ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE
29 September 1999 *

In Case T-44/98 R II,

Emesa Sugar (Free Zone) NV, a company incorporated under the laws of Aruba, established at Oranjestad (Aruba), represented by Gerard van der Wal, Advocate with a right of audience before the Hoge Raad der Nederlanden, with an address for service in Luxembourg at the Chambers of Aloyse May, 31 Grand-Rue,

applicant,

supported by

Government of Aruba, represented by Pierre V.F. Bos and Marco M. Slotboom, of the Rotterdam Bar, with an address for service in Luxembourg at the Chambers of Loesch and Wolter, 11 Rue Goethe,

intervener,

* Language of the case: Dutch.

Commission of the European Communities, represented by Thomas van Rijn, Legal Adviser, acting as Agent, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

supported by

Council of the European Union, represented by Jürgen Huber and Guus Houttouin, Legal Advisers, acting as Agents, with an address for service in Luxembourg at the office of Alessandro Morbilli, Director-General of the Department for Legal Affairs of the European Investment Bank, 100 Boulevard Konrad Adenauer,

Kingdom of Spain, represented by Mónica López-Monis Gallego, Abogado del Estado, of the State Legal Service for Community Litigation, acting as Agent, with an address for service in Luxembourg at the Spanish Embassy, 4-6 Boulevard Emmanuel Servais,

and

French Republic, represented by Claude Chavance, Secretary for Foreign Affairs, acting as Agent, with an address for service in Luxembourg at the French Embassy, 8B Boulevard Joseph II,

interveners,

APPLICATION for the extension of the interim measures granted to the applicant by the President of the Court of First Instance by order of 30 April 1999 in Case T-44/98 R II *Emesa Sugar* v *Commission* [1999] ECR II-1427,

THE PRESIDENT OF THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES

makes the following

Order

Legal context and facts

1 The legal background and the facts of this case were set out in detail in the order of the President of the Court of First Instance of 30 April 1999 in Case T-44/98 R II *Emesa Sugar* v *Commission* [1999] ECR II-1427, hereinafter 'the order of 30 April 1999' and reference is therefore made to paragraphs 1 to 25 of that order.

Procedure

2 By application lodged at the Registry of the Court of First Instance on 10 March 1998, the applicant brought under the fourth paragraph of Article 173 of the EC Treaty (now, after amendment, Article 230 EC) an action, registered as Case T-44/98, for the annulment of the Commission decision of 23 December 1997

(VI/51329, hereinafter 'the contested decision') which rejected as inadmissible the application which it had submitted under Article 8(3) 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, hereinafter 'the implementing regulation') for the issue of import licences for 3 010 tonnes of sugar qualifying as ACP/OCT originating products (hereinafter 'OCT-origin sugar').

3 By separate document received at the Registry of the Court of First Instance on 10 April 1998 the applicant also initiated proceedings under Articles 185 and 186 of the EC Treaty (now Articles 242 EC and 243 EC) for, first, suspension of the operation of the contested decision until the Court gives judgment on the substance of the case and, second, an order prohibiting the Commission from applying, during the same period, the provisions of the implementing regulation and/or Article 108b of Council Decision 91/482/EEC of 25 July 1991 on the association of the overseas countries and territories with the European Economic Community (OJ 1991 L 263, p. 1, 'the OCT decision'), as amended, in so far as those provisions have the effect of limiting imports into the Community of sugar originating in the overseas countries and territories.

4 By order of 14 August 1998 in Case T-44/98 R *Emesa Sugar* v *Commission* [1998] ECR II-3079, the President of the Court of First Instance dismissed that application for interim measures.

5 On appeal by the applicant, that order was annulled by order of the President of the Court of Justice of 17 December 1998 in Case C-364/98 P(R) *Emesa Sugar* v *Commission* [1998] ECR I-8815, which referred the case back to the Court of First Instance.

6 After the case was referred back to the Court of First Instance and following a written procedure and oral procedure and an exchange of letters following a request for information by the judge hearing the application for interim measures, the latter made an order on 30 April 1999, the operative part of which reads as follows:

'1. The operation of Article 108b of Council Decision 91/482/EEC of 25 July 1991 on the association of the overseas countries and territories with the European Economic Community, 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, and of the Commission Decision of 23 December 1997 (VI/51329), is suspended in relation to Emesa Sugar (Free Zone) NV.

2. Emesa Sugar (Free Zone) NV is authorised to export to the Community milled sugar originating in the overseas countries and territories (OCTs), within the meaning of Article 6 of Annex II to Decision 91/482, and in accordance with the conditions set out in that decision, as in force up to 30 November 1997, subject to the following conditions and restrictions:

— the authorised imports will be subject to the provisions of Decision 91/482 applying prior to the entry into force of Council Decision 97/803/EC of 24 November 1997 amending at mid-term Decision 91/482 (OJ 1997 L 329, p. 50) and, in particular, to the obligation to obtain an import licence in accordance with Article 5(1) of Commission Regulation (EEC) No 3719/88 of 16 November 1988 laying down common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products (OJ 1998 L 331, p. 1), the obligation to obtain an EUR-I certificate and the obligation to furnish security of 3 euro per tonne, which will be released if the goods are imported in conformity with the import licence;

— the maximum quantity authorised for importation will be 7 500 tonnes for a period of six months commencing on the date of signature of this order;

— the OCT-origin sugar imported into the Community will be sold at a price at least equal to the intervention price referred to in Article 3(1)(a) of Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organisation of the markets in the sugar sector (OJ 1981 L 177, p. 4);

— the applicant may export the OCT-origin sugar on the condition that security is furnished in the form of a bank guarantee for a sum of USD 28 per tonne of sugar which it wishes to export in accordance with the present order. Such security must be provided not later than the date on which the sugar is presented to the customs authorities for declaration and must cover the tonnage presented. The amount of the security to be provided per tonne of sugar shall be increased or reduced:

— depending on any rise or fall in the intervention price referred to by Article 3(1)(a) of Regulation No 1785/81;

— depending on any rise or fall in the guaranteed price referred to by Article 5(4) of Protocol No 8 of the Fourth ACP-EC Convention signed in Lomé on 15 December 1989.

The reference point for the reduction or increase in the amount of the security shall be the intervention price or the guaranteed price on the date of signature of this order.

— the total amount of the security provided shall be released, on order of the President of the Court, for the benefit of the Community if the Court of Justice rules, during the six-month period commencing on the date of signature of this order, that Article 108b is not invalid in the judgment to be given in Case C-17/98;

— during the period of validity of the interim measure ordered, Emesa Sugar (Free Zone) NV shall not be entitled to lodge an application for an import licence under 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.

3. If the judgment of the Court of Justice in Case C-17/98 is delivered within the six months following the date of signature of this order:

— the present proceedings for interim measures (registered under number T-44/98 R II) will be resumed if the Court of Justice does not rule that Article 108b of the OCT decision is invalid and the parties will be requested to submit their written observations on the judgment of the Court of Justice. The further steps which the President of the Court of First Instance proposes to prescribe in the present proceedings will be set out in a new order; however, Emesa Sugar (Free Zone) NV may continue to export to the Community the sugar which is delivered to it free on board (FOB) before the date on which the judgment of the Court of Justice is delivered, (i) subject to a maximum of 7 500 tonnes, (ii) during the six-month period commencing on the date of signature of this order and (iii) in accordance with the conditions set out under point 2 above;

— this order shall continue to have effect until the end of the six-month period if the Court of Justice rules that Article 108b of the OCT decision is invalid and if the Court of First Instance has not given judgment in the case in the main proceedings (registered under number T-44/98).

4. Subject to the delivery of judgment by the Court of Justice in Case C-17/98 before the end of the first six-month period referred to in this order, the importation into the Community of a quantity of OCT-origin sugar to be specified shall be authorised for a further period by way of an order which Emesa Sugar (Free Zone) NV, acting in good time, will apply to the President of the Court of First Instance to make two months before the expiry of the first six-month period.

...'

7 On 30 July 1999 the applicant applied for renewal of the interim measures granted by the President of the Court of First Instance in his order of 30 April 1999.

8 The other parties to the proceedings were invited to submit their observations on that application. The Kingdom of Spain and the French Republic did not respond to that invitation.

9 The Government of Aruba submitted its observations on that application on 3 September 1999 and the Commission and the Council submitted their observations on 8 September 1999.

10 At the request of the judge hearing the application for interim measures, the applicant responded, by letter of 17 September 1999, to the objections raised by the Commission and the Council in their observations of 8 September 1999.

Law

Subject-matter and scope of the application

11 In his order of 30 April 1999, the judge hearing the application for interim measures considered that the circumstances were such as to require adoption of the necessary interim measures.

12 It now falls to that judge, who has before him an application for renewal of the interim measures granted by his order of 30 April 1999, to take a position on the conditions for import into the Community of a quantity of OCT-origin sugar for a further period commencing on 30 October 1999, the expiry date of the abovementioned interim measures.

13 Since none of the parties to the proceedings objects to the actual principle of renewing the interim measures granted to the applicant, the difference of views concerns only the conditions under which such renewal may be granted and in particular the period of validity of such interim measures, the quantity of sugar which the applicant may be authorised to import into the Community and the amount of the bank guarantee which the applicant must provide.

Arguments of the parties

14 In its observations of 8 September 1999, the Commission submits, first, that the validity of the interim measures may not extend beyond 29 February 2000, the expiry date of the OCT decision, unless the latter is extended.

15 Second, the Commission submits that the quantity allocated must reflect the duration of the interim measures, namely a maximum of four months, and the urgency of those measures. In its letter of 30 July 1999, the applicant did not indicate how authorisation to import a further quantity of 7 500 tonnes of sugar was necessary for its survival or why a lesser quantity could not suffice. It is therefore necessary to determine the minimum quantity of sugar which the applicant must be authorised to import to ensure its survival, in accordance with the requirement that the interests involved be balanced. It submits that the applicant should provide information in that regard.

16 Third, the guarantee to be provided by the applicant must be reviewed in the light of its financial situation, that is to say on the basis of details of the costs incurred and the earnings achieved by the applicant since the interim measures were granted by the order of 30 April 1999, the profit obtained and the debts which that profit enabled it to discharge. That guarantee should be set at a minimum of USD 43 per tonne. The applicant should provide information in that regard.

17 The Council, for its part, considers that the new interim measures should not be valid beyond 29 February 2000 or, if the period of application of the OCT decision is extended without any substantial change to the applicable trading conditions, until 30 April 2000.

18 It also contends that the quantity of sugar which the applicant may be authorised to import must be commensurate with the period of validity of the interim measures and must be supported by proof that a quantity of 7 500 tonnes is necessary for the undertaking's survival. According to the Council, the quantity of sugar and the amount of the guarantee set by the order of 30 April 1999 enabled the applicant to discharge at least half its debts. That ability to discharge debts during the first six months would appear quite sufficient to ensure the survival of the undertaking, in view of an offer, by one of its creditors, Free Zone Aruba NV, to accept payment by instalments. The amount of the guarantee and the quantity of sugar should therefore be adjusted to reflect the applicant's present situation.

19 The applicant, supported by the Government of Aruba, submits that the renewal requested, in accordance with the operative part of the order of 30 April 1999, must be subject to the same conditions as those imposed on the measures granted by that order, so that it should be authorised to import 7 500 tonnes of sugar into the Community in the period from 30 October 1999 to 29 April 2000. The factual and legal circumstances which justified the grant of the above interim measures remain unchanged.

20 In its letter of 17 September 1999 the applicant contends that it should not be required once more to prove that the circumstances justifying the grant of the interim measures still exist and to establish that both the quantity of sugar which it wishes to import into the Community and the amount of the guarantee which it must provide are necessary for its survival. It also contests the view that the quantity which it may be authorised to import and the amount of the guarantee which it must provide should be determined with reference to the duration of the interim measures and the urgency surrounding the issue thereof. It objects, finally, to the time-limit which the institutions wish to impose.

21 Essentially, in its view, the institutions have not demonstrated the existence of facts and circumstances such as to cause the judge hearing the application for interim measures to take a different view of the applicant's circumstances from that adopted by him in the order of 30 April 1999.

22 It states that the improvement in its financial situation since 30 April 1999 is not such that it would find a quantity of less than 7 500 tonnes acceptable. It was not able to resume procurement of supplies and production until after 30 April 1999, that is to say until it had made certain that outlets were available. The first consignment arrived in the port of Rotterdam on 26 July 1999 and the first deliveries were not made until August 1999. In view of normal settlement periods, the first payments were made only recently. It maintains that, if it were obliged to inform its customers now that, after 30 October 1999, deliveries could no longer be made of the desired quantities, the continuing existence of outlets would be affected, as would payments by its customers and, therefore, the

'results' of the measure applied for and granted, the purpose of which was to provide it with the means of existing and operating as an undertaking pending the delivery of judgment in the proceedings pending before the Court of First Instance in Case T-43/98 *Emesa Sugar* v *Council* and Case T-44/98 *Emesa Sugar* v *Commission*, and before the Court of Justice (request for a preliminary ruling, Case C-17/98, concerning the validity of the abovementioned decision 97/803 of 24 November 1997, particularly with regard to the insertion of Article 108b in the OCT decision).

23 As regards the matter of duration, the applicant contends that the first consignment dispatched after the order was made left Aruba in July 1999 and that the subsequent operations of purchase, production, sale and delivery take between 8 and 12 weeks.

24 Furthermore, it is hardly probable that a fresh OCT decision would be applicable with effect from 1 March 2000, in particular because, first, the Commission has not yet submitted a proposal to the Council in that connection and, second, the OCT decision provides for the possibility of transitional provisions.

25 To accept the argument advanced by the Council and Commission would be tantamount to granting a measure valid for four months as from 30 October 1999 but effectively covering only two months (December and January) and, if appropriate — in the event of the OCT decision being extended — valid for two further months, which would not assist the applicant in any way. If the extension for two months as from 1 March 2000 depends on the adoption by the Council of a transitional measure under Article 240(4) of the OCT decision, it could only be decided upon during February 2000. At that time, a supplementary measure covering two months will be pointless for the applicant in view of the time-limits of 8 to 12 weeks for which it must make allowance. For the sake of effectiveness, therefore, the period should be set at six months. If appropriate, the Commission could still apply to the Court of First Instance under Article 108 of its Rules of Procedure to have the period changed if the OCT rules in force made it appropriate to do so.

26 As regards the bank guarantee, the applicant maintains that its financial situation has not improved to such an extent that a guarantee exceeding USD 28 is justified, subject to possible adjustment of the amount thereof to the guaranteed price and the intervention price. Furthermore, the figure of USD 43 per tonne suggested by the Commission is no less in the nature of a token sum having regard to the levy on imports into the Community, namely USD 500 per tonne, than the figure of USD 28 per tonne applied at present.

27 Referring to the statistical data in its letter of 26 March 1999 (see paragraph 39 of the order of 30 April 1999), it states, finally, that, in order to pay off its debts, it needed to clear a margin of USD 62.60 per tonne (in the event of its importing 7 500 tonnes of OCT-origin sugar) or USD 31.30 per tonne (in the event of its importing 15 000 tonnes), figures which are not contested by the Council or the Commission. Accordingly, account should be taken of those figures for the purpose of renewing the interim measures. In view of the volume of its imports into the Community, of the fact that they took place only from the end of July and of the fact that it succeeded in securing the first payments only recently, the clearance of its debts is only just beginning.

28 The applicant claims that the measures granted in the order of 30 April 1999 should be extended under the same conditions and requests that a decision be adopted as soon as possible.

Findings of the judge hearing the application for interim measures

The period of validity of the interim measures

29 Under Article 240(1) thereof, the OCT decision is applicable for 10 years as from 1 March 1990.

30 Since, in principle, the OCT decision will cease to be applicable on 29 February 2000, the suspension of operation of Article 108b of that decision, by virtue of the order of 30 April 1999, cannot be extended beyond the period of application of the OCT decision.

31 Accordingly, having regard to the expiry date of the applicability of the OCT decision and to the constraints of a practical nature connected with imports, processing and exports to the Community to which the applicant is subject, the judge hearing the application for interim measures considers that the applicant should be allowed to continue to export to the Community, as from the end of the period of six months laid down in the order of 30 April 1999, any sugar delivered to it free on board (FOB) before 29 February 2000 under the conditions laid down in the present order.

32 However, if during this additional period of four months, commencing on 31 October 1999 and ending on 29 February 2000, the Court of Justice should give judgment in Case C-17/98 and hold that the provisions of the OCT decision imposing a restriction on imports into the Community of OCT-origin sugar are not invalid, the judge hearing the application for interim measures will invite the parties to these proceedings to submit to him their observations on that judgment and will, by order, indicate the course he intends following in the present proceedings, on the basis that Emesa Sugar (Free Zone) NV may continue to import into the Community such sugar as is delivered to it (FOB) before the date of delivery of that judgment of the Court of Justice, under the conditions laid down in the present order.

33 If on the other hand the Court of Justice declares during that period of four months that the provisions of the OCT decision imposing a restriction on imports into the Community of OCT-origin sugar are invalid, the order will continue to take effect until the end of that period, unless the Court of First Instance gives judgment in the main proceedings, registered as Case T-44/98, before the end of that period.

The quantity of OCT-origin sugar which may be imported into the Community

34 In his order of 30 April 1999, the judge hearing the application for interim measures considered that the applicant was in a financial situation threatening its existence because there was a real risk of its being declared insolvent. The requirement of urgency was therefore held to be satisfied. That appraisal took account of the fact that a loss of USD 421 950 was recorded for 1998 and the debts payable as at 31 December 1998 amounted to USD 469 288.

35 In their letters of 8 September 1999, the Commission and the Council consider that the quantity of sugar which may be imported into the Community under renewed interim measures should be consonant with the urgency attaching to such measures.

36 In that connection, the judge hearing the application for interim measures considers that the information provided by the applicant in its letter of 17 September 1999 supports the conclusion that it would be justified to allow imports of 7 500 tonnes of OCT-origin sugar, having regard to the urgency involved.

37 First, it was not possible for the applicant to make any deliveries of OCT-origin sugar following the order of 30 April 1999 until August 1999 and the first payments from its customers were received only recently. It is therefore unlikely that the applicant could have already, to any significant extent, repaid its creditors, so that the threat of insolvency cannot be regarded as having been ruled out since creditors will still be entitled to initiate proceedings which might lead to a declaration of insolvency.

38 Second, it is clear from the documents before the Court that the amount of the bank guarantee agreed between the applicant, the Commission and the Council was calculated on the basis of imports into the Community of 15 000 tonnes of OCT-origin sugar. The amount of the guarantee was initially calculated so that, when it was charged against the profit resulting from the sale of each tonne of OCT-origin sugar, a sum of USD 31.30 per tonne could be appropriated to the repayment of creditors — USD 31.30 per tonne multiplied by 15 000 tonnes gives a figure corresponding to the amount of the debts payable. Having regard to those figures, agreed between the applicant, the Commission and the Council after the hearing on 17 March 1999, in order to make sure that the creditors are actually paid, an essential precondition for averting, at least temporarily, the genuine risk of the applicant's becoming insolvent, it is justified to authorise imports of a further quantity of 7 500 tonnes of OCT-origin sugar into the Community. The Council's argument concerning Free Zone Aruba NV's offer to accept payment by instalments (Annex 8 to the letter sent by the applicant to the Registrar of the Court of First Instance) cannot be upheld in that connection, since that offer concerned payment by instalments only of debts during 1998.

39 Against that background, it must also be pointed out that it was in response to the request made by the Commission at the hearing of 17 March 1999 that it was decided that 7 500 tonnes of OCT-origin sugar could be imported into the Community over a period of six months, rather than a quantity of 15 000 tonnes over a whole year. The Commission emphasised that it was desirable to ensure that the applicant did not hasten to export 15 000 tonnes to the Community before judgment was delivered by the Court of Justice in Case C-17/98, as it was expected to do during the first period of six months.

40 Moreover, the practical arrangements for the purchase, import, processing and export to the Community of OCT-origin sugar and the need to allow the applicant to carry on its business under conditions of legal certainty mean that a decision on the present application for renewal of the interim measures must be given promptly, otherwise the applicant might be deprived of the right granted to it to export OCT-origin sugar throughout the period for which imports are authorised. That need for promptitude justifies giving a decision based on the

statistics relied on by the applicant, the Commission and the Council in setting the amount of the bank guarantee at USD 28 per tonne, without calling on the applicant to provide further, certified statistical information. In that connection, it must be observed that, whilst the Commission and the Council seek upward adjustment of the amount of the guarantee, they nevertheless failed to mention any objective factor, such as an amendment to the intervention price referred to in Article 3(1)(a) of Regulation No 1785/81 of 30 June 1981, cited above, as amended, or a change in the guaranteed price referred to in Article 5(4) of Protocol No 8 to the fourth ACP-EC Convention signed in Lomé on 15 December 1989, which might justify an increase.

41 Accordingly, it must be concluded that the urgency involved justifies authorising imports into the Community of a further quantity of 7 500 tonnes of OCT-origin sugar.

42 The balance of the opposing interests of the parties to these proceedings is not such as to preclude importation into the Community of the abovementioned additional quantity of OCT-origin sugar. It should be borne in mind that the Council admitted at the hearing on 17 March 1999, without being contradicted by the Commission, that imports of 15 000 tonnes of OCT-origin sugar per year do not involve any risk of upsetting the Community sugar market.

The amount of the guarantee

43 The amount of the guarantee was fixed by agreement between the applicant, the Commission and the Council following the hearing of 17 March 1999, on the basis of a quantity of 15 000 tonnes.

44 Therefore, for the reasons indicated above (paragraphs 38 and 40), it is appropriate to maintain the amount of the bank guarantee at USD 28 per tonne of sugar which the applicant wishes to import into the Community. Since the conditions for establishing and varying that guarantee, contained in paragraph 2 of the operative part of the order of 30 April 1999, are not contested by the parties, it is appropriate to apply those same conditions to the bank guarantee.

On those grounds,

THE PRESIDENT OF THE COURT OF FIRST INSTANCE

hereby orders:

1. **For the reasons set out in the order of the President of the Court of First Instance of 30 April 1999 in Case T-44/98 R II** *Emesa Sugar* v *Commission* [1999] ECR II-1427 and in accordance with paragraph 1 of the operative part of that order, the operation of Article 108b of Council Decision 91/482/EEC of 25 July 1991 on the association of the overseas countries and territories with the European Economic Community, 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 and of the Commission decision of 23 December 1997 (VI/51329) is suspended in relation to Emesa Sugar (Free Zone) NV.

2. **Emesa Sugar (Free Zone) NV is authorised to export to the Community milled sugar originating in the overseas countries and territories (OCT)**

within the meaning of Article 6 of Annex II to Decision 91/482 and in accordance with the conditions set out in that decision, as in force until 30 November 1997, subject to the following conditions and restrictions:

— the authorised imports will be subject to the provisions of Decision 91/482 applying prior to the entry into force of Council Decision 97/803/EC of 24 November 1997 amending at mid-term Decision 91/482 and, in particular, to the obligation to obtain an import licence in accordance with Article 5(1) of Commission Regulation (EEC) No 3719/88 of 16 November 1988 laying down common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products, the obligation to obtain an EUR-I certificate and the obligation to furnish security of 3 euro per tonne, which will be released if the goods are imported in conformity with the import licence;

— the maximum quantity authorised for importation will be 7 500 tonnes for the period from 31 October 1999 to 29 February 2000. After 290 February 2000, Emesa Sugar (Free Zone) NV may continue importing into the Community (i) subject to the limit of 7 500 tonnes and (ii) in accordance with the conditions laid down in this paragraph of the operative part the sugar which is delivered to it free on board (FOB) before that date;

— the OCT-origin sugar imported into the Community will be sold at a price at least equal to the intervention price referred to in Article 3(1)(a) of Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organisation of the markets in the sugar sector;

— Emesa Sugar (Free Zone) NV may import OCT-origin sugar into the Community on the condition that security is furnished in the form of a bank guarantee for a sum of USD 28 per tonne of sugar which it wishes to import in accordance with the present order. Such security must be

provided not later than the date on which the sugar is presented to the customs authorities for declaration and must cover the tonnage presented. The amount of the security to be provided per tonne of sugar shall be increased or reduced:

— depending on any rise or fall in the intervention price referred to by Article 3(1)(a) of Regulation No 1785/81;

— depending on any rise or fall in the guaranteed price referred to by Article 5(4) of Protocol No 8 of the Fourth ACP-EC Convention signed in Lomé on 15 December 1989.

The reference point for the reduction or increase in the amount of the security shall be the intervention price or the guaranteed price on 31 October 1999;

— the total amount of the security provided shall be released, on order of the judge hearing the application for interim measures, for the benefit of the Community if the Court of Justice rules, during the period from 31 October 1999 to 29 February 2000, that Article 108b is not invalid in the judgment to be given in Case C-17/98;

— during the period of validity of the interim measure ordered, Emesa Sugar (Free Zone) NV shall not be entitled to lodge an application for an import licence under Regulation No 2553/97.

3. If the judgment of the Court of Justice in Case C-17/98 is delivered during the period from 31 October 1999 to 29 February 2000:

— the present proceedings for interim measures (registered under number T-44/98 R II) will be resumed if the Court of Justice does not rule that Article 108b of Decision 91/482 is invalid and the parties will be requested to submit their written observations on the judgment of the Court of Justice. The further steps which the judge hearing the application for interim measures proposes to prescribe in the present proceedings will be set out in a new order; however, Emesa Sugar (Free Zone) NV may continue to import into the Community the sugar which is delivered to it free on board (FOB) before the date on which the judgment of the Court of Justice is delivered, (i) subject to a maximum of 7 500 tonnes, (ii) during the six-month period expiring on 29 February 2000 and (iii) in accordance with the conditions set out under point 2 above;

— this order shall continue to have effect until 29 February 2000 if the Court of Justice rules that Article 108b of Decision 91/482 is invalid and if the Court of First Instance has not given judgment in the case in the main proceedings (registered under number T-44/98).

4. The costs are reserved.

Luxembourg, 29 September 1999.

H. Jung — Registrar

B. Vesterdorf — President