# OPINION OF ADVOCATE GENERAL LÉGER

delivered on 13 March 2001 [1]

1. By these actions, brought under Article 173 of the EC Treaty (now, after amendment, Article 230 EC), the Kingdom of the Netherlands and Nederlandse Antillen [2] ask the Court to annul Council Regulation (EC) No 1036/97 of 2 June 1997 introducing safeguard measures in respect of imports of rice originating in the overseas countries and territories [3] and to order the Council of the European Union to pay the costs.

## I — Legal and procedural background to Cases C-301/97 and C-452/98

*EC Treaty*

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

3. Article 227(3) of the EC Treaty (now, after amendment, Article 299(3) EC) provides that the association arrangements are to apply to the OCTs listed in Annex IV to the Treaty, which includes the Netherlands Antilles.

4. According to the second paragraph of Article 131 of the EC Treaty (now, after amendment, the second paragraph of Article 182 EC), the purpose of association is to promote the economic and social development of the OCTs and to establish close economic relations between them and the Community as a whole.

5. Article 132(1) of the EC Treaty (now Article 183(1) EC) states that the Member States are to apply to their trade with the OCTs the same treatment as they accord each other pursuant to the Treaty.

1 — Original language: French.

2 — Hereinafter 'ARM'.

3 — OJ 1997 L 151, p. 1 (hereinafter referred to as the 'regulation at issue' or 'the contested regulation').

6. Article 133(1) of the EC Treaty (now, after amendment, Article 184(1) EC) 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.

7. Article 134 of the EC Treaty (now Article 185 EC) provides that, if the level of the duties applicable to goods from a third country on entry into a country or territory 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.

8. Pursuant to Article 136 of the EC Treaty (now, after amendment, Article 187 EC), the Council is to determine the detailed rules and procedure for the association between the OCTs and the Community. Those measures were most recently laid down by Council Decision 91/482/EEC of 25 July 1991 on the association of the OCTs with the European Economic Community. [4]

4 — OJ 1991 L 263, p. 1 (hereinafter the 'OCT decision').

*The OCT decision*

9. 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.

10. Under Article 1 of Annex II to the OCT decision, a product is to be considered to be originating in the OCTs if it has been either wholly obtained or sufficiently worked or processed there.

11. Article 2(1)(b) of Annex II to the OCT decision states 'vegetable products harvested in the OCTs' are to be considered wholly obtained in the OCTs.

12. Under Article 3(1) of the abovementioned annex, non-originating materials are considered to be sufficiently worked or processed when the product obtained is classified in a heading which is different from those in which all the non-originating materials used in its manufacture are classified.

13. Article 3(3) of Annex II to the OCT decision lists working or processing considered as insufficient to confer the status of originating products on OCT products.

14. Article 6(2) of that annex provides:

'When products wholly obtained in the Community or in the ACP States undergo working or processing in the OCTs, they shall be considered as having been wholly obtained in the OCTs' (the 'cumulation of ACP/OCT origin' rule).

15. Article 109(1) of the OCT decision allows the Commission to take safeguard measures, or to authorise a Member State to take them, if, as a result of the application of the 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 difficulties arise which may result in a deterioration in a sector of the Community's activity or in a region of the Community. The Commission is then required to follow the procedure specified in Annex IV to the OCT decision.

16. Under Article 109(2) of the OCT decision, 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.

17. Under Article 1(5) and (7) of Annex IV to the OCT decision, any Member State may refer the Commission's decision to implement 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 20 working days.

*The 1994 General Agreement on Tariffs and Trade* [5]

18. Article XIX(a) of GATT 1994 provides that if, as a result of unforeseen circumstances, any product is being imported into the territory of a contracting party in such increased quantities and under such condi-

5 — Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986-1994) (OJ 1994 L 336, p. 1, hereinafter 'GATT 1994').

tions as to cause, or threaten, serious injury to domestic producers of like or directly competitive products, the contracting party is free to introduce safeguard measures.

*Agreement on Safeguards*

19. The Agreement on Safeguards [6] is one of the multilateral agreements on trade in goods concluded by the World Trade Organisation. [7] Article 7(5) provides that no safeguard measure is to be applied again to the import of a product which has been subject to such a measure, taken after the date of entry into force of the WTO Agreement, for a period of time equal to that during which such measure had been previously applied, provided that the period of non-application is at least two years.

*Regulation (EC) No 764/97* [8]

20. On 23 April 1997, taking the view that the serious disruption to the Community market in rice and the risk of significant deterioration in that sector of economic activity which had necessitated the adoption of Regulation (EC) No 304/97 [9] had still not been eliminated, the Commission adopted Regulation No 764/97.

21. Under Regulation No 764/97, rice originating in the OCTs falling within CN code 1006 could be imported into the Community free of customs duties, during the period 1 May to 30 September 1997, up to the following limits:

(a) 10 000 tonnes for rice originating in Montserrat and the Turks and Caicos Islands, and

(b) 59 610 tonnes for rice originating in other OCTs. This category predominantly concerns the Netherlands Antilles.

6 — Uruguay Round Multilateral Negotiations (1986-1994) — Annex 1 — Annex 1A — Agreement on Safeguards (WTO-GATT 1994) (OJ 1994 L 336, p. 184).

7 — Hereinafter the 'WTO'.

8 — Commission Regulation of 23 April 1997 introducing safeguard measures in respect of imports of rice originating in the overseas countries and territories (OJ 1997 L 112, p. 3).

9 — Council Regulation 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). This regulation has been the subject of two annulment actions, which I have examined, and in which I have today delivered a single Opinion (Cases C-110/97 and C-451/98).

*Regulation No 1036/97*

22. The regulation at issue repeals and replaces Regulation No 764/97.

23. It was adopted by the Council following references by the Spanish and United Kingdom Governments, in accordance with Article 1(5) of Annex IV to the OCT decision. By those references the Governments in question sought an amendment of the Commission decision for the benefit, in particular, of the economically least-developed OCTs.

24. The Council acceded to those requests, in that it altered the allocation of quotas between the OCTs in question, whilst leaving the overall quantity unchanged. Article 1 of the regulation at issue provides that imports into the Community of rice originating in the OCTs falling within CN code 1006 and benefiting from exemption from customs duties is to be restricted during the period 1 May to 30 November 1997 to the following quantities:

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

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

25. Under Article 8, Regulation No 1036/97 was to enter into force on the date of its publication in the *Official Journal of the European Communities*, and was to apply from 1 May to 30 November 1997.

26. On 20 August 1997, the Kingdom of the Netherlands commenced an action for annulment of Regulation No 1036/97.

27. On 11 June 1997 the applicant commenced parallel proceedings in the Court of First Instance of the European Communities for annulment of the same regulation. By order of 16 November 1998 the Court of First Instance declined jurisdiction in that case in favour of the Court of Justice.

## II — The factual background to Cases C-301/97 and C-452/98

*The Community market in rice*

28. There are three main varieties of rice: round-grained rice, semi-long grained rice (otherwise known as Japonica)and long-

grained rice (otherwise known as Indica). Only Japonica and Indica rice are consumed in the Community.

29. The rice-producing countries in the Community are essentially France, Spain and Italy. The variety of rice most commonly produced is Japonica, of which there is surplus production. On the other hand, the Community does not produce enough Indica rice to meet its own needs. For this reason the Community has encouraged the culture of Indica rice by granting temporary aid per hectare to Community producers.

30. Before they can be eaten, the different varieties of rice have to be processed. There are four stages of processing. At each one of these stages the unitary value of the rice is increased. The processing stage is therefore always shown with the price or tax applicable to the rice.

31. There are generally four processing stages:

— paddy rice: this is the rice as harvested, as yet unfit for consumption;

— brown rice: [10] this is the rice after the husk has been removed. It is fit for consumption but can also be processed further;

— semi-milled rice: [11] this is the rice after part of the pericarp has been removed. It is a semi-finished product generally sold for processing rather than for consumption;

— milled rice: [12] this is fully processed rice after both the husk and the pericarp have been removed.

32. The Community produces only milled rice. By contrast the Netherlands Antilles only produce semi-milled rice. Semi-milled rice originating in the Netherlands Antilles must undergo a final transformation before being consumed in the Community.

10 — Also called 'husked rice', 'cargo rice' or 'whole-grain rice'.
11 — Also called 'partly polished rice'.
12 — Also called 'polished rice'.

## III — Admissibility of the intervention of the Kingdom of Spain and of the Netherlands Antilles' application in Case C-452/98

33. The pleas in law and submissions of the applicant in Case C-452/98 are, to all intents and purposes, the same as those of the Netherlands Government in Case C-301/97. Since the Netherlands Antilles have raised the question of the admissibility of the Kingdom of Spain's intervention and of their own application, I will deal with those points first, which, in any event, must be examined by the Court of its own motion.

*Arguments of the applicant*

34. *As a preliminary point*, the applicant submits that the intervention of the Kingdom of Spain should be held inadmissible by reason of the fact that the Act of Accession of the Kingdom of Spain has been ratified by the Kingdom of the Netherlands only in respect of the European part of the Netherlands. It follows that there is no Community law tie between the Netherlands Antilles and the Kingdom of Spain.

35. As far as its own application is concerned, the applicant submits that it is admissible, firstly, under the second, third and fourth paragraphs of Article 173 of the Treaty, and secondly, by virtue of the Netherlands Government's declaration in Annex VIII to the OCT decision. [13]

36. *Principally*, it considers that its OCT status allows it to seek the annulment of the regulation at issue on the basis of the second paragraph of Article 173 of the Treaty, without having to show that it is directly and individually concerned by that regulation.

37. In its view, as an OCT listed in Annex IV to the Treaty, the Netherlands Antilles have had rights and obligations directly conferred on them by the Treaty. It is by reason of these prerogatives that the applicant claims the right to bring proceedings under the second paragraph of Article 173 of the Treaty.

38. The applicant submits that, according to the preamble to the Statute of the Kingdom of the Netherlands, the Netherlands Antilles and Aruba have adopted a legal order 'in which they independently defend their own interests'. [14] The applicant points out that the interests of the Kingdom of the Netherlands are not always coterminous with its own. [15] Accordingly,

13 — Hereinafter 'the declaration'.

14 — Paragraph 26 of the applicant's reply.

15 — By way of example, it points out that, on 6 October 1997, the Kingdom of the Netherlands approved the amendment of the OCT decision which limited the import of Antilles rice to 160 000 tonnes per year against the express wishes of the Netherlands Antilles.

the applicant should be acknowledged as having a right to institute proceedings under the second paragraph of Article 173 of the Treaty independent of that of the Netherlands Government.

39. Similarly, the applicant submits that its entitlement to bring proceedings under the second paragraph of Article 173 of the Treaty is demonstrated by the fact that, under Article 1(5) of Annex IV to the OCT decision, only the Member States, to the exclusion of the OCT, are entitled to refer to the Council for revision of the safeguard measures adopted by the Commission.

40. Furthermore, in its view, the fact that the declaration recognises that the Netherlands Antilles have specific autonomy within the Kingdom of the Netherlands argues in favour of the existence of an autonomous right on its part to bring proceedings against measures adopted under that decision.

41. Lastly, it considers that the judgment of the Court of Justice in Case C-70/88 *Parliament* v *Council* [16] could be applied by analogy. Like the Parliament in that case, it intends by this action to protect the prerogatives accorded to it by the Treaty — namely its right of free access to the Community market, and the protection of the interests of an important sector of its economy.

42. *In the alternative*, the applicant asks that its application be held admissible by reason of the fourth paragraph of Article 173 of the Treaty.

43. In its view, these provisions impose no condition other than that it have legal personality. [17] That condition is satisfied since domestic Netherlands law recognises it as having such personality and the right to be a party to judicial proceedings in order to defend its own interests.

44. The applicant claims that it is directly and individually concerned by the regulation in question.

45. The existence of a direct detriment caused by the regulation at issue is said to be shown by the fact that it leaves no margin of discretion to the Member States in respect of its implementation, and that it imposes serious restrictions on a significant sector of the economy of the Netherlands Antilles — namely the rice-milling sector, which accounts for 0.9% of its gross national product in 1996.

16 — [1990] ECR I-2041.

17 — Reply, paragraph 24.

46. Furthermore, the applicant is individually affected by the regulation at issue because its effect is to restrict the trade in goods from the OCTs to the Community. In so far as the Netherlands Antilles are included in the list of OCTs to which the provisions of Part Four of the Treaty apply, Articles 227(3) and 131(1) of the Treaty, and the OCT decision apply to them. [18] The applicant concludes from this that the OCTs are a restricted group of legal persons.

47. Furthermore, in its view, it follows from the provisions of Article 109 of the OCT decision, upon which the regulation at issue is founded, that the Commission must take into account the effects that the proposed measure may have on the OCTs' economies. Since the Netherlands Antilles export by far the greatest quantity of rice originating in the OCTs to the Community and, when the regulation was adopted, the Council was aware that practically all of the rice originating in the OCTs came from the Netherlands Antilles, it should be concluded that the Netherlands Antilles are individually concerned by the regulation at issue.

48. At the hearing, the applicant submitted that, in its judgment of 10 February 2000 in Joined Cases T-32/98 and T-41/98 *Nederlandse Antillen* v *Commission*, [19] the Court of First Instance, in similar cases, [20] held admissible the application of the Netherlands Antilles on the basis of the fourth paragraph of Article 173 of the Treaty. It asks the Court to accept the arguments and submissions put forward both before the Court of First Instance and the Court of Justice as to the admissibility of its application. Alternatively, it invites the Court to adopt the reasoning of the Court of First Instance in that judgment.

*Assessment*

Admissibility of the Kingdom of Spain's intervention

49. Pursuant to the first paragraph of Article 37 of the EC Statute of the Court of Justice, the Member States are entitled to intervene in any case before the Court. This right arises from their status as parties to the Treaty. In this regard they have a legal interest in bringing proceedings to defend the terms of the agreement which they have entered into. As 'privileged' applicants, they are able to take advantage of an irrebuttable presumption of a legal interest in bringing proceedings and standing.

18 — Which defines the OCT association arrangements.

19 — [2000] ECR II-201.

20 — Those cases concerned applications for the annulment of two Commission regulations introducing specific safeguard measures intended to restrict imports of rice originating in the OCTs falling within CN code 1006.

50. I cannot, therefore, agree with the Netherlands Antilles — that is to say, consider that the Kingdom of Spain has no standing in a case between the Netherlands Antilles and the Community because the Treaty of Accession of the Kingdom of Spain was ratified by the Kingdom of the Netherlands only in respect of the European part of the Netherlands, without depriving the first paragraph of Article 37 of the EC Statute of the Court of Justice of its effect. To uphold such reasoning would amount to allowing provisions of domestic law to limit the application of a right arising from the Treaty.

51. I would therefore ask the Court to hold that the intervention of the Kingdom of Spain is admissible.

Admissibility of the Netherlands Antilles' application under the second paragraph of Article 173 of the Treaty

52. It should first be recalled that Article 173 exhaustively lists:

— the nature of acts the legality of which may be reviewed, as well as the institutions adopting them (first paragraph); [21]

— the persons entitled to bring proceedings for judicial review of the legality of these acts and the conditions in which such applications will be admissible (second, [22] third [23] and fourth [24] paragraphs);

— the grounds of challenge (second paragraph);

— the time-limit (fifth paragraph).

53. It appears from the wording of the second paragraph of Article 173 of the Treaty that only the Member States, the

21 — This paragraph provides that '[t]he Court of Justice shall review the legality of acts adopted jointly by the European Parliament and the Council, of acts of the Council, of the Commission and of the ECB, other than recommendations and opinions, and of acts of the European Parliament intended to produce legal effects *vis-à-vis* third parties.'

22 — Which provides that '[i]t shall for this purpose have jurisdiction in actions brought by a Member State, the Council or the Commission on grounds of lack of competence, infringement of an essential procedural requirement, infringement of this Treaty or of any rule of law relating to its application, or misuse of powers.'

23 — Which provides that '[t]he Court of Justice shall have jurisdiction under the same conditions in actions brought by the European Parliament and by the ECB for the purpose of protecting their prerogatives'.

24 — Which provides that '[a]ny natural or legal person may, under the same conditions, institute proceedings against a decision addressed to that person or against a decision which, although in the form of a regulation or a decision addressed to another person, is of direct and individual concern to the former'.

Council and the Commission are automatically and generally entitled to bring annulment proceedings. In other words these 'privileged' applicants are not required to show standing or their legal interest in bringing proceedings for the annulment of acts adopted by the Community institutions and intended to produce legal effects with regard to third parties. They enjoy an irrebuttable presumption that they have a legal interest in bringing proceedings. [25] It would appear natural to accord that privilege to such applicants. As parties to the Treaty, the Member States have an obvious interest in upholding the terms of an agreement to which they are parties. The Commission's interest is also clear, having regard to its functions, under Article 155 of the EC Treaty (now Article 211 EC), as 'guardian of the Treaty'. [26] Equally, the Council, as the authority charged with attaining the objectives set out in the Treaty, in accordance with Article 145 of the EC Treaty (now Article 202 EC), has a legal interest in upholding Community legality.

54. It must be concluded that, in order to bring themselves within the second paragraph of Article 173 of the Treaty, the Netherlands Antilles need to prove that they are either a Member State or one of the Community institutions enjoying general and automatic standing — that is, either the Council or the Commission.

55. It is clear that the Netherlands Antilles is not a Community institution.

56. Furthermore, the status of 'Member State', within the meaning of the Treaty and, in particular, the provisions on judicial review, is exclusively reserved to the government authorities of the Member States of the European Communities, to the exclusion of governments of regions or of autonomous communities, irrespective of the powers they may have. [27]

57. According to the Court, '[i]f the contrary were true, it would undermine the institutional balance provided for by the Treaties, which determine the conditions under which the Member States, that is to say the States party to the Treaties establishing the Communities and the Accession Treaties, participate in the functioning of the Community institutions. It is not possible for the European Communities to comprise a greater number of Member States than the number of States between which they were established'. [28]

25 — See, in this regard, Canedo, M., 'L'intérêt à agir dans le recours en annulation du droit communautaire', *Revue trimestrielle de droit européen*, July-September 2000, p. 451.

26 — See, in particular, Case C-146/91 *KYDEP* v *Council and Commission* [1994] ECR I-4199, paragraph 30; Case C-431/92 *Commission* v *Germany* [1995] ECR I-2189, paragraphs 21 and 22; and Case C-207/97 *Commission* v *Belgium* [1999] ECR I-275, paragraph 24.

27 — See, in particular, the orders of the Court in Case C-95/97 *Région wallonne* v *Commission* [1997] ECR I-1787, paragraph 6, and Case C-180/97 *Regione Toscana* v *Commission* [1997] ECR I-5245, paragraph 6.

28 — Ibidem.

58. In its recent judgment in Case C-17/98 *Emesa Sugar*, [29] the Court expressly ruled out the possibility of OCTs being regarded as Member States within the meaning of the Treaty. The Court held that 'although the OCTs are associated countries and territories having particular links with the Community, they are not part of it and are, as regards the Community, in the same situation as non-member countries'. [30]

59. Since the Netherlands Antilles are an OCT, they cannot be a Member State for the purposes of the Treaty. [31]

60. As for the applicant's argument to the effect that domestic institutional rules confer on it a wide autonomy with regard to the Kingdom of the Netherlands and thereby enable it to bring proceedings under the second paragraph of Article 173 of the Treaty independently of any proceedings which could otherwise be brought by the Netherlands Government, it must be pointed out that the division of powers under domestic institutional rules is not a matter for the Court. [32] In other words, it is not for the Community institutions to take a view on the division of powers laid down by the institutional rules of the Member States or upon the obligations falling respectively on central authorities of the State and other territorial authorities. [33] Any disputes which could arise regarding assessment of the extent of their respective powers and of mutual rights and obligations are, therefore, a matter for the Member States alone.

61. The applicant's argument based on domestic institutional rules is therefore invalid as regards the admissibility of an application under the second paragraph of Article 173 of the Treaty.

62. It follows from the foregoing that the applicant cannot admissibly bring proceedings under the second paragraph of Article 173 of the Treaty.

Admissibility of the Netherlands Antilles' application on the basis of the declaration

63. The applicant also submits that the declaration accords it the right to bring an

29 — Case C-17/98 [2000] ECR I-675.

30 — Ibidem, paragraph 29.

31 — In application of that case-law, the Court of First Instance recently held, in the context of an application for annulment brought by the Netherlands Antilles against a Commission regulation introducing safeguard measures in respect of imports of rice originating in the OCTs, that the Netherlands Antilles had no legal interest in bringing proceedings under the second paragraph of Article 173 of the Treaty (*Nederlandse Antillen* v *Commission*, cited above, paragraph 43).

32 — See, in particular, Case C-8/88 *Germany* v *Commission* [1990] ECR I-2321, paragraph 13, and again the order in *Région wallonne* v *Commission*, cited above, paragraph 7.

33 — Order in *Région wallonne* v *Commission*, cited above, paragraph 7.

action for the annulment of measures adopted under that decision.

64. It should be pointed out in this regard that the provisions of a declaration can be of legal significance only to the extent that the content of those provisions reflects the text of the secondary legislation which gave rise to the declaration. [34]

65. The declaration in question was adopted by the Netherlands Government in response to the OCT decision.

66. Therefore, in order for this declaration to be of legal significance, the purpose of the OCT decision would need to be to govern the procedural conditions for judicial remedies in respect of measures adopted under the said decision.

67. It appears from the overall scheme of the OCT decision that it is intended to implement the provisions of the Treaty governing the association between the OCTs and the Member States, but does not govern the procedural conditions for judicial remedies sought by the Member States and the OCTs in respect of measures which might be adopted under the OCT decision.

34 — Case C-292/89 *Antonissen* [1991] ECR I-745, paragraph 18.

68. It also appears from the overall scheme of the OCT decision that the Member States have a privileged relationship with the Community institutions in the adoption and revision of measures adopted under the said decision.

69. Thus under Article 1(5) and (7) of Annex IV to the OCT decision, the Member States alone are entitled to refer the Commission's decision introducing safeguard measures to the Council within 10 working days of receiving notification of the decision.

70. It follows from the foregoing that, even if the declaration did confer on the Netherlands Antilles the right to bring proceedings before the Court for review of the legality of acts adopted by the Community institutions under the OCT decision, no legal significance should be attached to it, in so far as the purpose of the OCT decision is not to define the procedural conditions for judicial remedies in respect of measures adopted pursuant to that decision.

71. For the sake of completeness, I would add that I do not consider that the Netherlands Government intended to confer any such right on the Netherlands Antilles by that declaration.

72. The declaration provides as follows:

'The [G]overnment of the Kingdom of the Netherlands draws attention to the constitutional structure of the Kingdom of the Netherlands resulting from the statute of 29 December 1954, and in particular, to the autonomy of the countries of the Kingdom so far as concerns the provisions of the Decision, and the fact that the Decision was, in consequence, adopted in cooperation with the Governments of the Netherlands Antilles and Aruba pursuant to the constitutional procedures in force in the Kingdom.

It declares that, for that reason and without prejudice to the rights and obligations devolving upon it under the Treaty and under the Decision, the Governments of the Netherlands Antilles and of Aruba will fulfil the obligations arising out of the Decision.'

73. It follows expressly from the wording of those provisions that the purpose of the declaration is not to derogate from the rules of the Treaty or of the OCT decision.

74. As we have seen, the OCT decision does not contain any rule governing the procedural conditions for judicial remedies sought by the Member States and the OCTs in respect of measures which might be adopted pursuant to the OCT decision.

75. Furthermore, the Treaty does not confer on the OCTs any specific right in respect of judicial remedies, such rights being conferred only in the economic, social and cultural fields. [35]

76. Furthermore, it is clear from the actual wording of this declaration that the Netherlands Government did not recognise the Netherlands Antilles or Aruba as having any specific rights — still less in respect of judicial remedies — but intended to remind the Governments of those OCTs that they were required to fulfil their obligations arising out of the decision.

77. Therefore, the provisions of the declaration cannot be interpreted as granting to the Netherlands Antilles specific rights in respect of judicial remedies.

78. It follows from the foregoing that the normal provisions of the Treaty governing judicial remedies, that is, the provisions of Article 173 of the Treaty, apply in this case.

Admissibility of the Netherlands Antilles' application under the third paragraph of Article 173 of the Treaty

35 — See Articles 131 to 136 of the Treaty.

79. The applicant asks that Case C-70/88 *Parliament* v *Council*, cited above, be applied by analogy. It submits that its application should be held admissible under the third paragraph of Article 173 of the Treaty inasmuch as its purpose is to protect the prerogatives which the Treaty recognises the applicant as enjoying.

80. I cannot accept that argument. In *Parliament* v *Council*, the intention of the Court was to deal with a procedural question as to the conditions governing the admissibility of proceedings brought by Community institutions other than the Council and the Commission. [36] That judgment is aimed at ensuring that institutional balance is maintained, not at establishing the standing of natural and legal persons who consider themselves to be harmed by an act of general application adopted by a Community institution. [37]

81. The third paragraph of Article 173 of the Treaty, added to the Treaty following that judgment, merely reproduces what it said.

82. It is common ground that the Netherlands Antilles are not one of the institutions of the Community which participates in the drafting of Community acts intended to have legal effects with respect to third parties. They cannot therefore rely on the judgment in Case C-70/88 *Parliament* v *Council*.

83. It follows from the foregoing that the Netherlands Antilles' application on the basis of the third paragraph of Article 173 of the Treaty is inadmissible.

Admissibility of the Netherlands Antilles' application under the fourth paragraph of Article 173 of the Treaty

84. Under the fourth paragraph of Article 173 of the Treaty, any natural or legal person may institute proceedings against a decision addressed to that person or against a decision which, although in the form of a regulation or a decision addressed to another person, is of direct and individual concern to the former.

85. Since the contested regulation is not a decision addressed to the Netherlands Antilles, within the meaning of the fourth paragraph of Article 173 of the Treaty, it must be ascertained whether it is an act of general application or whether it is in fact a decision in the form of a regulation.

86. In order to determine whether an act is of general application, it is necessary to determine its nature and the legal effects which it is intended to, or does in fact, produce. [38]

36 — Paragraphs 23 and 24.

37 — Ibidem, paragraphs 25 to 27.

38 — See, in particular, Case 307/81 *Alusuisse Italia* v *Council and Commission* [1982] ECR 3463, paragraph 8.

87. By Regulation No 1036/97 the Council has adopted normative measures which are applicable without distinction to economic operators in general in the Community trade in rice originating in the OCTs. The purpose and effect of the regulation at issue is to limit imports of rice originating in the OCTs as a whole into the Community.

88. The regulation is, therefore, by its nature, of general application and does not constitute a decision within the meaning of Article 189 of the EC Treaty (now Article 249 EC).

89. It cannot be ruled out, however, that an act, notwithstanding its general application, can be of *direct and individual* concern to certain natural or legal persons. [39] The question whether the Netherlands Antilles satisfy these two conditions must therefore be examined.

90. Under settled case-law, [40] the Court has held that an act of general application adopted by a Community institution is of *individual* concern to natural or legal persons, *by reason of certain attributes* which are peculiar to them, or by reason of *circumstances* in which they are differentiated from all other persons. Those natural or legal persons are then considered to be 'persons concerned', that is, they have shown themselves to belong to a limited group of persons whose legal position is affected by reason of circumstances in which they are differentiated from all other persons and distinguished individually in the same way as an addressee. [41]

91. The applicant claims to fulfil these two conditions.

92. In its view, the contested regulation concerns all the OCTs. It deduces from this that the OCTs are a limited group of legal persons.

93. It further submits that the Netherlands Antilles are a legal person 'concerned' in respect of those measures, within the meaning of the Court's case-law.

94. *First*, the Netherlands Antilles are said to have attributes that are peculiar to them by comparison with the other OCTs. The applicant claims in this regard that the

39 — See, in particular, Case C-309/89 *Codorniu* v *Council* [1994] ECR I-1853, paragraph 19.

40 — See Case 25/62 *Plaumann* v *Commission* [1963] ECR 95; Case 11/82 *Piraiki-Patraiki and Others* v *Commission* [1985] ECR 207, paragraph 11, and *Codorniu* v *Council*, cited above, paragraph 20.

41 — See in particular, *Piraiki-Patraiki and Others* v *Commission*, cited above, paragraphs 17 and 28, and Case C-390/95 P *Antillean Rice Mills and Others* v *Commission* [1999] ECR I-769, paragraph 28.

regulation at issue imposes considerable restrictions on a significant sector of its economy.

95. It appears from the observations of the applicant that the rice-milling sector represented only 0.9% of the gross domestic product of the Netherlands Antilles for 1996. It seems to be doubtful, to say the least, having regard to the figure put forward, that this can be considered to be a particularly significant sector of the Netherlands Antilles' economy. I would have concluded otherwise had the economic sector affected by the measure at issue represented a far more significant proportion of the gross domestic product of the OCT in question. I must therefore conclude that the applicant has not shown that the contested regulation affects it by reason of attributes which distinguish it from the other OCTs also referred to by said regulation.

96. *Secondly*, the applicant states that the Netherlands Antilles find themselves in circumstances which differentiate them from all other persons and which distinguish them individually in the same way as an addressee, within the meaning of the Court's case-law in *Piraiki-Patraiki and Others* v *Commission*. It submits, in this respect, that it exports by far the largest quantity of rice originating in the OCTs to the Community and that, when the regulation was adopted, the Council was aware of that specific situation but failed to take it into account when considering the impact that the safeguard measures would have on the Netherlands Antilles' economy.

97. It is true that the fact that, when taking a decision, the Community institutions are required, by specific provisions, to take account of the negative effects that their decision might have for the economy of a State or for undertakings concerned may be such as to distinguish those different persons individually. [42] However the Court has consistently held that that can only, in fact, be the case if the State or undertakings concerned also adduce evidence that their circumstances distinguish them from all other persons. [43] In that respect the Court has held that Article 109(1) of the OCT decision contained an obligation of that nature. [44]

98. It follows therefore from the Court's case-law that that obligation upon a Community institution is only one *factor* enabling legal persons to show a specific, individual and personal interest in bringing proceedings under the fourth paragraph of Article 173 of the Treaty against an act of general application. In so doing, if those persons adduced such evidence, they should be regarded as belonging to a limited circle of 'persons concerned' within the meaning of *Piraiki-Patraiki and Others* v *Commission*, cited above.

99. In this case the applicant relies on the judgment in *Nederlandse Antillen* v *Com-*

42 — *Piraiki-Patraiki and Others* v *Commission*, cited above, paragraph 28.

43 — See, in particular, *Plaumann* v *Commission* and *Piraiki-Patraiki and Others* v *Commission*, paragraph 28, cited above.

44 — *Antillean Rice Mills* v *Commission*, cited above, paragraphs 25 to 30.

*mission*, cited above, which, on similar facts, held admissible its application under the fourth paragraph of Article 173 of the Treaty.

100. I cannot, however, accept the applicant's submission on this point, owing to an erroneous application by the Court of First Instance of the Court's case-law in *Piraiki-Patraiki and Others* v *Commission*, cited above.

101. In its judgment of 14 September 1995 in *Antillean Rice Mills* v *Commission*, '*ARM-1*',[45] the Court of First Instance correctly applied the Court's decision in *Piraiki-Patraiki and Others* v *Commission*. It observed, first, that the OCT decision required the Community institutions to take account of the impact of the decisions envisaged on the legal position of identified or identifiable persons.[46] Secondly, it emphasised that such persons had to produce evidence that their circumstances differentiated them from all other persons.[47] It pointed out, thirdly, that the existence of contracts entered into before the adoption of the safeguard measures in question, the performance of which had been wholly or partly prevented by the adoption of those measures, constituted a 'factor capable of defining the limited class of undertakings concerned but that other factors may also be used for that purpose'.[48] It found, fourthly, that, in the case before it, the applicants had shown themselves to be in 'factual circumstances [such that the applicants] may be considered to be undertakings concerned by the measure'.[49] It concluded, finally, that 'the objection of inadmissibility raised by the Commission must be dismissed'.[50]

102. The Court of First Instance therefore found that the obligation on the Community institutions to take account of the impact of the safeguard measures envisaged on the economy of the OCTs or on undertakings concerned was just one factor enabling the latter to prove their specific, individual and personal interest in bringing an action for the annulment of an act of general application adopted by a Community institution.

103. By contrast, in Joined Cases T-32/98 and T-41/98 *Nederlandse Antillen* v *Commission*, cited above, the Court of First Instance did not carry out such an analysis or examination. In that case, the Court of First Instance treated the *obligation* upon the Community institutions to take account of the possible impact of the safeguard measures envisaged on the economy of an OCT as *a sufficient condition* for persons benefiting from the corresponding right to be considered 'persons concerned' within

45 — Joined Cases T-480/93 and T-483/93 [1995] ECR II-2305.
46 — Paragraph 72.
47 — Ibidem, paragraph 73.
48 — Ibidem, paragraph 74.
49 — Ibidem, paragraph 76.
50 — Ibidem, paragraph 80.

the meaning of the Court's decision in *Piraiki-Patraiki and Others* v *Commission*. [51] In so doing it reversed the reasoning of the Court in that case.

104. Paragraph 57 of the decision in *Nederlandse Antillen* v *Commission* is particularly revealing in that respect. The Court of First Instance held that:

'It is true, as the Commission points out, that the fact that a local or regional authority of a Member State demonstrates that the application or implementation of a Community measure is capable of affecting socio-economic conditions within its territory is not sufficient for it to be recognised that that measure is of individual concern to it... . However, in this case, the contested measures are *of individual concern* to the applicant in so far as the Commission, when envisaging their adoption, was under a duty specifically to take account of the applicant's situation by virtue of Article 109(2) of the OCT Decision'. [52]

105. It follows that the Court of First Instance concluded that the Netherlands Antilles' application was admissible solely on the basis of the obligation on the Community institutions to take account of the impact of measures envisaged on the economy of the OCTs in question, although, in *Piraiki-Patraiki and Others* v *Commission*, *Plaumann* v *Commission*, and *ARM-1*, cited above, that obligation is just one factor which must be supported by evidence that the persons concerned are affected by the act in question *by reason of certain attributes* which are peculiar to them or by reason of *circumstances* in which they are differentiated from all other persons.

106. It follows from the foregoing [53] that, in order to satisfy the conditions laid down by the Court's case-law, the Netherlands Antilles must show, in addition to the obligation incumbent on the Council, that their circumstances differentiate and distinguish them from all other OCTs.

107. In that regard the applicant submits that it exports by far the greatest quantity of rice originating in the OCTs to the Community and that, when the regulation was adopted, the Council was aware of that particular circumstance, but failed to take it into account when assessing the impact of the safeguard measures that were going to be taken on the economy of the Netherlands Antilles.

108. I do not consider that the circumstances described by the applicant are such as to distinguish them from the other OCTs. The applicant confines itself to listing the likely significant socio-economic

51 — Paragraphs 55 to 57.

52 — Emphasis added.

53 — See points 97 to 101 of this Opinion.

consequences of the application in its territory of the contested regulation.

109. According to settled case-law,[54] 'the fact that a local or regional authority of a Member State demonstrates that the application or implementation of a Community measure is capable of affecting socio-economic conditions within its territory is not sufficient for it to be recognised that that measure is of individual concern to it'.[55]

110. Further, it should be pointed out that in this case the economic activity in question affected by the said regulation, namely the processing, in the territory of the Netherlands Antilles, of rice originating in third countries, is a commercial activity which could be carried out at any time by any operator and is therefore not such as to differentiate the Netherlands Antilles from all other OCTs.[56]

111. Furthermore, given that goods originating in third countries only obtain a small amount of added value in the territories of the OCTs, the economic sector affected by the contested regulation can only make a small contribution to the development of the OCTs. In any case, the applicant has stated that the rice-milling sector represented only 0.9% of the Netherlands Antilles' gross domestic product in 1996. The applicant's claim that the regulation at issue has serious consequences in a significant sector of its economy is not therefore well founded.

112. Taking all of these various factors into account, the applicant has not shown that it has been affected by the regulation in question by reason of attributes which are peculiar to it or by reason of circumstances in which it is differentiated from all other OCTs.

113. Since the applicant has failed to show that the regulation at issue is of individual concern to it, there is no need to consider whether it is directly affected by it.

114. It follows from the foregoing that the applicant is not a 'person concerned' within the meaning of the Court's case-law. I therefore propose that the Court hold its application to be inadmissible.

115. It is, therefore, unnecessary to examine the substance of this application.

54 — See in particular, the orders in Case T-238/97 *Comunidad Autónoma de Cantabria* v *Council* [1998] ECR II-2271, paragraphs 21 and 22, and Case T-609/97 *Regione Puglia* v *Commission and Spain* [1998] ECR II-4051, paragraphs 21 and 22.

55 — *Nederlandse Antillen* v *Commission*, cited above, paragraph 57.

56 — See, by analogy, *Plaumann* v *Commission*, cited above.

## IV — Pleas in law and submissions of the Netherlands Government in Case C-301/97

116. The Netherlands Government puts forward seven pleas in law in support of its application, alleging:

— breach of the principle of legal certainty;

— breach of the GATT rules;

— breach of Article 109(1) of the OCT decision;

— breach of Article 109(2) of the OCT decision;

— misuse of powers;

— disregard of the revision procedure for safeguard measures in Annex IV to the OCT decision; and lastly

— breach of Article 190 of the EC Treaty (now Article 253 EC).

## V — Discussion

*First plea in law alleging breach of the principle of legal certainty*

Arguments

117. Under this heading the Netherlands Government contends that the Council has breached the principle of legal certainty by failing to determine the legal situation of the undertakings concerned and of the OCTs once the tariff quota laid down by Article 1 of the contested regulation was filled. In its view, that step was necessary in so far as two diametrically opposed legal situations could be envisaged in this case: in the first, once the quota was met, the OCTs would be deprived of the right to import rice into the Community; in the second, the importation of rice would be possible, but only if the customs duties applicable to such a transaction were paid. Such uncertainty is said to be incompatible with the principle of legal certainty.

118. The Council, the Commission and the Spanish and Italian Governments deny that allegation.

Assessment

119. The principle of legal certainty is one of the fundamental principles of Community law,[57] which requires, in particular, that rules imposing charges on their addressees are clear and precise so that the latter may be able to ascertain unequivocally what their rights and obligations are.[58]

120. In this case, with regard to the legal situation of the economic operators concerned when the tariff quota was filled, that is to say, exporters of rice originating in the OCTs, the meaning and the consequences of the application of the regulation at issue are clear, even if the consequences are not expressly set out.

121. Article 1 of the regulation at issue limits the quantity of rice originating in the OCTs and falling within CN code 1006[59] that may be imported free of customs duty, but is not intended to prohibit imports of goods originating in the OCTs. The imposition of a tariff quota necessarily means that any quantity of the product over and above the quota is subject to customs duty at the normal rate.

122. That reading of the provision is confirmed by the purpose of the regulation as it appears in the preamble. The regulation is intended to remedy disruption in the Community market for rice caused by massive imports of rice originating in the OCTs. In order to do so, the Community legislature adopted safeguard measures in accordance with the provisions of the OCT decision. Those measures consist of limiting imports of rice originating in the OCTs exempt from customs duty, but not prohibiting such imports. A measure banning all imports of goods from the OCTs to the Community would, in any case, be contrary to Article 131 of the Treaty. That article provides that the association is intended to introduce close economic relations between the OCTs and the Community. A prohibition on the importation of goods originating in the OCTs would contravene Article 131 of the Treaty and Article 109(2) of the OCT decision, which states that the safeguard measure chosen must respect the principle of proportionality.

57 — See, to that effect, Joined Cases 205/82 to 215/82 *Deutsche Milchkontor and Others* [1983] ECR 2633.

58 — See, in particular, Case 169/80 *Gondrand Frères and Garancini* [1981] ECR 1931; Joined Cases 92/87 and 93/87 *Commission* v *France and United Kingdom* [1989] ECR 405, paragraph 22, and Case C-143/93 *Van Es Douane Agenten* [1996] ECR I-431, paragraph 27.

59 — That is, semi-milled rice originating in the OCTs and benefiting from the rule of cumulation of origin.

123. In Case C-17/98 *Emesa Sugar*, [60] cited above, the Court confirmed this interpretation and held that the introduction of a safeguard measure such as a tariff quota meant that 'the products concerned can be imported in excess of the quota only against payment of customs duties'.

124. Consequently, contrary to the Netherlands Government's submission, the Council has not breached the principle of legal certainty by failing expressly to indicate the legal situation of the undertakings concerned, and of the OCTs when the tariff quota set by Article 1 of the contested regulation is filled. The first plea in law is accordingly unfounded.

*Second plea in law, alleging breach of Article 7(5) of the Agreement on Safeguards*

Arguments

125. The Netherlands Government maintains that the Council contravened Article 7(5) of the Agreement on Safeguards by adopting Regulation No 1036/97 within two years of the expiry of Regulation No 304/97.

126. In its view, Article 7(5) of the Agreement on Safeguards, which lays down a clear, precise and unconditional obligation, has direct effect.

127. It is said to apply to relations between the Community and the OCTs, since the OCTs are regarded as third countries for the purposes of the Agreement establishing the WTO. [61]

Assessment

128. The question whether agreements concluded within the framework of GATT 1994 constitute rules in the light of which the Court is to renew the legality of Community acts was dealt with in the judgment in *Portugal* v *Council*. [62]

129. In that case, the Portuguese Government sought the annulment of Council Decision 96/386/EC of 26 February 1996

60 — Paragraph 45.

61 — See Opinion 1/94 of 15 November 1994 [1994] ECR I-5267.

62 — Case C-149/96 [1999] ECR I-8395.

concerning the conclusion of Memoranda of Understanding between the European Community and the Islamic Republic of Pakistan and between the European Community and the Republic of India on arrangements in the area of market access for textile products, [63] on the ground that it breached certain rules and fundamental principles of the WTO, in particular those of the GATT.

130. The Court did not base its decision on the existence or absence of direct effect of the provisions of the agreements, but on an analysis of the specific situation created in the international legal order by the implementation of those agreements.

131. The Court pointed out that it is for each of the parties to an agreement to determine the legal means appropriate to executing fully its commitments, unless the agreement, interpreted in the light of its subject-matter and purpose, itself specifies those means.

132. As for such legal means within the Community legal order, the sole consideration that the Court found, in fact, *to be relevant was that of reciprocity in the implementation of the agreement*. The Court noted that the courts of the Community's most important trading partners do not review the legality of rules of domestic law in the light of the WTO agreements and therefore the test of reciprocity was not generally satisfied.

133. As a result the Court concluded that 'having regard to their nature and structure, the WTO agreements are not, in principle, among the rules in the light of which the Court is to review the legality of measures adopted by the Community institutions'. [64]

134. The Court further stated that 'it is only where the Community intended to implement a particular obligation assumed in the context of the WTO, or where the Community measure refers expressly to the precise provisions of the WTO agreements, that it is for the Court to review the legality of the Community measure in question in the light of the WTO rules'. [65]

135. In this case it is not in dispute that the purpose of the regulation at issue is to apply Article 109 of the OCT decision, and it is not intended to ensure the implementation within the Community legal order of a particular obligation arising within the context of the WTO, any more than it expressly refers to the provisions of the WTO agreements.

63 — OJ 1996 L 153, p. 47.

64 — *Portugal* v *Council*, cited above, paragraph 47.

65 — Ibidem, paragraph 49.

136. Therefore, following the Court's judgment in Case C-149/96 *Portugal* v *Council*, cited above, I would propose that the Court hold that the Kingdom of the Netherlands' plea that the contested regulation was adopted in breach of certain rules and fundamental principles of the WTO, and in particular Article 7(5) of the Agreement on Safeguards, is unfounded.

*Third plea in law, alleging breach of Article 109(1) of the OCT decision*

This plea is made up of two limbs.

First limb of the third plea in law

Arguments

137. Under the first limb of its first plea, the Netherlands Government submits that it follows from the provisions of Article 132 of the Treaty that the advantages accorded to the OCT in the context of the progressive stages of the association cannot be called into question for reasons connected with the quantities or price-level of products imported from the OCTs.

138. The Netherlands Government states that the purpose of the OCT decision, under Article 131 of the Treaty, is to promote the economic and social development of the OCTs and to establish close economic relations between the latter and the Community. Under Article 133 of the Treaty, the complete abolition of customs duties on goods originating from the OCTs upon their entry into the Member States constitutes one of the means of bringing about the abovementioned objectives.

139. In its view, the realisation of those objectives presupposes that the volume or price of products originating from the OCTs cannot justify the adoption of safeguard measures. If one were to accept that those reasons justified the adoption of such measures, the realisation of the objectives of the OCT arrangements, which include, according to Article 3(r) of the Treaty, an increase in trade, would be permanently compromised. The effect of the safeguard measures would thus be to reduce to nothing the natural development of trade, which is the purpose of the Treaty.

140. The Netherlands Government accepts that safeguard measures can be adopted, but only for the purposes of dealing with unforeseen circumstances, or where the conditions set out in Article 134 of the Treaty are met. It claims that to hold otherwise would amount to undermining the principle of liberalisation of trade between the Community and the OCTs.

141. The Council, the Commission and the Spanish and Italian Governments disagree with the Netherlands Government's arguments.

Assessment

142. When examining the Netherlands Government's application in Case C-110/97, I concluded that the Court should dismiss this plea in law as unfounded. [66] Since the arguments put forward by the Netherlands Government in support of the first limb of the third plea are strictly the same as those advanced in Case C-110/97, I would invite the Court to refer to my reasoning in that case. [67]

143. I would suggest, for the reasons given in Case C-110/97, that the Court hold, contrary to the assertions of the Netherlands Government, that Article 132 of the Treaty cannot be interpreted as meaning that the advantages accorded to the OCTs in the context of the progressive attachment of association cannot be called into question for reasons connected with the quantities or price-level of products imported from the OCTs. The first limb of the third plea in law is therefore unfounded.

66 — See points 64 to 69 of my Opinion delivered today in that case.

67 — Ibidem.

Second limb of the third plea in law

Arguments

144. Under the second limb of the third plea, the Netherlands Government contends that the Council has failed to show that the quantity or price-level of rice originating in the OCTs caused or threatened to cause a significant disturbance on the Community market.

145. In its view, the Council's argument that *the quantities of rice imported* from the OCTs into the Community still constituted a factor that threatened to disturb the Community market in rice was wrong.

146. On that point, it states that the Community production of Indica rice is not enough to meet its own needs. That structural deficit in respect of Indica rice can be compensated for only by imports of rice from the OCTs. It adds that the accession of the Kingdom of Sweden, the Republic of Finland and the Republic of Austria to the European Union has only aggravated an already delicate situation.

147. The Netherlands Government also denies that there was any *causal link* between imports of rice from the OCTs and any impending disturbance on the Community market. It claims that the disturbance on the Community market was caused by massive imports of rice from third countries, in particular the United States of America and Egypt, which were made possible by 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. [68]

148. Lastly, concerning the allegedly lower *price* of rice originating in the OCTs by comparison with the price of Community rice, on the basis of evidence which it has already submitted in Case C-110/97, the Netherlands Government states that the price of OCT rice is clearly higher than that of Community rice.

Assessment

149. It should be pointed out that, in this case, the Netherlands Government has faithfully reproduced the arguments it put forward in Case C-110/97. Furthermore, to support its case it relies on the same factual evidence as adduced in that case. [69]

150. I have set out fully in Case C-110/97 my reasons for finding that the Netherlands Government has failed to prove that the Council committed a manifest error of assessment. [70]

151. Accordingly, I propose that the Court hold that there is insufficient evidence to find that the Council committed a manifest error of assessment in the application of Article 109(1) of the OCT decision. The second limb of the third plea in law should therefore be held to be unfounded.

*Fourth plea in law, alleging breach of Article 109(2) of the OCT decision*

This plea is divided into five limbs and I will consider each in turn.

68 — OJ 1996 L 190, p. 1. This regulation was adopted following agreements negotiated under the GATT.

69 — See, on this point, the data supplied by the Kingdom of the Netherlands at paragraph 79 of its application.

70 — See points 83 to 103 of my Opinion delivered today in that case.

First limb of the fourth plea in law

Arguments

152. By the first limb of the fourth plea, the Netherlands Government claims that the Council failed to respect the order of preference of the association arrangements of EC/OCT/ACP/third countries established by the Treaty, because the contested regulation has the effect of making OCT rice more expensive than rice from third countries or from the ACP States.

153. In that regard, the Netherlands Government points out that the Community limited imports of husked rice free of customs duties from the OCTs to 69 610 tonnes in the period from 1 May to 30 November 1997 inclusive, whilst, in the same period, under Regulation No 1522/96, a much greater quantity of imports from third countries was allowed.

154. In so doing, it states, the Council put the OCTs in an unfavourable economic position by comparison with third countries. The Netherlands Government concludes from this that the order of preference EC/OCT/ACP/third countries provided for under the special association arrangements in part four of the Treaty [71] has not been complied with.

71 — Referred to in *ARM-I*, paragraph 142.

Assessment

155. To the extent that the Netherlands Government puts forward the same arguments of fact [72] and law as it does in Case C-110/97, I would invite the Court to refer to my previous discussion. [73]

156. For the reasons I have set out in Case C-110/97, I conclude that the application of Regulation No 1036/97 did not place the ACP countries and third countries in a manifestly more advantageous competitive position than that of the OCTs.

Second limb of the fourth plea in law

Arguments

157. By the second limb of the fourth plea, the Netherlands Government states that the Council failed to consider whether the safeguard measures adopted could have negative consequences for the economies of the Netherlands Antilles and Aruba.

72 — See paragraphs 83 and 84 of its application.

73 — See points 112 to 115 of my Opinion delivered today in that case.

158. The Netherlands Government states that it officially knew, even before the meeting of the relevant committee on 11 April 1997, under the provisions of Annex IV to the OCT decision, [74] that the Commission had already decided to introduce new safeguard measures when those under Regulation No 304/97 expired.

159. The Netherlands Government states that proof of this may be found in the report of the working party of the Council dated 27 May 1997. [75]

Assessment

160. As in Case C-110/97, [76] the Netherlands Government has adduced no cogent evidence in support of this plea. [77]

161. The second limb of the fourth plea in law is therefore unfounded.

Third limb of the fourth plea in law

Arguments

162. By the third limb of this plea, the Netherlands Government submits that the Council infringed the principle of proportionality in opting for a tariff quota instead of a minimum price as a safeguard measure.

163. It submits that a minimum price would have been more appropriate for achieving the Council's objective — namely, avoiding the overproduction of rice originating in the Netherlands Antilles [78] and meeting the deficit in the production of Indica rice on the Community market. Furthermore, the Netherlands Government states that the introduction of a minimum price would have avoided the undertakings concerned having to cease all exports of rice to the Community.

74 — Under Article 1(2) of Annex IV to the OCT decision, this committee is made up of representatives of the Member States and is chaired by a Commission representative. Its role is consultative. The Commission must, under Article 1(3), take account of its opinion before adopting safeguard measures. Its opinion does not bind the Commission.

75 — Document number 8498/97 (Limit, OCT 23, fin 173). See paragraphs 89 and 114 of the Netherlands Government's application.

76 — See points 120 to 122 of my Opinion delivered today in that case.

77 — The report of the Council working party, of 27 May 1997, was not submitted in evidence to the Court.

78 — Otherwise referred to as 'Antillean rice'.

Assessment

164. I have set out the reasons why I consider that the Netherlands Government has failed to show that the Council committed a manifest error of assession in Case C-110/97. [79] To the extent that the Netherlands Government puts forward the same points of fact and law, I invite the Court to refer to my previous reasoning. [80]

165. Furthermore, as I have already stated, [81] the introduction of the measures in question does not prohibit the export of Antillean rice to the Community once the quota has been filled. Accordingly, the complaint alleging that a measure prohibiting the export of rice to the Community was introduced to the detriment of undertakings registered under the law of the Netherlands Antilles is without substance.

166. Consequently, I consider that the Netherlands Government has not adduced sufficient proof that the introduction of a minimum price would have entailed less disturbance for the OCTs' economies, in particular that of the Netherlands Antilles and Aruba, and would, at the same time, have been as effective as the measure at issue in the achievement of the objectives sought by the Community legislature.

167. It follows from the foregoing that the third limb of the fourth plea in law is unfounded.

Fourth limb of the fourth plea in law

Arguments

168. By the fourth limb of this plea in law, the Netherlands Government considers that the contested regulation disregards Article 109(2) of the OCT decision in that the amount of the security required from importers renders inapplicable the legislation laying down special detailed rules for the application of the system of import licences for rice. [82]

169. In support of this argument, the Netherlands Government submits that the amount of the security required is disproportionate to the objective of the OCT decision. It considers that it is completely abnormal that the amount of the security

79 — Points 129 to 134 of my Opinion delivered today in that case.

80 — Ibidem.

81 — Points 119 to 124 of this Opinion.

82 — 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).

applicable to imports from the OCTs is the same as the customs duties applicable to third countries.

Assessment

170. The arguments advanced in support of the fourth limb of the fourth plea in law are identical to those put forward by the Netherlands Government in Case C-110/97.

171. Therefore, for the reasons I have set out in relation to Case C-110/97, [83] I conclude that the Netherlands Government has failed to show that the Council, in adopting the measure in question, has breached the principle of proportionality. I therefore propose that the Court hold the fourth limb of the fourth plea in law to be unfounded.

Fifth limb of the fourth plea in law

Arguments

172. Lastly, by the fifth and final limb of the fourth plea, the Netherlands Government submits that the Council breached the principle of proportionality in Article 109(2) of the OCT decision, in that, in successively adopting Regulations Nos 304/97 and 1036/97, its actions can no longer be regarded as exceptional and temporary.

Assessment

173. It should be pointed out that, in accordance with the Court's settled case-law, [84] the Council has a wide margin of discretion in the application of the provisions of Article 109 of the OCT decision. The lawfulness of a measure can be affected only if a measure is manifestly inappropriate having regard to the objective pursued. [85]

174. The Commission decided to extend the effect of the first safeguard measures adopted under Regulation No 304/97 after establishing that there were serious disturbances on the Community market in rice. No evidence has been adduced to show that the substantive preconditions for the adoption of the regulation at issue were not met. Accordingly, the Commission cannot be

83 — Points 139 to 143 of my Opinion delivered today in that case.

84 — See *Piraiki-Patraiki and Others* v *Commission*, cited above, paragraph 40, and *Antillean Rice Mills* v *Commission*, cited above, paragraph 48.

85 — See *Emesa Sugar*, cited above, paragraph 53.

criticised for having shown diligence in adopting measures necessary for the proper functioning of the common agricultural policy.

175. The complaint based on the exceptional nature of the new measures does not seem to me to be well founded in this case. The Netherlands Government has not shown that, at that stage, the Community institutions were in the habit of regulating imbalances in the Community market for rice by adopting successive regulations aimed at limiting imports of rice from the OCTs. [86] On the other hand, if there had been a succession of regulations imposing such limits, it seems to me that the Community institutions would not be complying with the requirement that only exceptional recourse should be had to that type of measure.

176. Furthermore, since the measures introduced by Regulation No 1036/97 are of limited duration, it cannot be the case that the actions of the Council are not temporary.

177. I therefore propose that the Court declare the fifth limb of the fourth plea in law to be unfounded.

86 — The regulation at issue, it will be recalled, was only the second safeguard measure.

178. It follows from the foregoing that the fourth plea in law, alleging breach of Article 109(2) of the OCT decision, should be held to be unfounded.

*Fifth plea in law, alleging misuse of powers*

Arguments

179. By its fifth plea, the Netherlands Government claims that there has been a misuse of powers by the Council and the Commission in that they used their powers under Article 109(1) of the OCT decision for a purpose other than that for which it was intended.

180. According to the Netherlands Government, it is clear that, by the adoption of those successive safeguard measures, the Commission and the Council wished to restrict imports of rice originating in the OCTs. Therefore they ought to have used the revision procedure in the OCT decision. However, in order to bring about the desired revision, the unanimous agreement of the Member States, including, necessarily, the Kingdom of the Netherlands was required. Recourse was had to the safeguard measure procedure in Article 109(1)

of the OCT decision, therefore, when recourse to the revision procedure in that decision was required.

Assessment

181. The arguments put forward in support of this fifth plea in law are identical to those advanced by the Netherlands Government in Case C-110/97.

182. For the reasons set out in my Opinion in Case C-110/97,[87] I conclude that the Netherlands Government has failed to show that the Council, in adopting the measure in question, has misused its powers. I therefore propose that the Court hold the fifth plea in law to be unfounded.

*Sixth plea in law, alleging breach of the revision procedure for safeguard measures set out in Annex IV to the OCT decision*

183. In support of this plea in law, the Netherlands Government asserts that the Council failed to consult the committee as provided for in Article 1(2) of Annex IV to the OCT decision. It considers furthermore that the Council and the Commission failed to give a hearing to the Netherlands Antilles and Aruba on the proposed measure. Lastly, it claims that Article 1(7) of Annex IV to the OCT decision has been breached. I will consider each of those three limbs in turn.

First limb of the sixth plea in law

Arguments

184. By the first limb of the sixth plea in law, the Netherlands Government considers that Annex IV to the OCT decision has been breached, in that the Committee was not consulted in accordance with the procedure laid down in Article 1(2) of that Annex. That article provides that '[w]here the Commission, at the request of a Member State or on its own initiative, decides that the safeguard measures provided for in Article 109 of the Decision should be applied:

...

— it shall consult a Committee made up of representatives of the Member States and chaired by a Commission representative'.

87 — Points 146 to 150 of my Opinion delivered today in that case.

185. It points out that the Committee adopted rules of procedure on 11 January 1993 for the consultation of the Member States in the context of that Annex. [88] It points out that the first paragraph of Article 3 of those rules of procedure provides that notification to attend, the agenda and working papers will be forwarded by the chairman to the members of the Committee in accordance with the procedure laid down in the second paragraph of Article 8: those documents are to include, in particular, the documentation received from the Member State requesting the Commission to apply safeguard measures.

186. It submits that in this case the meeting of the Committee on 11 April 1997 took place in breach of Article 3 of the rules of procedure in that, when it was given notification to attend by letter dated 4 April 1997, no documentation was sent to the Netherlands Government. It considers that the purpose of Article 3 of the rules of procedure is to give the Member States prior notification of the request for safeguard measures, and of the provisional view of the Commission as to whether the proposed measures are justified and how they would operate. It asserts that only if the Member States have this information in advance can they effectively carry out the task allotted to them under Annex IV to the OCT decision.

88 — Consultative Committee on safeguard measures in the context of the association of overseas countries and territories (OCT) with the European Community, Report of the meeting of 11 January 1993, VIII/112/93, of 13 January 1993.

187. The Council and the Commission reply that the Commission called the meeting on its own initiative, and not at the request of a Member State. They state that the Netherlands Government's criticism is therefore without legal foundation. They further submit that figures on the situation pertaining in the Community rice sector were supplied at the meeting on 11 April, and that the Kingdom of the Netherlands did not refer the Commission's regulation to the Council pursuant to Article 1(5) of Annex IV to the OCT decision, nor did it raise any error of procedure on the part of the Commission during the Council's examination of the regulation.

Assessment

188. It appears from the general scheme of the texts governing the Committee that the purpose of the consultation procedure is to enable its members to learn of the view of the Community institutions as to the necessity of adopting safeguard measures and the facts on which that view is based. It expressly appears from the preamble to Regulation No 764/97 that the Commission decided to adopt further measures

having regard to the situation in the Community rice market. [89] The statistical data on the state of the sector in question were given to the Committee, and the inaccuracy of that data has not been proven.

189. It is true that the documentation submitted by the Italian Government was not circulated to the Committee. However, it has not been shown that the nature of that material was such that the Committee would thereby have been any better informed as to the intentions of the Commission and the facts on which they were based.

190. It follows from the foregoing that the first complaint in support of the sixth plea in law is therefore unfounded.

Second limb of the sixth plea in law

Arguments

191. By the second limb of the sixth plea in law, the Netherlands Government considers that the Commission did not follow proper Community law procedure when it decided to adopt safeguard measures, in that it failed to give a hearing to the OCTs, or at the least, to the Netherlands Antilles and Aruba, on the proposed safeguard measure. The Council did not do so either when Regulation No 1036/97 was decided upon. In its view, whilst this requirement does not appear expressly in Annex IV to the OCT decision, the rules of procedure must be interpreted in such a way as to bring Annex IV to the OCT decision into line with the *audi alteram partem* rule, which is one of the general principles of Community law.

192. The Commission considers that the allegation of breach of Article 1(2) of Annex IV to the OCT decision is inadmissible. That complaint is a new plea made at the stage of the reply, which is not permitted under Article 42(2) of the Rules of Procedure of the Court of Justice.

193. The Commission submits that this allegation is unfounded. The Netherlands Antilles were given a hearing, at their request, at a partnership consultation meeting.

89 — Third recital.

Assessment

194. I do not share the Commission's view that the second limb of the sixth plea in law should be held inadmissible.

195. The allegation of breach of Article 1(2) of Annex IV to the OCT decision is not, in my view, a new plea put forward in the reply which is prohibited at that stage of the proceedings by Article 42(2) of the Rules of Procedure of the Court of Justice, but a new argument in support of a plea already advanced in the initial application, namely breach of the revision procedure set out in Annex IV to the OCT decision.

196. Arguments and plea in law are separate legal concepts. [90] This new argument does not in the least change the subject-matter of the dispute, but simply develops one of the legal submissions made by the applicant from the start of the proceedings.

90 — See, in particular, Case 2/57 *Compagnie des Hauts Fourneaux de Chasse* v *High Authority* [1957 and 1958] ECR 199: 'the Court takes the view that a distinction must be drawn between the introduction of new submissions in the course of the proceedings and, on the other hand, the introduction of certain new arguments. In the present case the Court's view is that the applicant did not introduce new submissions but merely developed those made in its application by invoking a number of arguments some of which were adduced for the first time in the reply. In those circumstances, there is nothing to prevent the Court from considering them'. For a more recent judgment, see, in particular, Case C-153/96 P *De Ryk* v *Commission* [1997] ECR I-2901, paragraph 19.

The rights of the defence have not therefore been breached.

197. As to the substance, I consider that the second limb of this plea in law is unfounded.

198. Contrary to the allegations of the Netherlands Government, it appears that the OCTs, and in particular the Netherlands Antilles and Aruba, were consulted over the proposed measures. [91]

199. It follows from the foregoing that the second limb of the sixth plea in law is unfounded.

Third limb of the sixth plea in law

Arguments

200. By the third limb of this plea in law, the Netherlands Government claims that there has been a breach of Article 1(7) of Annex IV to the OCT decision.

91 — This meeting took place on 15 April 1997, as stated by the Netherlands Government at paragraph 46 of its application.

201. That article enables the Council to adopt a different decision if a Member State refers the decision of the Commission to the Council.

202. The Netherlands Government submits that the nature of the revision procedure in Annex IV implies that, whilst the Council is not bound to adopt a new decision, it must, if it decides to do so, proceed independently to make the necessary assessment and findings. It submits that, in this case, the Council did not do so. The Netherlands Government considers that the Council simply based its decision on the Commission's assertions that the conditions laid down by Article 109 of the OCT decision were satisfied, but that it had no evidence to enable it to verify the accuracy of those conclusions.

203. It further claims that the regulation at issue infringes the principle of non-retroactivity contained in Article 1(4) of Annex IV to the OCT decision.

Assessment

204. The arguments advanced in support of the third limb of the sixth plea in law are identical to those put forward by the Netherlands Government in Case C-110/97.[92]

205. Therefore, for the reasons set out in my Opinion in Case C-110/97,[93] I conclude that the Netherlands Government has not shown that the Council, in adopting the measure at issue, has breached the revision procedure for safeguard measures provided for under Annex IV to the OCT decision. I therefore propose that the Court declare the sixth plea in law unfounded.

*Seventh plea in law, alleging breach of Article 190 of the Treaty*

206. By the seventh and last plea in law, the Netherlands Government considers that the statement of reasons for Regulation No 1036/97 was not in accordance with the terms of Article 190 of the Treaty.

92 — See points 151 to 157 of my Opinion delivered today in that case.

93 — Ibidem, points 158 to 165.

Arguments

207. In this respect the Netherlands Government submits that the statement of reasons in the regulation at issue consists solely of generalities, set out in abstract terms, to the point that they are almost always the same regardless of the material facts, and that that is insufficient justification for a specific safeguard measure.

208. The Netherlands Government submits that the inadequacies in the statement of reasons are not compensated for by the fact that, being involved in the implementation of the contested decision, it had information that enabled it to fill the gaps in the statement of reasons itself.

Assessment

209. I have already discussed the requirements laid down by the Court's case-law as to compliance with the provisions of Article 190 of the Treaty in similar cases. [94] To summarise, it appears that in the Court's view, the statement of reasons must show 'clearly and unequivocally the reasoning of the Community authority which adopted the measure so as to inform the persons concerned of the justification for the measure adopted and to enable the Court to exercise its powers of review'. [95]

210. The Court in particular stated, in a similar case, [96] that 'it is for the Council to determine whether, in the light of the consequences resulting from implementation of the legislation it has enacted, it is necessary to amend it in certain respects. Accordingly, and in contrast to the view taken by the [applicant] Government, the Council was not required to set out in the statement of reasons the changes in the circumstances which led to the fixing of the original quota'. [97] The Court also stated that 'since the Council had explained the objectives pursued, it was not required to justify the technical choices made, in particular the size of the increase in the contested quota'. [98]

94 — Ibidem, paragraphs 169 to 175.

95 — See, in particular, Joined Cases C-63/90 and C-67/90 *Portugal and Spain* v *Council* [1992] ECR I-5073, paragraph 16.

96 — See Case C-284/94 *Spain* v *Council* [1998] ECR I-7309, paragraph 30. That concerned the question whether the Council, when it adopted Regulation (EC) No 1921/94 of 25 July 1994 amending Regulation (EC) No 519/94 on common rules for imports from certain third countries (OJ 1994 L 198, p. 1), had infringed Article 190 of the Treaty.

97 — Ibidem, paragraph 34.

98 — Ibidem, paragraph 35.

211. In this case, it should be pointed out that the regulation at issue is a generally applicable act which is one of a series of regulations laid down by the Community institutions in order to implement and reconcile two complex policies, the common agricultural policy in the rice market and economic policy in the context of the association arrangements with the OCTs.

212. It further appears that the reasons given for the regulation set out the overall situation which led to its adoption.

Thus it is stated in the second recital in the preamble that the serious disruption in the Community rice sector and the risk of a significant deterioration in that sector of economic activity had not been eliminated in spite of the adoption of earlier safeguard measures. It is further explained that the Community rice sector was in a fragile situation following droughts in the 1994/1995 and 1995/1996 seasons, and by underproduction of Indica rice. [99]

213. The reasons given for the regulation at issue also set out the general objectives it is intended to achieve.

It is, in particular, stated that the disruption in the Community market for Indica rice caused by imports of rice from the OCTs risked undermining the attempts of the Community legislature, by means of aid per hectare on a temporary basis, to encourage Community producers to grow Indica rice, [100] and that it was, therefore, appropriate to adopt safeguard measures to prevent that situation from deteriorating, and the attempts of the common agricultural policy to diversify production from being undermined.

214. It must be concluded that the Council clearly and unequivocally set out its reasons for the adoption of the regulation.

215. It follows that this last plea in law must be dismissed.

99 — Seventh and eighth recitals.

100 — Eighth recital.

## Conclusion

216. For the reasons set out above, I suggest that the Court:

(1) In Case C-301/97

— dismiss the application;

— order the Kingdom of the Netherlands to bear its own costs as well as those of the Council of the European Union;

— order that the Kingdom of Spain, the French Republic and the Italian Republic and the Commission of the European Communities bear their own costs.

(2) In Case C-452/98

— declare the application inadmissible;

— order the Nederlandse Antillen to bear their own costs as well as those of the Council of the European Union;

— order that the Kingdom of Spain, the French Republic, the Italian Republic and the Kingdom of the Netherlands and the Commission of the European Communities bear their own costs.