles 2 to 6 of Regulation No 2553/97, which were declared applicable *mutatis mutandis* by Article 2(2) of the contested regulation, are unlawful. They contend solely that the Commission lacked competence to adopt Regulation No 2553/97.

244 However, the applicants' argument, if it were well founded, would not affect the legality of the contested regulation if it were established that the Commission had the power to include in the contested regulation provisions such as those appearing in Articles 2 to 6 of Regulation No 2553/97.

245 In that regard, the Court notes that Articles 2 to 6 of Regulation No 2553/97 govern the detailed arrangements for issuing import licences in respect of sugar qualifying for ACP/OCT cumulation of origin.

246 Article 109 of the OCT Decision, which grants the Commission the power to adopt safeguard measures in trade between the OCTs and the Community, must be interpreted as meaning that it allows the Commission to make the entry of products originating in the OCTs, imports of which were limited under Article 109(1) of that decision, subject to the issue of an import licence in order

to ensure the effectiveness of the measure adopted and to lay down the rules for issuing such import licences.

247 Even assuming that the Commission did not have the power to adopt Regulation No 2553/97, it was entitled, directly, on the basis of Article 109 of the OCT Decision, to establish the detailed arrangements for issuing import licences for sugar or mixtures qualifying for EC/OCT cumulation of origin, by incorporating *mutatis mutandis* Articles 2 to 6 of Regulation No 2553/97 into the contested regulation.

248 It follows from all the foregoing that the plea of illegality raised against Regulation No 2553/97 must be rejected.

The claims for compensation

249 The applicants in the three cases, supported by the Netherlands Government, claim that the alleged illegalities on which the pleas for annulment are based caused them damage which the Community is required to repair.

250 The Court points out that, as regards the Community's non-contractual liability, a right to reparation is conferred where three conditions are met: the rule of law infringed must be intended to confer rights on individuals and the breach must be

sufficiently serious; the existence of damage must be established; and, lastly, there must be a direct causal link between the breach of the obligation resting on the Community and the damage sustained by the injured parties (see, to that effect, Case C-352/98 P *Bergaderm and Goupil* v *Commission* [2000] ECR I-5291, paragraph 42).

251 In a legislative context involving the exercise of a wide discretion, the Community cannot incur liability unless the institution concerned has manifestly and gravely disregarded the limits on the exercise of its powers (Case C-390/95 P *Antillean Rice Mills and Others* v *Commission*, cited in paragraph 53 above, paragraph 57 and case-law cited therein).

252 In the present case, the applicants have wholly failed to show that, by adopting the contested regulation, the Commission manifestly and seriously exceeded its powers. Consideration of the pleas put forward in support of the claims for annulment has not disclosed any illegality whatsoever on the part of the Commission in adopting the contested regulation.

253 In those circumstances, the claims for compensation cannot succeed either.

254 It follows from all the foregoing that the applications must be dismissed in their entirety.

Costs

255 Under Article 87(2) of the Rules of Procedure of the Court of First Instance, 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 applicants have been unsuccessful they must be ordered to pay the costs, including those incurred in the interim proceedings for interim relief, as applied for by the Commission.

256 Pursuant to Article 87(4) of the Rules of Procedure, the interveners must be ordered to bear their own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Third Chamber)

hereby:

1. **Orders that Cases T-94/00, T-110/00 and T-159/00 be joined for the purposes of the judgment;**

2. **Dismisses the applications;**

3. **Orders each of the applicants to bear its own costs and pay those incurred by the Commission, including those incurred by it in the proceedings for interim relief, in the case it has brought;**

4. **Orders the interveners to bear their own costs.**

Jaeger Lenaerts Azizi

Delivered in open court in Luxembourg on 14 November 2002.

H. Jung

Registrar

K. Lenaerts

President