JUDGMENT OF THE COURT

22 November 2001 *

In Case C-110/97,

Kingdom of the Netherlands, represented by M.A. Fierstra, acting as Agent,

applicant,

v

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

defendant,

supported by

Kingdom of Spain, represented by L. Pérez de Ayala Becerril, acting as Agent, with an address for service in Luxembourg,

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

* Language of the case: Dutch.

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

and

Commission of the European Communities, represented by T. van Rijn, acting as Agent, with an address for service in Luxembourg,

interveners,

APPLICATION for the annulment of Council Regulation (EC) No 304/97 of 17 February 1997 introducing safeguard measures in respect of imports of rice originating in the overseas countries and territories (OJ 1997 L 51, p. 1),

THE COURT,

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

Advocate General: P. Léger,
Registrar: L. Hewlett, Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 7 November 2000 at which the Kingdom of the Netherlands was represented by M.A. Fierstra; the Council by G. Houttuin; the Kingdom of Spain by N. Díaz Abad, acting as Agent; the Italian Republic by F. Quadri; and the Commission by T. van Rijn,

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

gives the following

Judgment

1 By application lodged at the Registry of the Court on 17 March 1997 the Kingdom of the Netherlands applied, under the second paragraph of Article 173 of the EC Treaty (now, after amendment, the second paragraph of Article 230 EC), for the annulment of Council Regulation No 304/97 of 17 February 1997 introducing safeguard measures in respect of imports of rice originating in the overseas countries and territories (OJ 1997 L 51, p. 1).

2 By application lodged at the Registry of the Court on the same day, the applicant applied for interim relief.

3 By that application it claimed:

— primarily, the suspension of operation of Regulation No 304/97 as regards imports of rice originating in the Netherlands Antilles and Aruba,

— in the alternative, that the quota for rice originating in the Netherlands Antilles and Aruba which may be imported be fixed at an amount at least equal to the quota for rice originating in the most favoured non-member countries which may be imported into the Community free of customs duties,

— in the further alternative, that the Kingdom of the Netherlands and the Council of the European Union be ordered to consult together on a minimum price at which husked rice originating in the Netherlands Antilles and Aruba may be imported into the Community and which satisfies certain conditions set out by the applicant, and within seven days of the date of the order so providing, they be ordered to submit the results of their consultations to the President of the Court for a decision,

— in the further alternative, that all such measures be taken as the Court deems appropriate.

4 By order of the President of the Court of Justice of 21 March 1997 in Case C-110/97 R *Netherlands* v *Council* [1997] ECR I-1795, that application was dismissed.

5 By orders of 13 June and 17 September 1997, the Kingdom of Spain, the French Republic, the Italian Republic and the Commission of the European Communities were granted leave to intervene in support of the forms of order sought by the Council.

Legal background

EC Treaty

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

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

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

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

10 Pursuant to the second and third paragraphs of Article 131 of the Treaty, the purpose of the association of the OCTs and the European Community is to promote the economic and social development of the OCTs and to establish close economic relations between them and the Community as a whole. In accordance with the principles set out in the Preamble to the EC Treaty, association is to serve primarily to further the interests and prosperity of the inhabitants of the OCTs in order to lead them to the economic, social and cultural development to which they aspire.

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

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

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

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

Decision 91/482/EEC

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

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

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

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

which may result in a deterioration in a sector of the Community's activity or in a region of the Community'.

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

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

Regulation (EC) No 21/97

21 On 29 November and 10 December 1996, the Italian and Spanish Governments asked the Commission to introduce safeguard measures in respect of rice originating in the OCTs.

22 Pursuant to Article 109 of the OCT Decision the Commission adopted Regulation No 21/97 of 8 January 1997 introducing safeguard measures in respect of imports of rice originating in the overseas countries and territories (OJ 1997 L 5, p. 24).

23 Article 1(1) of Regulation No 21/97 introduced a tariff quota allowing the import into the Community of rice originating in the OCTs falling within CN code 1006 exempt from customs duties up to a limit of 4 594 tonnes for rice originating in Montserrat, 1 328 tonnes for rice originating in the Turks and Caicos Islands and 36 728 tonnes for rice originating in the other OCTs.

24 Pursuant to the second paragraph of Article 7, Regulation No 21/97 was to apply from 1 January to 30 April 1997.

25 Subsequently, pursuant to Article 1(5) of Annex IV to the OCT Decision, the United Kingdom Government referred Regulation No 21/97 to the Council and requested that it increase the quota allocated to Montserrat and the Turks and Caicos Islands.

26 By letter of 21 January 1997 the Netherlands Government also announced that it objected to Regulation No 21/97 and asked the Council to adopt another decision.

Regulation No 304/97

27 On 17 February 1997 the Council adopted Regulation No 304/97, Article 7(1) of which repeals Regulation No 21/97.

28 Essentially the Council Regulation differs from that of the Commission in one respect, namely the volume of the quota allocated to Montserrat and the Turks and Caicos Islands.

29 Article 1(1) of Regulation No 304/97 provides:

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

(a) 8 000 tonnes for rice originating in Montserrat and in the Turks and Caicos Islands, made up of:

— 4 594 tonnes originating in Montserrat, and

— 3 406 tonnes originating in Montserrat or the Turks and Caicos Islands;

and

(b) 36 728 tonnes for rice originating in the other OCTs.'

30 According to the second paragraph of Article 8, Regulation No 304/97 was to apply from 1 January to 30 April 1997, except for the second indent of Article 1(1)(a), which was to apply from the date of entry into force of that Regulation, 21 February 1997, when it was published in the *Official Journal of the European Communities*.

The Community market in rice

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

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

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

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

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

36 It is possible to distinguish four stages of processing:

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

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

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

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

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

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

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

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

The action

41 The Netherlands Government claims that the Court should annul Regulation No 304/97 and order the Council to pay the costs.

42 In support of its action the Netherlands Government invokes five pleas in law as follows: (i) breach of Article 109(1) of the OCT Decision; (ii) breach of Article 109(2) of the OCT Decision; (iii) misuse of powers; (iv) failure to have regard to the revision procedure for safeguard measures laid down in Annex IV to the OCT Decision and (v) infringement of Article 190 of the EC Treaty (now Article 253 EC).

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

44 The Kingdom of Spain, the French Republic, the Italian Republic and the Commission, as interveners, contend that the Court should dismiss the action and order the Kingdom of the Netherlands to pay the costs.

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

The first part

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

46 It points out that Article 132 of the Treaty sets as an objective for the Member States that they apply the same treatment to their trade with the OCTs as they accord to each other pursuant to the Treaty. In those circumstances, it claims, even a low cost price of products originating in the OCTs cannot give rise to the adoption of safeguard measures in OCT-EC relations.

47 As for the increase in imports of rice originating in the OCTs, the Netherlands Government claims that, since the increase in trade with the OCTs is, under Article 3(r) of the Treaty, one of the purposes of the OCT arrangements, the volume of imports of rice originating in the OCTs cannot be a ground for adopting safeguard measures.

48 The Netherlands Government acknowledges that the Council may adopt safeguard measures, but only when the conditions set out in Article 134 of the Treaty are satisfied.

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

50 Pursuant to Article 131 of the Treaty, the purpose of that association is to promote the economic and social development of the OCTs and to establish close economic relations between them and the Community as a whole.

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

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

53 However it is also apparent from the Court's case-law that, when the Council enacts measures under the second paragraph of Article 136 of the Treaty, it must take account not only of the principles in Part Four of the Treaty but also of the other principles of Community law, including those relating to the common agricultural policy (see Case C-390/95 P *Antillean Rice Mills and Others* v

Commission [1999] ECR I-769, paragraph 37, and Case C-17/98 *Emesa Sugar* [2000] ECR I-675, paragraph 38).

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

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

56 It follows that, when it considers that imports of rice originating in the OCTs cause or risk causing, by the combined effect of the quantities imported and the prices charged, serious disturbances to the Community market in rice, the Council may be prompted, by derogation from the principle set out in Article 132(1) of the Treaty and Article 101(1) of the OCT Decision to curtail certain advantages previously granted to the OCTs.

57 The argument of the Netherlands Government that, under Article 132 of the Treaty, the advantages accorded to the OCTs in the context of the progressive implementation of the association may not be undermined for reasons relating to the quantities or the price of products originating in the OCTs imported into the Community, cannot therefore be upheld.

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

59 Accordingly the first part of the first plea must be rejected.

The second part

60 By the second part of the first plea, the Netherlands Government maintains that it is obviously wrong to state, as does the preamble to Regulation No 304/97, that rice originating in the OCTs was imported at such low prices and in such high quantities as to cause, or risk causing a disturbance to the Community market in rice. According to the Netherlands Government, the Council did not arrive at its findings of fact in a legally valid manner such as to enable it to determine whether the conditions for the application of Article 109 of the OCT Decision were satisfied and if it was therefore appropriate to adopt the safeguard measures.

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

62 In cases involving such a discretion, the Community courts must restrict themselves to considering whether the exercise of that discretion contains a manifest error or constitutes a misuse of power or whether the Community institutions clearly exceeded the bounds of their discretion (see Case C-390/95 P *Antillean Rice Mills and Others* v *Commission*, cited above, paragraph 48; see also to that effect Case 11/82 *Piraiki-Patraiki and Others* v *Commission* [1985] ECR 207, paragraph 40, and Case C-189/01 *Jippes and Others* [2001] ECR I-5689, paragraph 80).

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

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

64 The Netherlands Government points out that the Community's production of Indica rice in the years 1992/1993 to 1996/1997 was insufficient to meet Community demand and that it was necessary to overcome this structural deficit by means of imports. In those circumstances the volume of imports of rice originating in the OTCs could not, in its view, disturb or threaten to disturb the Community market in rice.

65 It further claims that during the period of application of the safeguard measures, the amount of rice originating in the Netherlands Antilles imported into the Community was considerably less than in 1996 but that, in spite of that significant reduction, the price of Community Indica rice continued to fall.

66 Furthermore, the Netherlands Government claims that there are other demonstrable causes for the disturbances to the Community market in rice. Most of the Indica rice imported into the Community was from third countries other than the OCTs and, from 1995/1996, imports from those countries increased still further.

67 The Council and the interveners claim that, during the years 1992/1993 to 1995/1996, imports of rice originating in the OCTs tripled. That significant growth, combined with the enormous production capacity of the OCTs, was conclusive for the adoption of safeguard measures, particularly in the light of the fact that the OCT Decision made it possible for certain economic operators to import rice from Surinam and Guyana into the Community exempt from customs duties and charges having an equivalent effect, since initial processing in the Netherlands Antilles allows that rice to be regarded as rice originating in the OCTs.

68 It should be noted, first, that, as the Council found from data supplied by the Statistical Office of the European Communities (Eurostat) concerning the years 1992/1993 to 1995/1996, imports of rice originating in the OCTs increased very significantly and rapidly during those years, from 77 000 tonnes in 1992/1993 to more than 212 000 tonnes in 1995/1996, and as a percentage of all rice imported, from 31% to more than 40%.

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

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

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

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

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

73 The Netherlands Government claims that the statement in the preamble to Regulation No 304/97, that rice originating in the OCTs is sold on the Community market at a lower price than that at which Community rice can be sold, is manifestly inaccurate.

74 It considers that, since the Community producers do not produce semi-milled rice, in order to compare prices it is necessary to calculate an equivalent milled price for rice originating in the OCTs. As for the choice of basis of comparison for the equivalent milled price, it considers that imports of paddy rice originating in the OCTs should not be taken into account. While Community rice marketed in its paddy state is processed directly into milled rice by the buyers, the paddy rice originating in the OCTs undergoes a two-stage process, being converted first into semi-milled rice in the OCTs, then into milled rice in the Community. The equivalent milled price of paddy rice originating in the OCTs therefore includes an additional cost as compared with Community milled rice, corresponding to the profit margin of the intermediary miller.

75 The Council, for its part, refers to the data supplied by Eurostat to show how the price of Indica rice suffered a sharp fall on the Italian and Spanish markets from October 1996, before settling at a level considerably lower than the intervention price.

76 The Commission and the Spanish and French Governments claim that, as between Community rice and rice imported from the OCTs, it is necessary to compare like with like; that is, the comparison must be made at the semi-milled stage or the husked stage, because it is at those stages of processing and not at the milled stage that there is competition between the rice from different sources. It is therefore irrelevant that the processing of rice originating in the OCTs requires an additional step. From the economic standpoint, that step is certainly not necessary since semi-milled rice originating in the OCTs undergoes the same type of processing in the Community's rice-milling plants as Community husked rice (or that from third countries).

77 In its judgment in Joined Cases T-480/93 and T-483/93 *Antillean Rice Mills and Others* v *Commission* [1995] ECR II-2305, the Court of First Instance considered, moreover, that the Commission had not committed a manifest error of assessment in comparing prices at the semi-milled stage.

78 The Council claims that the safeguard measure was imposed in response to the situation in the Community market in Indica rice, in which two cumulative factors were acting together, namely an increase in the quantities of rice originating in the OCTs imported into the Community and a fall in the price on the Community market. The unreasonable increase in imports of rice originating in the OCTs caused another sharp fall in the price of Community Indica rice in 1996, which placed it well below the intervention price, and required an urgent initiative on the part of the Council to protect the integrity of the common agricultural policy.

79 The Commission also considers that the threat of disturbances to the Community market in rice was sufficiently proven by the sharp falls in the price of Community rice in the autumn of 1996.

80 In that regard, it is appropriate first of all to note, as the Advocate General observed at point 97 of his Opinion, that the difference of opinion between the Netherlands Government, on the one hand, and the Council and the interveners on the other arises from their diametrically opposed views as to the processing stage at which the price of raw materials should be compared, and as to the method of price calculation, in particular as regards the conversion rate to be used between the various processing stages.

81 However, as stated at paragraph 38 of the present judgment, rice originating in the Netherlands Antilles which is exported to the Community to be processed into milled rice is semi-milled rice. It therefore competes with Community paddy rice processed by Community producers of milled rice.

82 It follows from this that, as the Commission and the French and Spanish Governments have submitted, it is not incorrect to compare the price of rice originating in the OCTs and of Community rice at the semi-milled stage by

calculating an equivalent semi-milled price for the Community rice because that comparison is made at precisely the stage at which competition occurs.

83 Finally, it appears from the file that the price of Indica rice on the Italian market decreased from ECU 364 per tonne in October 1996 to ECU 319 per tonne in December 1996, being more than ECU 30 below the intervention price.

84 Taking account of those factors, the Netherlands Government has not established that the Council committed a manifest error of assessment in stating, in the preamble to Regulation No 304/97, that the rice originating in the OCTs was sold on the Community market at a lower price than that at which Community rice was sold, having regard to the stage of processing that was taken into account.

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

85 Finally, the Netherlands Government claims that the Council has not proved the existence of a causal link between imports of rice originating in the OCTs and disturbances on the Community market. Prices on the world market are markedly lower than that of rice originating in the OCTs and, accordingly duty free imports of rice from third countries (in particular, from the United States of America and Egypt) had a considerable influence on the Community market in rice.

86 In reply, the Council and the interveners point out that, under Article 109 of the OCT Decision, the Council enjoys a wide discretion, and that, in the present case, it was reasonably able to conclude that the imports in question, by the combined

effect of the quantities and the prices of those imports, caused disturbances on the Community market in rice.

87 Referring to the judgment of the Court of First Instance in *Antillean Rice Mills and Others* v *Commission*, cited above, they note that the Court held that the Commission was entitled to find, on the basis of a significant reduction in the price of Community rice together with a significant increase in imports of rice originating in the OCTs, that the conditions for the application of Article 109(1) of the OCT Decision were met. Accordingly they consider that it is sufficient for the adoption of safeguard measures that there be reliable evidence to suggest that imports of products originating in the OCTs caused or risked causing disturbances in the Community.

88 To begin with, it should be noted that the Commission may, under Article 109(1) of the OCT Decision, adopt safeguard measures if, 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.

89 First, as regards the argument of the Netherlands Government that the risk of disturbances to the Community market in rice was not attributable to imports of rice originating in the OCTs, but to the tariff quotas opened under Council Regulation (EC) No 1522/96 of 24 July 1996 opening and providing for the administration of certain tariff quotas for imports of rice and broken rice (OJ 1996 L 190, p. 1), it should be stressed that, when the Council adopted Regulation No 304/97, Regulation No 1522/96, allowing duty-free imports into the Community of Indica rice from third countries, was not for the most part in force. As the Commission pointed out in its observations, the WTO quota levels of milled and semi-milled rice reserved by Regulation No 1522/96 for the United States, representing more than half of the total quota introduced by that

Regulation, had not yet been released, there being no agreement with the United States on the terms and conditions of export.

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

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

92 Given the Community institutions' wide discretion in the application of Article 109 of the OCT Decision, and the fact that that discretion can be exercised not only in relation to the nature and scope of the provisions which are to be adopted but also, to a certain extent, to the findings as to the basic facts (see, to that effect, Case C-150/94 *United Kingdom* v *Council* [1998] ECR I-7235, paragraph 55, and Case C-289/97 *Eridania* [2000] ECR I-5409, paragraph 48), it cannot be concluded that the Council committed a manifest error in its assessment of the information available to it when Regulation No 304/97 was adopted.

93 The second part of the first plea in law is therefore unfounded.

94 It follows from the foregoing that the first plea in law must be rejected as unfounded.

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

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

The first part

96 By the first part of this plea, the Netherlands Government claims that Regulation No 304/97 breaches Article 109(2) of the OCT Decision by infringing the order of preference of Member States/OCTs/ACP States/third countries. That Regulation placed the OCTs in an unfavourable position compared with the ACP States and third countries by enabling the latter to export more rice to the Community than could the OCTs.

97 According to the Netherlands Government, whilst Article 1(1) of Regulation No 304/97 limited duty-free imports to the Community of husked rice equivalent originating in the OCTs to 44 728 tonnes, Regulation No 1522/96 allowed duty-free imports from third countries of 69 488 tonnes of husked rice equivalent over the same period. The Netherlands Government therefore claims that the quantity of rice from certain third countries that could be imported at zero duty on the basis of Regulation No 1522/96 was, in itself, greater than the quantity of rice

originating in the OCTs that could be imported pursuant to Regulation No 304/97.

98 The Council and the Commission object to the Netherlands Government's comparison on the ground that it is made on the wrong basis. The Council points out that the quota provided by Regulation No 1522/96 is 63 000 tonnes of milled rice or semi-milled rice on an annual basis, which is 91 000 tonnes of husked rice equivalent. On the other hand, the quota provided for by Regulation No 304/97 was fixed at 44 728 tonnes of husked rice equivalent for the first four months of 1997. Given that, according to the Eurostat statistics, 26.195% of imports to the Community of rice originating in the OCTs occurred during the first four months of the year, the theoretical OCT quota for a full year can be evaluated, according to the Council, at about 170 750 tonnes, or almost three times the quota set by Regulation No 1522/96.

99 The Commission and the Spanish Government claim that, in the light of the data produced by the Council during the proceedings, instead of imports of rice originating in the OCTs being put in an unfavourable position by comparison with imports from third countries, they were placed in an indisputably advantageous position.

100 As stated at paragraphs 61 to 63 of the present judgment, the Community court must restrict itself to considering whether the Council, which had a wide discretion in the matter, committed a manifest error of assessment in adopting Regulation No 304/97.

101 Contrary to the Netherlands Government's claim, it does not appear from the file that the implementation of Regulations Nos 304/97 and 1522/96 had the effect of placing the ACP States and third countries in a more favourable position by comparison with the OCTs.

102 As stated at paragraph 89 of the present judgment, when the Council adopted Regulation No 304/97, Regulation No 1522/96, allowing imports into the Community of Indica rice from third countries exempt from customs duty, was not for the most part, in force.

103 Moreover, it is apparent that the quota of 44 728 tonnes over four months provided for by Regulation No 304/97 was not manifestly disadvantageous for the OCTs when compared with the quota of 91 000 tonnes over one year provided by Regulation No 1522/96.

104 In the light of those considerations, the Court finds that Regulation No 304/97 did not have the effect of placing the ACP States and third countries in a manifestly more advantageous competitive position than that of the OCTs.

105 It follows that the first part of the second plea is unfounded.

The second part

106 By the second part of the second plea, the Netherlands Government claims that the Council, in adopting Regulation No 304/97, did not consider the consequences that that Regulation might have on the economy of the Netherlands Antilles.

107 Under Article 109(2) of the OCT Decision, any safeguard measure must satisfy the condition of inflicting minimal disturbance on the functioning of the association and the Community, requiring the Community institutions to inquire

into the consequences of the intended measures. However, when Regulation No 21/97 was adopted, the Commission did not inquire into the negative repercussions that its decision could have on the economy of the OCTs and the undertakings concerned, nor had the Council taken those effects into account when drafting Regulation No 304/97.

108 The Netherlands Government states that, whilst a partnership meeting with the OCTs was organised by the Commission on 18 December 1996, it took place after the committee composed of representatives of the Member States and presided over by a representative of the Commission, pursuant to Article 1(2) of Annex IV to the OCT Decision, had already met on 13 December 1996, and that the Commission already had a clearly established opinion on the adoption of safeguard measures. Furthermore, there was insufficient time after calling for that partnership meeting for the OCTs to gather the necessary information to assess the effects of the intended safeguard measures.

109 The Netherlands Government concludes from this that the Commission and the Council have not complied with their obligations under Article 109(2) of the OCT Decision.

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

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

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

112 First, whilst it is true that, before calling the partnership meeting of 18 December 1996, the Commission had already informed the Netherlands Government of its intention to adopt safeguard measures, the Netherlands Government adduces no evidence to show that the Commission's decision to introduce safeguard measures had already been taken, and that the meeting was a mere formality.

113 Furthermore, it does not appear from the information supplied by the parties that the Council failed in its obligation to consider the consequences of the safeguard measures on the economy of the Netherlands Antilles before adopting Regulation No 304/97. It should be observed in that respect, as the Council has done, that when a Member State, pursuant to Article 1(5) of Annex IV to the OCT Decision, refers to the Council a decision of the Commission introducing safeguard measures, the Council is not required to carry out a completely independent inquiry before adopting its decision under Article 1(7) of Annex IV to the OCT Decision, but is entitled to take account of the information on the basis of which the Commission adopted its decision.

114 The Netherlands Government also claims that, in introducing safeguard measures, Regulations Nos 21/97 and 304/97 totally ignored the legitimate expectations of those undertakings which, at the time when those measures were adopted, had consignments of rice en route to the Community.

115 As for the alleged breach of the principle of the protection of legitimate expectations, it will be recalled that, according to settled case-law, traders cannot properly claim to have a legitimate expectation that an existing situation which is capable of being altered by the Community institutions within the limits of their discretionary power will be maintained (see Case C-284/94 *Spain* v *Council* [1998] ECR I-7309, paragraph 43).

116 It is true that it is also apparent from the Court's case-law that the Community institutions may not, without breaching the principle of the protection of legitimate expectations, adopt measures that have the effect of depriving traders of rights they can legitimately claim, without invoking any overriding public interest (see, to that effect, Case C-152/88 *Sofrimport* v *Commission* [1990] ECR I-2477, paragraphs 26 and 27).

117 However, as the Advocate General points out at point 52 of his Opinion, the contracts referred to by the Netherlands Government for the supply of rice to Community buyers were entered into after the Commission had informed the Netherlands Government of its intention to adopt safeguard measures and while the importer concerned, Antillean Rice Mills NV, knew of that intention and could perfectly well have obtained import licences before the entry into force of those measures.

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

Third and fourth parts

119 By the third and fourth parts of the second plea, the Netherlands Government claims that the principle of proportionality, as formulated by Article 109(2) of the

OCT Decision, was not complied with in the adoption of Regulation No 304/97.

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

121 However, it submits that Regulation No 304/97 did not comply with that requirement. According to the Netherlands Government, a safeguard measure laying down a minimum price would have been quite sufficient to achieve the objective pursued and would have been less restrictive for the OCTs and undertakings concerned, in that it would not have entailed the complete cessation of rice exports to the Community.

122 It should be recalled that, according to settled case-law, in order to establish whether a provision of Community law complies with the principle of proportionality, it must be ascertained whether the means which it employs are suitable for the purpose of achieving the desired objective and whether they do not go beyond what is necessary to achieve it (Case C-233/94 *Germany* v *Parliament and Council* [1997] ECR I-2405, paragraph 54; Case C-284/95 *Safety Hi-Tech* [1998] ECR I-4301, paragraph 57, and Case C-390/95 P *Antillean Rice Mills and Others* v *Commission*, cited above, paragraph 52).

123 It is apparent from the twelfth recital of the preamble to Regulation No 304/97 that the Council considered that the introduction of a tariff quota would guarantee OCT rice access to the Community market within the limits compatible with the stability of that market while preserving the greatest possible degree of preferential treatment for that product consistent with the objectives of the OCT Decision.

124 Regulation No 304/97 was intended simply to limit duty-free imports of rice originating in the OCTs. Neither its purpose nor its effect was to prohibit imports of that product. Once the tariff quota for Indica rice originating in the OCTs was exhausted, the Netherlands Antilles could still export additional quantities subject to the payment of the necessary customs duties.

125 The safeguard measures adopted under Regulation No 304/97 which only exceptionally, partially and temporarily limited the free importation into the Community of rice originating in the OCTs were therefore suitable for the objective pursued by the Community institutions as it appears from that Regulation and from the OCT Decision.

126 As for the argument of the Netherlands Government that the introduction of a minimum price would have inflicted less disturbance on the economy of the OCTs and would have been just as effective in achieving the objectives pursued, it should be pointed out that, whilst ensuring that the rights of the OCTs are respected, the Community court cannot, without risk of overriding the wide discretion of the Council, substitute its assessment for that of the Council as to the choice of the most appropriate measure to prevent disturbances to the Community market in rice if those measures have not been proved to be manifestly inappropriate for achieving the objective pursued (see, to that effect, Case C-280/93 *Germany* v *Commission* [1994] ECR I-4973, paragraph 94, and *Jippes*, cited above, paragraph 83).

127 However, the Netherlands Government has not established that the Council adopted measures that were manifestly inappropriate or that it carried out a manifestly erroneous assessment of the information available to it at the time when Regulation No 304/97 was adopted.

128 Given the limited consequences of the introduction of a tariff quota for imports of rice originating in the OCTs for only four months, it was reasonable for the

Council to decide, in reconciling the objectives of the common agricultural policy and of the association of the OCTs with the Community, that Regulation No 304/97 was suitable for the purpose of achieving the desired objective and that it did not go beyond what was necessary to achieve it.

129 Second, the Netherlands Government alleges a violation of Article 109(2) of the OCT Decision in that the amount of the guarantee requested of Antillean importers under Article 3(4) of Regulation No 304/97 renders inapplicable Commission Regulation (EC) No 1162/95 of 23 May 1995 laying down special detailed rules for the application of the system of import and export licences for cereals and rice (OJ 1995 L 117, p. 2). The amount of the guarantee applicable to imports of rice originating in the OCTs — which is the same as the customs duties applicable to third countries — is disproportionate to the objective pursued by the OCT Decision.

130 It should be borne in mind that Regulation No 304/97 laid down a tariff quota limited to 36 728 tonnes of rice originating in the OCTs other than Montserrat and the Turks and Caicos Islands, and that it was foreseeable that that quota would be of considerable interest to exporters.

131 As the Commission rightly observes, it was necessary, by means of a substantial guarantee, to avoid the situation in which traders applied for import licences and did not subsequently use them, thereby causing loss to other traders who did in fact intend to import rice originating in the OCTs but who were not able to obtain enough import licences.

132 Contrary to the applicant's claim, whilst it is true that the amount of guarantee must be paid in order to acquire the import licences, a guarantee of that type does

not deprive those undertakings that are genuinely interested of the possibility of exporting rice to the Community since that sum is reimbursed to the undertaking if the import operation is carried out.

133 It follows that the third and fourth parts of the second plea must also be rejected.

134 Consequently, the second plea must be rejected in its entirety.

The third plea: misuse of powers

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

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

137 As the Court has repeatedly held, a measure is only vitiated by misuse of powers if it appears, on the basis of objective, relevant and consistent evidence to have been taken with the exclusive or main purpose of achieving an end other than that stated or evading a procedure specifically prescribed by the Treaty for dealing with the circumstances of the case (see Case 69/83 *Lux* v *Court of Auditors* [1984] ECR 2447, paragraph 30; Case C-331/88 *Fedesa and Others* [1990] ECR I-4023, paragraph 24; Case C-156/93 *Parliament* v *Commission* [1995] ECR I-2019, paragraph 31; and Case C-48/96 P *Windpark Groothusen* v *Commission* [1998] ECR I-2873, paragraph 52).

138 As for the objectives pursued by the Council in adopting Regulation No 304/97 there is nothing in the file to support the Netherlands Government's claim that the Council was pursuing an aim other than that of remedying the disturbances noted on the Community market in rice or of avoiding more serious disturbances than those already existing.

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

140 The Netherlands Government's third plea is therefore rejected.

The fourth plea: failure to have regard to the revision procedure for safeguard measures laid down in Annex IV to the OCT Decision

141 The Netherlands Government claims, first, that the Council used its power under Article 1(7) of Annex IV to the OCT Decision in a manifestly incorrect way. In adopting Regulation No 304/97 the Council adopted a new measure replacing the safeguard measures decided upon by the Commission. However, it did not itself consider whether the conditions for the application of Article 109 were actually met, but relied on the assertions to that effect of the Commission.

142 The Netherlands Government thus claims that the Council did not in any way consider how much rice originating in the OCTs was imported into the Community, at what price, what the serious disturbances were, or the risk of such disturbances on the Community market in rice. Furthermore, it claims, the Council did not have all of the information provided by the Commission that would have enabled it to verify the accuracy of the Commission's conclusions.

143 Second, the Netherlands Government considers that the safeguard measures introduced by Regulation No 304/97 were taken in breach of Article 1(4) of Annex IV to the OCT Decision. That provision states that the Commission's decision pursuant to Article 109 of the OCT Decision is to apply with immediate effect, but does not speak of retroactive effect. However, although, under the first paragraph of Article 7 of Regulation No 21/97, that Regulation entered into force on 9 January 1997 when it was published in the *Official Journal of the European Communities*, under the second paragraph of the same article, it was to apply from 1 January to 30 April 1997. It therefore had retroactive effect. That breach of Article 1(4) of Annex IV to the OCT Decision was not remedied by Regulation No 304/97.

144 As regards, first, the Netherlands Government's criticism of the assessment carried out by the Council prior to the adoption of Regulation No 304/97, it should be borne in mind that, pursuant to Article 1(5) and (7) of Annex IV to the OCT Decision, any Member State may refer to the Council the Commission's decision adopting appropriate measures for the implementation of Article 109 of the OCT Decision and the Council may adopt a different decision within the time there stated.

145 When the Council decides to adopt a new decision, that must be understood as taking place within the framework of the general procedure in which the Commission has already intervened.

146 As has already been pointed out at paragraph 113 of the present judgment, those provisions of the OCT Decision do not require the Council to carry out a completely independent inquiry before taking a decision under Article 1(7) of Annex IV to the OCT Decision.

147 Given the nature of the Council's review in this context, as well as the fact that a safeguard measure must normally be adopted as soon as possible, it is entirely logical and reasonable that the Council took into account the data on which the Commission relied in adopting Regulation No 21/97.

148 Furthermore, as stated at paragraph 61 above, the Council enjoys a wide discretion in the application of Article 109 of the OCT Decision. It is, in those circumstances, for the applicant to show that the Council's exercise of that power is vitiated by a manifest error or by a misuse of powers or even that the Council manifestly exceeded the limits of that power.

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

150 As regards, second, the alleged breach of Article 1(4) of Annex IV to the OCT Decision, it should first be noted that that provision, according to which the Commission's decision introducing safeguard measures is to apply with immediate effect, cannot be interpreted as prohibiting the adoption of measures with retroactive effect. It is simply a manifestation of the possibility, under Article 191 of the EC Treaty (now Article 254 EC), of specifying a date for the entry into force of a regulation other than that applicable by default.

151 The fact nevertheless remains that the principle of legal certainty generally precludes a Community act from taking effect as from a date prior to its publication. It may however exceptionally be otherwise where the purpose to be attained so requires and the legitimate expectations of the persons concerned are properly respected (see Case 98/78 *Racke* [1979] ECR 69, paragraph 20; Case 99/78 *Decker* [1979] ECR 101, paragraph 8; Case 258/80 *Rumi* v *Commission* [1982] ECR 487, paragraph 11; and Case C-337/88 *SAFA* [1990] ECR I-1, paragraph 13).

152 In this respect, Article 1(4) of Regulation No 21/97 provides essentially that applications for import licences submitted between 4 January 1997 and the date of entry into force of that Regulation on 9 January 1997, for which licences have not been issued, are deemed to be admissible under Regulation No 21/97 provided that they comply with certain conditions laid down by that Regulation.

153 It follows from this that the scheme applicable to those applications was amended retroactively by Regulation No 21/97.

154 However, contrary to the suggestion of the Netherlands Government, the Commission, far from subjecting all the import licences applied for or granted between 1 January and the entry into force of the Regulation No 21/97, retroactively and without distinction, to the restrictions resulting from that Regulation, established a progressive scheme through which the retroactive effect is reduced. Only those applications submitted after Saturday, 4 January 1997 are concerned, and those applications are not subject to all of the conditions of admissibility introduced by the Regulation.

155 That scheme was not unwarranted given the exceptional circumstances of a significant increase in imports of cheap rice originating in the OCTs, the risk of serious disturbances on the Community market in rice as a result, and the risk of speculation arising from the fixing of quotas.

156 Furthermore, as from the date set for the applicability of the transitional measures laid down by Article 1(4) of Regulation No 21/97, the Commission published a notice in the *Official Journal of the European Communities* bringing those measures to the attention of the trade circles concerned. Even apart from that publication, it should be borne in mind that traders were aware that safeguard measures were imminent. Consequently, the adoption of the measures provided for by Article 1(4) of Regulation No 21/97 does not appear to have undermined any expectation worthy of protection.

157 The Court therefore finds that the Commission was entitled to adopt the retroactive provisions provided for by Article 1(4) of Regulation No 21/97 and that the Council cannot therefore be criticised for not having repealed those provisions in Regulation No 304/97.

158 It follows that the fourth plea must also be rejected.

The fifth plea: infringement of Article 190 of the Treaty

159 According to the applicant, Regulation No 304/97 infringes Article 190 of the Treaty in that it does not include a sufficient statement of the reasons on which it is based.

160 In that regard, the Netherlands Government points out that the statement of reasons must show clearly and unequivocally the reasoning of the institution which enacted the measure so as to inform the persons concerned of the justification for the measure adopted and to enable the Court to exercise its powers of review.

161 The Netherlands Government considers that the allegations in the recitals to the preamble to Regulation No 304/97 that, first, rice originating in the OCTs was sold on the Community market at a markedly lower price than that at which Community rice could be sold, and second, the combined effect of the quantities and prices of those imports was causing serious disturbances on the Community market in rice, and third, those imports might undermine the Community's attempts to diversify Community production from Japonica rice to Indica rice, were unsubstantiated.

162 It claims that the Council did not carry out an assessment of market trends and could not therefore have arrived at the conclusion that those imports were causing serious disturbances to that market. Those gaps in the statement of reasons cannot be compensated for by the fact that the Netherlands Government, having been involved in the implementation of Regulation No 304/97, had information at its disposal that would have enabled it to fill those gaps itself.

163 In that regard, it must be borne in mind that the statement of reasons required by Article 190 of the Treaty must be appropriate to the nature of the measure in

question. It must show clearly and unequivocally the reasoning of the institution which enacted the measure so as to inform the persons concerned of the justification for the measure adopted and to enable the Court to exercise its powers of review (see Joined Cases C-63/90 and C-67/90 *Portugal and Spain* v *Council* [1992] ECR I-5073, paragraph 16; Case C-353/92 *Greece* v *Council* [1994] ECR I-3411, paragraph 19; and Joined Cases C-9/95, C-23/95 and C-156/95 *Belgium and Germany* v *Commission* [1997] ECR I-645, paragraph 44).

164 It is not necessary, however, for details of all relevant factual and legal aspects to be given, in so far as the question whether the statement of the grounds for a decision meets the requirements of Article 190 of the Treaty must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question. This is *a fortiori* the case where the Member States have been closely associated with the process of drafting the contested measure and are thus aware of the reasons underlying that measure (see Case C-478/93 *Netherlands* v *Commission* [1995] ECR I-3081, paragraphs 49 and 50, and Case C-466/93 *Atlanta Fruchthandelsgesellschaft and Others II* [1995] ECR I-3799, paragraph 16).

165 Furthermore, in the case of a measure intended to have general application the preamble may be limited to indicating the general situation which led to its adoption, on the one hand, and the general objectives which it is intended to achieve, on the other (see *Spain* v *Council*, cited above, paragraph 28).

166 Moreover, the Court has repeatedly held that if the contested measure clearly discloses the essential objective pursued by the institution, it would be excessive to require a specific statement of reasons for the various technical choices made (see, in particular, *Atlanta Fruchthandelsgesellschaft and Others II*, cited above, paragraph 16, and *Spain* v *Council*, cited above, paragraph 30).

167 That is all the more so where, as in the present case, the Community institutions enjoy a wide margin of discretion in their choice of the means necessary to achieve a complex policy (see, to that effect, *Spain* v *Council*, cited above, paragraph 33).

168 Regulation No 304/97 is a measure of general application which forms part of a series of Regulations enacted by the Community institutions to implement and reconcile two complex policies, namely the common agricultural policy in the rice sector, and the economic policy formulated in the context of the association with the OCTs.

169 It is apparent from the file that the adoption by the Commission of safeguard measures under Regulation No 21/97 was preceded by a series of contacts and meetings between the Commission, the Member States and the OCTs.

170 As regards Regulation No 304/97, the Council set out in the recitals of the preamble, first, the context in which it decided that there was a risk of disturbances on the Community market in rice caused by the combined effect of the quantities and price of imports originating in the OCTs into the Community. It referred in particular in the seventh and eighth recitals to the fragile state of the Community market caused by a normal harvest of Indica rice after two years of drought and by a deficit in the production of Indica rice in the Community.

171 Second, it explained that imports of cheap rice from the OCTs might undermine the attempts to diversify Community production from Japonica rice to Indica rice

and that the quantities of rice imported from the OCTs were likely to increase still further owing to the potential of the producer regions.

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

173 It follows from this that the fifth plea must be rejected as unfounded.

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

Costs

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

On those grounds,

THE COURT,

hereby:

1. Dismisses the action as unfounded.

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

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

Rodríguez Iglesias Jann Macken

Gulmann Edward La Pergola

Puissochet Sevón Wathelet

Schintgen Skouris

Delivered in open court in Luxembourg on 22 November 2001.

R. Grass G.C. Rodríguez Iglesias

Registrar President