JUDGMENT OF THE COURT (Second Chamber)
14 July 2005 *

In Case C-26/00,

ACTION for annulment under Article 230 EC, brought on 29 January 2000,

Kingdom of the Netherlands, represented by M. Fierstra and J. van Bakel, acting as Agents,

applicant,

v

Commission of the European Communities, represented by T. van Rijn and C. van der Hauwaert, acting as Agents, with an address for service in Luxembourg,

defendant,

* Language of the case: Dutch.

supported by

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

intervener,

THE COURT (Second Chamber),

composed of C.W.A. Timmermans, President of the Chamber, R. Silva de Lapuerta, R. Schintgen (Rapporteur), G. Arestis and J. Klučka, Judges,

Advocate General: P. Léger,
Registrar: R. Grass,

having regard to the written procedure,

after hearing the Opinion of the Advocate General at the sitting on 17 February 2005,

gives the following

Judgment

1 By its application, the Kingdom of the Netherlands seeks the annulment of Commission Regulation (EC) No 2423/1999 of 15 November 1999 introducing safeguard measures in respect of sugar falling within CN code 1701 and mixtures of sugar and cocoa falling within CN codes 1806 10 30 and 1806 10 90 originating in the overseas countries and territories (OJ 1999 L 294, p. 11, hereinafter 'the contested regulation').

Legal context

The common organisation of the markets in the sugar sector

2 By Regulation (EC) No 2038/1999 of 13 September 1999 on the common organisation of the markets in the sugar sector (OJ 1999 L 252, p. 1), the Council of the European Union consolidated Regulation (EEC) No 1785/81 of 30 June 1981, which had established that common organisation (OJ 1981 L 177, p. 4), after it had been amended several times. The purpose of that organisation is to regulate the Community sugar market in order to increase employment and raise the standard of living among Community sugar producers.

3 Support for Community production through guaranteed prices is limited to national production quotas (A and B quotas) allocated by the Council, under Regulation No 2038/1999, to each Member State, which then divides them amongst its producers. Quota B sugar (termed 'B sugar') is subject to a higher production levy than Quota A sugar (termed 'A sugar'). Sugar produced in excess of the A and B quotas is termed 'C sugar' and cannot be sold within the European Community unless it is transferred to the A and B quotas for the following season.

4 Apart from those of C sugar, extra-Community exports benefit, under Article 18 of Regulation No 2038/1999, from export refunds to make up for the difference between the price on the Community market and the price on the world market.

5 The quantity of sugar which can benefit from an export refund and the total annual amount of refunds are governed by the World Trade Organisation (WTO) Agreements ('the WTO Agreements'), to which the Community is a party, approved

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

The association arrangements of overseas countries and territories with the Community

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

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

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

9 Several decisions have been adopted on the basis of Article 136 of the EC Treaty (now, after amendment, Article 187 EC), among them 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), which, according to Article 240(1) thereof, is to apply for a period of 10 years from 1 March 1990.

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

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

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

12 Article 102 of the OCT Decision provides:

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

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

14 Article 3(3) of Annex II contains a list of types of working or processing which are insufficient to confer the status of originating products on products coming from the OCTs in particular.

15 Article 6(2) of that annex contains, however, rules known as 'the EC/OCT and the ACP/OCT cumulation of origin rules'. It 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.'

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

17 Decision 97/803 inserted into the OCT Decision inter alia Article 108b, paragraph 1 of which provides that '[t]he ACP/OCT cumulation of origin referred to in Article 6 of Annex II shall be allowed for an annual quantity of 3 000 tonnes of sugar'. Decision 97/803 did not, however, limit application of the EC/OCT cumulation of origin rule.

18 Article 109(1) of the OCT Decision authorises the Commission of the European Communities to take 'the necessary safeguard measures' if, 'as a result of the application of [the OCT] decision, serious disturbances occur in a sector of the economy of the Community or one or more of its Member States, or their external financial stability is jeopardised, or if difficulties arise which may result in a

deterioration in a sector of the Community's activity or in a region of the Community ...'. Under Article 109(2) of the OCT Decision, the Commission must choose 'such measures as would least disturb the functioning of the association and the Community'. Moreover, '[those] measures shall not exceed the limits of what is strictly necessary to remedy the difficulties that have arisen'.

The safeguard measures adopted against imports of sugar and of mixtures of sugar and cocoa qualifying for the EC/OCT cumulation of origin

19 The Commission adopted the contested regulation on the basis of Article 109 of the OCT Decision.

20 The first five recitals in the preamble to the contested regulation state as follows:

'(1) In recent months difficulties have arisen which may result in a serious deterioration of the Community's sugar sector. These difficulties have been caused by increasing quantities of sugar imported from 1997 onwards under the EC/OCT cumulation of origin procedure and in the form of mixtures of sugar and cocoa ... originating in the overseas countries and territories. These products are imported into the Community free of import duties in accordance with Article 101(1) of the OCT Decision.

(2) These imports may result in a serious deterioration in the operation of the common organisation of the market in the sugar sector and have highly detrimental effects on Community sugar operators.

(3) The operation of the market organisation may be profoundly destabilised: sugar consumption is constant on the Community market, and accordingly any import of sugar into the Community at prices below the intervention price throws onto the export market a corresponding quantity of Community sugar which it cannot absorb. Refunds paid on such sugar are charged to the Community budget (currently at around EUR 520/tonne). Such exports are limited in volume by the GATT agreements, and the imports thus reduce the scope for exporting sugar within quotas. To cope with this problem, consideration should be given to reducing Community production quotas.

(4) Community sugar operators also risk damage as a result of these higher imports. The features of the common market organisation in sugar are the principle of self-financing by the Community's sugar producers, disposal of surplus sugar produced in the Community (particularly through export refunds), and a minimum price which Community sugar manufacturers must pay for their raw material (beet). Such increased imports of sugar, either as such or in the form of products with a high sugar content, at prices below those at which Community producers can sell comparable products, have a profoundly destabilising impact on the activity of Community undertakings which, owing to the common agricultural policy's constraints in favour of farmers, cannot compete with the imported products.

(5) An increase in the volume of exports attracting refunds may also entail the risk of a rise in the unit costs of exporting sugar within quotas and consequently in the production levy on Community sugar producers.'

21 The eighth and ninth recitals in the preamble to the contested regulation state as follows:

'(8) To this end, sugar ... should be released for free circulation in the Community free of import duties only if the import price cif, as shown by supporting documents, of unpacked sugar of the standard quality defined by Community rules delivered to European ports in the Community is not less than the intervention price of the products in question. This measure should ensure that imported sugar is not sold at prices below those on the Community market and avoid the destabilising effects of these imports while ensuring an adequate unit profit for the OCT operators concerned and compliance with the order of preferences introduced in favour of Community products and of products originating in the OCT by the EC Treaty.

(9) In the case of mixtures of sugar and cocoa ... , imports should be subject to Community surveillance. This will allow the Commission to monitor the development of such imports closely, as regards quantities and prices, without generating any additional administrative burden for operators'.

22 For sugar qualifying for EC/OCT cumulation of origin, the safeguard measure imposed takes the form of a minimum price. Accordingly, Article 1(1) of the contested regulation provides:

'Products with EC-OCT cumulation of origin falling within CN code 1701 shall be released for free circulation in the Community free of import duties only if the

import price cif of unpacked goods of standard quality as laid down by Council Regulation (EEC) No 793/72 [of 17 April 1972 (OJ, English Special Edition 1972 (I), p. 299)] fixing the standard quality for white sugar is not less than the intervention price of the products in question.'

23 As regards mixtures of sugar and cocoa (products falling within CN codes 1806 10 30 and 1806 10 90) originating in the OCTs, Article 2 of the contested regulation provides that they are to be released for free circulation in the Community 'subject to Community surveillance in accordance with the rules laid down in Article 308d of Commission Regulation (EEC) No 2454/93' of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ 1993 L 253, p. 1).

24 The said Article 308d(1) provides:

'Where community surveillance of preferential imports is to be made, the Member States shall provide to the Commission once each month, or at more frequent intervals if requested by the Commission, details of the quantities of products put into free circulation with the benefit of preferential tariff arrangements during the previous months.'

25 Under Article 3 of the contested regulation, it was to apply until 29 February 2000.

Facts

26 At the end of June 1999, the Commission initiated the procedure provided for by Article 109 of the OCT Decision as regards imports of sugar and mixtures of cocoa

and sugar coming from Aruba. It noted, in a communication of 23 June 1999 addressed to the Member States, a large increase in imports of sugar and mixtures of sugar and cocoa into the Community during the preceding months and attributed that increase to the fact that those products were offered on the Community market at prices below those offered by Community sugar producers, such situation having 'a far-reaching impact on the activity of Community undertakings [, which,] given the constraints benefiting farmers under the common agricultural policy, [could] not compete with imports'.

27 According to the Commission, the OCT producers were buying their sugar in the Community at the world market price, which was more than EUR 500/tonne below the Community market price. The sugar, after a little processing, was re-imported into the Community free of duty.

28 The Consultative Committee referred to in Article 1(2) of Annex IV to the OCT Decision met on 30 June 1999. The majority of the Member States stated that they were in favour of the Commission's proposal to adopt safeguard measures. The Kingdom of the Netherlands opposed it, maintaining, among other things, that no evidence had been furnished that the sugar in question had been sold at a price below the Community price and that the requirements for the adoption of safeguard measures were not met.

29 The Commission did not, however, immediately implement that proposal, but initiated, in August 1999, a new procedure extended on that occasion to imports of sugar and of mixtures of sugar and cocoa coming from all the OCTs. According to the Commission, the tendency of imports to increase at prices below the intervention price, noted in June in respect of Aruba, had been confirmed as regards all the OCTs.

30 The Consultative Committee met again on the following 8 September and the majority of the Member States (the Kingdom of the Netherlands having reiterated its opposition to the Commission's proposal) stated that they were in favour of the adoption of the safeguard measures, which were finally adopted on 15 November 1999, after a large increase in imports in the course of September and October of that year was established.

31 In accordance with Article 1(5) of Annex IV to the OCT Decision, the Kingdom of the Netherlands referred the contested regulation to the Council, which did not take the opportunity given it by Article 1(7) thereof to adopt a different decision.

Forms of order sought by the parties

32 The Netherlands Government claims that the Court should:

— annul the contested regulation;

— order the Commission to pay the costs.

33 The Commission contends that the Court should:

— dismiss the action as unfounded;

— order the Kingdom of the Netherlands to pay the costs.

34 By order of 11 March 2000, the President of the Court granted the Kingdom of Spain leave to intervene in support of the forms of order sought by the Commission.

35 By letter lodged at the Court Registry on 12 July 2000, the Kingdom of the Netherlands applied for the proceedings before the Court to be stayed pending the Court of First Instance's decision disposing of Case T-47/00 *Rica Foods* v *Commission*, the object of which was also the annulment of the contested regulation.

36 By order of 17 October 2000, the President of the Court granted that application under the third paragraph of Article 47 of the EC Statute of the Court of Justice and Article 82a(1)(a) of the Rules of Procedure of the Court of Justice.

37 The Court of First Instance, by judgment of 17 January 2002 in Case T-47/00 *Rica Foods* v *Commission* [2002] ECR II-113, dismissed that action as inadmissible.

The action

38 In support of its application for annulment of the contested regulation, the Kingdom of the Netherlands relies on four pleas in law, alleging respectively:

— infringement of Article 109(1) of the OCT Decision, on the ground that in adopting Article 1 of the contested regulation the Commission relied on a manifestly incorrect assessment of the facts concerning sugar or, at the very least, misused its power to impose safeguard measures;

— infringement of the same provision, on the ground that in adopting Article 2 of the contested regulation the Commission relied on a manifestly incorrect assessment of the facts concerning mixtures of cocoa and sugar or, at the very least, misused its power to impose safeguard measures;

— breach of the duty to state reasons set out in Article 253 EC, on the ground that the statement of reasons in the regulation is inadequate, internally inconsistent and, in part, incomprehensible;

— infringement of Article 109(2) of the OCT Decision, on the ground that the Commission required, in Article 1 of the contested regulation, that the import price cif of sugar with EC/OCT cumulation of origin, must not be less than the EC intervention price of sugar.

The first plea in law, alleging infringement of Article 109(1) of the OCT Decision and relating to the minimum price imposed for sugar

Arguments of the parties

39 By its first plea in law, the Netherlands Government claims that, as regards the import into the Community of sugar with EC/OCT cumulation of origin, the Commission made a manifestly incorrect assessment of the facts, before concluding that it was necessary to adopt safeguard measures, and misused its powers, on the ground that the obvious purpose of the measures in question was to protect the European sugar producers against any possible competition from non-quota imports from the OCTs.

40 According to that Government, safeguard measures are an exception to the normally applicable trading rules. It is therefore for the Commission to prove the existence of exceptional circumstances requiring such measures on the basis of the objective assessment criteria set out in Article 109 of the OCT Decision. That was not done here.

41 The first plea in law has six parts.

42 In the first place, the Netherlands Government claims that the quantities of sugar imported from the OCTs, which, according to the statistics compiled by the Statistical Office of the European Communities (Eurostat), rose to about 45 000 tonnes in 1999, less than 0.4% of Community production and a little less than 3% of the preferential imports from the ACP states and India, could not have presented any risk of disturbance in the common organisation of the sugar market.

43 Secondly, the Government maintains that the Commission provided no evidence that sugar from the OCTs was being sold in the Community at a price below the intervention price.

44 Thirdly, the Netherlands Government points out that the total production of sugar in the Community varies by more than a million tonnes from one year to another. Since consumption also fluctuates, the assertion that each additional quantity imported from the OCTs leads to the export of a corresponding quantity is based on a gross over-simplification, even on a failure to recognise reality. In any event, even if a corresponding increase in subsidised exports had been established, the

consequences thereof for the Community budget are not, according to that Government, a relevant ground capable of justifying the adoption of safeguard measures within the meaning of Article 109 of the OCT Decision, since such consequences are inherent in any system based on the freedom to import.

45 Fourthly, the Government submits that the sugar imports at issue were not such as to create difficulties for the Community in the light of its obligations under the WTO Agreements. Relying on 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, paragraph 107, it observes that the Community had sufficient room for manoeuvre to cope with the increase of sugar imports from the OCTs up to 2000.

46 Fifthly, the Netherlands Government doubts that the Commission considered reducing production quotas when it adopted the contested regulation. In any event, that reduction was not made necessary by the sugar imports at issue themselves.

47 Finally, the Government submits that it is not established that the sugar imports at issue caused loss to Community producers. First of all, export refunds are financed by the European Agricultural Guidance and Guarantee Fund (EAGGF) and not by Community producers. Next, in 1999, sugar was sold to the OCT producers at a price about double the world market price, which enabled the Community producers to make substantial profits. Lastly, the Commission has not shown that each tonne imported from the OCTs has led to a corresponding decrease in the sales made by Community producers.

48 The Commission replies that, according to the figures published by Eurostat, the total amount of sugar imports from the OCTs rose to 10 251.7 tonnes in 1997 and to 43 948.4 tonnes between January and October 1999, an increase of 328%, with an acceleration in the rate of increase of those imports between the months of August and October also having been established. The great majority of those imports were of sugar qualifying for EC/OCT cumulation of origin.

49 The Commission submits that such an increase in imports was capable of seriously disturbing the functioning of the common organisation of the sugar market. In view of the surplus on the global market, the import of a certain quantity of sugar results in the disposal of an equivalent quantity of Community sugar on the Community market being prevented, and such quantity, therefore, has to be exported, involving costs both for the Community budget and for the sugar producers, who contribute to the financing of export refunds.

50 According to the Commission, any additional sugar import, even in small quantities, can destabilise the market. In due course, the Community may, because of the increase in imports, be forced to lower the Community production quotas, which is contrary to the principles and purposes of the common agricultural policy. The Commission refers in that regard to Case C-17/98 *Emesa Sugar* [2000] ECR I-675, paragraph 56.

51 The sale of imported products at prices below the intervention price aggravates the consequences of the increase in imports, since Community producers cannot offer their sugar at a lower price as they are obliged, under Article 6 of Regulation No 2038/1999, to pay a minimum price for the sugar beet which they buy. It was reasonable for the Commission to have suspected, albeit without having established

it as a fact, that OCT undertakings were buying C sugar at the world market price and importing it into the Community at prices below the intervention price.

52 The Commission also argues that the common organisation of the market has established production quotas, both for sugar which will be consumed on the Community market (A sugar) and for sugar which can be exported with refund (A and B sugars). It submits that if the sugar producers cannot dispose of A sugar on the Community market, they try to export it in the framework of exports, necessarily subsidised. Another solution would be to store the sugar, but for some years now sugar has no longer been offered to intervention and the Commission also discourages recourse to that procedure in view of its cost to the Community budget.

53 As regards compliance with the obligations undertaken in the framework of the WTO, the Commission refers to paragraph 56 of the judgment in *Emesa Sugar*, cited above.

54 Finally, as regards the detrimental effects for Community operators, the Commission, referring to paragraph 56 of the judgment in *Emesa Sugar* and to paragraph 88 of the Opinion of Advocate General Ruiz-Jarabo Colomer in that case, observes that export refunds are not financed entirely by the EAGGF, since responsibility for a substantial part of them is assumed by Community producers. While it is true that certain Community producers can make a profit from sales of C Sugar to OCT producers, that fact cannot compensate, in the Commission's submission, for the loss caused to the sector as a whole.

55 The Spanish Government's position is identical to that of the Commission. It points out that the substantial increase, since 1997, in sugar imports from the OCTs is the

result of the revision of the OCT Decision which limited duty-free imports into the Community of products with ACP/OCT cumulation of origin. Undertakings in the sector, informed of that prospect at the time of the publication, in 1996, of the proposed revision, turned to products with EC/OCT cumulation of origin, which were not covered by that provision. The safeguard measures adopted are thus intended to protect the interests of Community producers in the framework of the common agricultural policy without affecting the OCTs' economies since the measures do not cover sugar produced in those countries.

56 That Government also points out that in 1999 the price of sugar on the world market was EUR 242 per tonne whereas sugar was sold at EUR 775 per tonne in Spain. The OCT operators thus extracted a profit margin of EUR 533 per tonne of sugar which they exported free of customs duties into the Community. They were therefore in a position to buy C sugar and, after minimum processing, to avoid paying import duties whilst reaping huge profits.

57 In addition, the Spanish Government, noting that the sugar in question is not the product of crops cultivated in the OCTs, points out that the OCT Decision was adopted with a view to the development of those territories. Those countries derive no benefit from the added value obtained from processing operations on which the EC/OCT cumulation of origin depends, given that, in practice, the minimum processing which is carried out in them generates no employment and therefore does not encourage the development of the OCTs.

Findings of the Court

58 It should first be borne in mind that the Community institutions have a wide discretion in the application of Article 109 of the OCT Decision (see, to that effect,

Case C-390/95 P *Antillean Rice Mills and Others* v *Commission* [1999] ECR I-769, paragraph 48, Case C-110/97 *Netherlands* v *Council* [2001] ECR I-8763, paragraph 61, and Case C-301/97 *Netherlands* v *Council* [2001] ECR I-8853, paragraph 73).

59 In those circumstances, the Community Court must restrict itself to considering whether the exercise of that discretion is vitiated by manifest error or misuse of powers and whether the Community institutions clearly exceeded the bounds of their discretion (see *Antillean Rice Mills and Others* v *Commission*, cited above, paragraph 48, Case C-110/97 *Netherlands* v *Council*, cited above, paragraph 62, and Case C-301/97 *Netherlands* v *Council*, cited above, paragraph 74).

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

61 Under Article 109(1) of the OCT Decision the Commission 'may' take safeguard measures '[i]f, as a result of the application of [that decision] serious disturbances occur in a sector of the economy of the Community or one or more of its Member States, or their external financial stability is jeopardised', or 'if difficulties arise which may result in a deterioration in a sector of the Community's activity or in a region of the Community'. The Court of Justice held, in paragraph 47 of its judgment in *Antillean Rice Mills and Others* v *Commission*, that, on the first hypothesis stated in that paragraph, the existence of a causal link must be established because the purpose of the safeguard measures must be to iron out or reduce the difficulties which have arisen in the sector concerned, and that, on the other hand, as regards the second hypothesis, it is not a requirement that the difficulties which justify the imposition of a safeguard measure result from the application of the OCT Decision.

62 The Commission based the contested regulation on the second hypothesis stated in Article 109(1) of the OCT Decision. It is clear from the first recital in the preamble to the regulation that the Commission adopted the contested safeguard measure when 'in recent months difficulties [had] arisen which [might] result in a serious deterioration of the Community's sugar sector'.

63 It is clear, more particularly, from the second to fifth recitals in the preamble to the regulation that recourse to Article 109 of the OCT Decision was motivated by the fact that the imports of sugar and mixtures with EC/OCT cumulation of origin involved the risk of serious deterioration in the operation of the common organisation of the market in the sugar sector and effects highly detrimental to Community operators in that sector.

64 The first plea in law is made up of six parts, the first five of which, in essence, concern the existence of a risk of disturbance in the common organisation of the sugar market and the sixth the existence of a risk of effects detrimental to Community operators.

The risk of disturbance in the common organisation of the sugar market

65 First, the Netherlands Government submits that, having regard to the tiny quantities of sugar imported under the regime for EC/OCT cumulation of origin, there was no 'difficulty' within the meaning of Article 109(1) of the OCT Decision.

66 In that regard, it is clear from the first and third recitals in the preamble to the contested regulation that the Commission established that there were 'increasing' quantities of sugar imported from 1997 onwards from the OCTs under the regime for EC/OCT cumulation of origin and that the operation of the market organisation might be 'profoundly destabilised'. The third recital to the regulation states in that regard:

'sugar consumption is constant on the Community market, and accordingly any import of sugar into the Community at prices below the intervention price throws onto the export market a corresponding quantity of Community sugar which it cannot absorb. Refunds paid on such sugar are charged to the Community budget (currently at around EUR 520/tonne). Such exports are limited in volume by the GATT agreements, and the imports thus reduce the scope for exporting sugar within quotas. To cope with this problem, consideration should be given to reducing Community production quotas'.

67 It must be recalled, as the Court found in paragraph 56 of its judgment in *Emesa Sugar*, that in 1997 Community production of beet sugar already exceeded the quantity consumed in the Community; in addition cane sugar was imported from the ACP States to cater for specific demand for that product and the Community was under an obligation to import a certain quantity of sugar from non-member countries under the WTO agreements. The Community was also required to subsidise sugar exports by granting export refunds, within the limits laid down in the WTO agreements. In those circumstances and in view of the growing increase in imports of sugar from the OCTs since 1997, the Commission was entitled to take the view that any additional quantity of sugar reaching the Community market, even if minimal compared with Community production, would have obliged the Community institutions to increase the amount of the export subsidies, within the limits mentioned above, or to reduce the quotas of European producers, which would have disturbed the common organisation of the sugar market, the balance of which was already precarious, and would have been contrary to the objectives of the common agricultural policy.

68 The Netherlands Government has therefore not shown that the Commission made a manifest error of assessment in considering that sugar imports originating in the OCTs had significantly increased between 1997 and 1999 and that that increase, though minimal compared to Community production, amounted to 'difficulties' within the meaning of Article 109(1) of the OCT Decision.

69 Consequently, the first part of the first plea in law must be rejected as unfounded.

70 Secondly, the third recital in the preamble to the contested regulation states that 'any import of sugar into the Community at prices below the intervention price throws onto the export market a corresponding quantity of Community sugar which it cannot absorb'.

71 As the Netherlands Government has pointed out, the Commission has not established that sugar imports originating in the OCTs actually occurred at a price below the intervention price on the Community market. The Commission itself admitted, in its written observations, that it had based itself, in that regard, on a 'suspicion'.

72 That fact, however, cannot invalidate the contested regulation having regard to the reasons set out in the second, third and fifth recitals in the preamble, which concern the risk of deterioration in the functioning of the common organisation of the sugar market and the loss which the imports in question could have caused to Community operators in the sugar sector.

73 Even if the imports in question were not at a price below the intervention price, the Commission sufficiently justified the safeguard measure at issue by pointing out that, in view of the stable consumption of sugar in the Community, the growing increase in sugar imports from the OCTs might cause growth in the volume of subsidised exports, itself resulting in an increase in the costs connected to those exports and hence in the contributions assumed by Community producers, or reductions in Community production quotas. Such difficulties, as the Court has already observed in paragraphs 40 and 56 of its judgment in *Emesa Sugar*, are likely to disturb the common organisation of the sugar market.

74 Consequently, the second part of the first plea in law must be rejected as immaterial.

75 Thirdly, the Netherlands Government challenges the Commission's statement, in the third recital in the preamble to the contested regulation, that any additional import of sugar 'throws onto the export market a corresponding quantity of Community sugar which it cannot absorb', since both the production and the consumption of sugar in the Community fluctuates from year to year. The Government also casts doubt on the fact that the exports in question are subsidised.

76 In that regard, it is sufficient to recall that Community production exceeds the consumption of sugar in the Community, a fact which the Netherlands Government does not dispute, and that the Community is, in addition, obliged to import a certain quantity of sugar from non-Member States under the WTO Agreements (*Emesa Sugar*, paragraph 56).

77 In view of the surplus on the Community sugar market, the fact that production and consumption of sugar in the Community may fluctuate from year to year is, as the Advocate General pointed out in paragraph 71 of his Opinion, irrelevant.

78 Precisely because of that surplus, any additional import under the regime for EC/OCT cumulation of origin increases the surplus of sugar on the Community market and leads to an increase in subsidised exports (see *Emesa Sugar*, paragraph 56).

79 On the last point the Commission did not make a manifest error of assessment by considering that exports generated by imports of sugar from the OCTs were subsidised exports, since the sugar imported from the OCTs in substitution for Community sugar must itself be exported in order to maintain the equilibrium of the common organisation of the markets.

80 As a result, the third part must also be rejected.

81 Fourthly, the Netherlands Government argues that up to 1 July 2000 the WTO agreements still afforded sufficient room for manoeuvre to permit the imports in question into the Community.

82 In that regard, it must be observed that, even if the additional exports of sugar with refund which the sugar imports from the OCTs could have generated did not reach the sums and quantities fixed in the WTO Agreements, the Netherlands Government has not shown that the Commission made a manifest error of assessment, first, by taking account of the purpose of the WTO Agreements gradually to limit export subsidies and, second, by considering that the increased sugar imports, under the regime for EC/OCT cumulation of origin, increased, in their turn, the total amount of export subsidies and had already given rise, before 1 July 2000, to the risk of destabilisation of the Community sugar sector, as the Court of First Instance pointed out in paragraph 139 of its judgment in Joined Cases T-94/00, T-110/00 and T-159/00 *Rica Foods and Others* v *Commission* [2002] ECR II-4677.

83 The fourth part of the first plea in law must, as a result, be rejected.

84 Fifthly, as regards the doubts expressed by the Netherlands Government as to the Commission's intention, when it adopted the contested regulation, to reduce Community production quotas, it suffices to state that the Netherlands Government has adduced no evidence in support of its allegations.

85 The fifth branch of the first plea in law cannot, therefore, be accepted.

The effects on Community producers

86 The second recital in the preamble to the contested regulation states that the imports in question 'may ... have highly detrimental effects on Community sugar operators'.

87 Contrary to the Netherlands Government's submission in support of the sixth part of its first plea in law, the Commission did not make a manifest error of assessment in putting forward such a ground to justify the adoption of the safeguard measure at issue.

88 First of all, it is evident that the deterioration or threat of deterioration in the common organisation of the market may necessitate a reduction in the production quotas and thus directly affect the income of Community producers.

89 Next, export refunds are financed in large measure by Community producers through production levies set each year by the Commission. As stated in paragraph 78 of this judgment, the Commission could legitimately find that the imports might have resulted in an increase in the volume of subsidised exports and, consequently, a rise in the production levy assumed by Community producers.

90 Lastly, even if certain producers could, as the Netherlands Government submits, realise substantial profits on the sale of C Sugar to OCT operators by selling at

prices much above the world market price, that assertion, which is not supported by any specific evidence, cannot bring into question the Commission's assessment that the imports in question might have disturbed the sugar sector, and thus resulted in particular in an increase in the amount of export subsidies or a reduction in production quotas.

91 The sixth part of the first plea in law must therefore be rejected as unfounded.

92 In the light of all the foregoing considerations, the first plea in law must be dismissed.

The second plea in law, alleging infringement of Article 109(1) of the OCT Decision and relating to the mechanism of customs surveillance of imports of mixtures of cocoa and sugar

Arguments of the parties

93 By its second plea in law, the Netherlands Government submits, as regards mixtures of cocoa and sugar, arguments similar to those advanced in support of the first plea.

94 It alleges, first of all, that the Commission did not establish that the import of extremely small quantities of mixtures, which showed no sign of increasing during 1999, justified the adoption of the safeguard measure at issue.

95 Next, the statement in the fourth recital in the preamble to the contested regulation that those mixtures were imported 'at prices below those at which Community producers can sell comparable products' is not supported by any evidence.

96 The Netherlands Government also maintains that the common organisation of the sugar market could not be disturbed by imports of mixtures since, under Article 1(1) of Regulation No 2038/1999, cocoa is not subject to that common organisation.

97 Lastly, even if the customs surveillance mechanism is a relatively innocuous measure, provided that the customs authorities do not resort to it to carry out paralysing checks, its aim is to collect information for the purposes of determining whether the imports in question are capable of disturbing the market. The purpose of a safeguard measure is the resolution of an existing problem, however, and not the determination of matters capable of justifying such a measure. Consequently, the Commission is guilty of misuse of powers.

98 The Commission replies that for mixtures of sugar and cocoa it confined itself to establishing a surveillance mechanism enabling it to collect factual data relating to the evolution of the quantities imported and prices paid, and that in the absence of the import certificates required for the products concerned. Even if it is indisputable that cocoa is not subject to the common organisation of the market, it is very obvious that the mixtures in question have a very high sugar content. Imports of

mixtures from the OCTs can therefore have, for sugar producers, detrimental effects on the sale of sugar to the Community producers of those mixtures.

99 So far as concerns the price paid, the Commission repeats its argument that imports at prices below the intervention price result in unfair competition which is damaging to Community producers, since they are unable to offer their sugar at a lower price, obliged as they are to pay a minimum price for the sugar beet they purchase.

100 The Spanish Government adopts the arguments advanced by the Commission. It adds, as regards the accusation of misuse of powers, that it is belied by the facts and not supported by any objective, relevant and consistent evidence.

Findings of the Court

101 Under Article 2 of the contested regulation, the release for free circulation of mixtures of sugar and cocoa originating from the OCT is subject to a surveillance mechanism which, as stated in the ninth recital in the preamble to that regulation, should allow the Commission 'to monitor the development of such imports closely, as regards quantities and prices, without generating any additional administrative burden for operators'.

102 While the mixtures are not subject to the common organisation of the sugar market, as is clear from Article 1(1) of Regulation No 2038/1999, the increase in imports of those products from the OCTs, generally with a high sugar content, gives rise none the less to a risk of disturbance in the functioning of the common organisation of the

market in the sugar sector, since those imports may affect the opportunities for Community producers to sell sugar to Community manufacturers of those mixtures.

103 In addition, even if it was not shown that the imports in question were at prices lower than prices capable of being obtained by Community producers, thus resulting in unfair competition damaging to those producers, the Commission could, without making a manifest error of assessment, decide that those imports involved a risk of disturbance to the functioning of the common organisation of the market, as has already been held in respect of imports of sugar in paragraph 67 of this judgment.

104 Finally, the Netherlands Government has not relied on any objective, relevant and consistent evidence to demonstrate that there was, in this case, any misuse of powers.

105 Consequently, the second plea in law must be rejected as unfounded.

The third plea in law, alleging breach of the duty to state reasons

Arguments of the parties

106 By its third plea in law, the Netherlands Government submits that the statement of reasons in the contested regulation, as set forth in the first to fifth recitals in its preamble, is insufficient. The regulation, the reasoning of which is concise, contains no indication of any hard evidence, any more than of the causes and effects of the alleged 'difficulties' relied upon.

107 In addition, the statement of reasons is contradictory in the sense that it cannot at the same time be alleged, in the third recital of the contested regulation, that additional imports lead to additional subsidised exports which damage the Community budget and, in the fourth recital of that regulation, that the costs of the surpluses which can be attributed to imports from the OCTs are assumed entirely by the producers.

108 Finally, the statement in the third recital that any import of sugar at prices below the intervention price results in additional costs for the Community budget is incomprehensible.

109 The Commission points out that according to the Court's settled case-law, the statement of reasons in a regulation must be adapted to the character of the act in question and must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure. Therefore, it can be required only that the statement of reasons provide a specific assessment, more or less complete, of the facts. The Commission stated the reasons for the contested regulation concisely but adequately: the first recital notes the difficulties occurring on the Community sugar market, the following recitals set out in detail the reasons for which those difficulties may result in a deterioration of the market situation, and lastly the reasons for the measures chosen are set out precisely. The statement of reasons in the contested regulation is, accordingly, sufficient to enable the Court of Justice to exercise its power of review.

110 In addition, the third and fourth recitals in the preamble to the contested regulation are not irreconcilable, since the increase in sugar imports from the OCTs may result in costs for Community sugar producers whilst also giving rise to a charge on the Community budget.

111 Finally, the third recital is perfectly comprehensible. Imports of sugar at prices below the intervention price give rise, to the detriment of Community producers, to unfair competition so that those producers find themselves unable to sell a comparable quantity of sugar on the Community market, with the result that that sugar has to be exported against payment of refunds which the Community budget must bear.

112 The Spanish Government's position is identical to that of the Commission. It adds that, according to the Court's case-law, in the case of a measure of general application, as here, the statement of reasons may be confined to indicating the general situation which led to its adoption, on the one hand, and the general objectives which the institution which adopted it intended to achieve, on the other. If the contested measure clearly discloses the essential objective pursued by the institution concerned, it would be unreasonable to require a specific statement of reasons for the various technical choices made. That is all the more so where, as in the present case, the Community institutions have a broad discretion in their choice of the means necessary to implement a complex policy.

Findings of the Court

113 The Court observes that it is settled case-law that the statement of reasons required by Article 253 EC must be appropriate to the nature of the act at issue and must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in question in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the Community Court to exercise its power of review. It is not necessary for the reasoning to go into all the relevant facts and points of law, since the question whether the statement of reasons for a measure meets the requirements of Article 253 EC must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (see, inter alia, Joined Cases C-9/95, C-23/95 and C-156/95 *Belgium and Germany* v *Commission* [1997] ECR I-645, paragraph 44, and Case C-367/95 P *Commission* v *Sytraval and Brink's France* [1998] ECR I-1719, paragraph 63).

114 In this case, as was noted in paragraphs 28 to 30 of this judgment, the adoption of the contested regulation was preceded by consultations between the Commission, the Kingdom of the Netherlands and the other Member States.

115 As regards the content of the measure, in the first to fifth recitals in the preamble to the contested regulation the Commission set out the difficulties which had arisen on the Community sugar market, the reasons for which those difficulties could result in a deterioration of the functioning of the common organisation of the market and the damaging effects for Community operators. In addition, it provided in the eighth and ninth recitals to that regulation the grounds which had led it to fix a minimum import price for sugar of EC/OCT origin and to make imports of mixtures subject to a Community surveillance procedure.

116 Moreover, as the Commission pointed out, the statements in the third and fourth recitals in the preamble to the contested regulation are in no way contradictory since the growing imports of sugar from the OCTs could both damage the Community budget and increase the costs of Community sugar producers.

117 Finally, the third recital in the preamble to the contested regulation does not present any particular difficulties of comprehensibility, as is clear from the explanations set out in response to the first plea in law and, in particular, from paragraphs 66 to 74 of this judgment.

118 Consequently, the third plea in law must be rejected as unfounded.

The fourth plea in law, alleging infringement of Article 109(2) of the OCT Decision

Arguments of the parties

119 By its fourth plea in law, the Netherlands Government complains that the Commission placed importers of sugar from the OCTs in a situation less favourable than that of Community operators by requiring the import price of such sugar, cif and unpacked, to be no lower than the intervention price. Unlike those operators, importers of sugar from the OCTs would have to add to the intervention price the costs of transport of the products within the Community as well as maintenance and storage costs, which are particularly high since the vessels providing the maritime links from the Netherlands OCTs serve only the ports of Northern Europe. In those circumstances, operators in the OCTs are no longer in a position to compete with Community operators.

120 The Netherlands Government submits that if, in any event, it was appropriate to fix a minimum price for sugar imported from the OCTs, it would have been more in keeping with the principle of proportionality to impose a minimum sale price, rather than a minimum import price. In failing to do that, the Commission disregarded Article 109(2) of the OCT Decision.

121 The Commission replies that the protection of Community producers is not in itself contrary to the principle of proportionality (see *Antillean Rice Mills and Others* v *Commission*, paragraph 54).

122 According to the Commission, the measures imposed do not go beyond what is necessary to ensure that protection. The establishment of a minimum import price is such as to guarantee equality, as far as competition is concerned, between Community producers and OCT producers, without thereby impeding access for sugar from the OCTs to the Community market.

123 The Commission observes, in that regard, that under Article 3 of Regulation No 2038/1999 there are fixed annually an intervention price for the areas of the Community where production is not in deficit and a derived intervention price for each of the areas where production is in deficit. The Commission explains that the latter price is higher than the intervention price because it takes into account additional costs, such as the costs of transport. Because of the safeguard measure at issue, if an OCT operator decided to export its products to an area of the Community in surplus, it would have to align its prices with the intervention price. If it then decided to sell its products in a deficit area it would, like any Community producer, have to increase the final sale price in order to cover the costs of transport and the other costs.

124 The Spanish Government submits also that the introduction of a minimum import price, which complies with Article 109(2) of the OCT Decision, guarantees equality, as far as competition is concerned, between Community producers and those of the OCTs.

Findings of the Court

125 Article 109(2) of the OCT Decision provides:

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

126 So far as concerns the principle of proportionality, in order to establish whether a provision of Community law complies with that principle, it must be ascertained whether the means which it employs are suitable for the purpose of achieving the desired objective and whether they do not go beyond what is necessary to achieve it (*Antillean Rice Mills and Others* v *Commission*, paragraph 52).

127 In this case, in order to remedy the difficulties that have arisen on the Community market, Article 1 of the contested regulation fixes a minimum import price for sugar qualifying for EC/OCT cumulation of origin, corresponding 'to the intervention price of the products in question'. The eighth recital in the preamble to that regulation states that 'this measure should ensure that imported sugar is not sold at prices below those on the Community market and avoid the destabilising effects of these imports while ensuring an adequate unit profit for the OCT operators concerned and compliance with the order of preferences introduced in favour of Community products and of products originating in the OCT by the EC Treaty'.

128 It is important also to point out, as a preliminary, that it follows from the very essence of a safeguard measure that certain imported products will be subject to a less favourable regime than Community products (*Antillean Rice Mills and Others* v *Commission*, paragraph 54). It is not sufficient in those circumstances to argue, in order to establish an infringement of Article 109(2) of the OCT Decision, that that safeguard measure puts the imported products in question in a competitive position less favourable than that enjoyed by Community products. On the contrary, it must be shown that the measure in question is not suitable for the purpose of achieving the desired objective or that it goes beyond what is necessary to achieve it.

129 In that regard, the Netherlands Government does not take issue with the recourse to a minimum price as such, but disputes the choice made by the Commission to impose a minimum import price rather than a minimum sale price of sugar, on the ground that such a choice places OCT operators in a position less favourable than

that of Community operators, without, however, providing evidence, or even seeking to provide it, that that choice is manifestly unsuitable to achieve the objective desired by the Commission.

130 As the Commission, and the Advocate General in paragraphs 107 to 109 of his Opinion, correctly observed, it is sufficient to state that the fourth plea in law is based on a misreading of Article 1(1) of the contested regulation.

131 Under that provision, if sugar with EC/OCT cumulation of origin is imported into a non-deficit area of the Community, the import price must be equal to or higher than the intervention price; if it is imported into a deficit area of the Community, the import price must be equal to or higher than the derived intervention price.

132 In those circumstances, if an OCT operator decides to export its products to a non-deficit area of the Community it must align its prices with the intervention price, provided that if it then decides to sell its products in a deficit area, it must, like any Community producer, bear the costs of transport of its goods to the deficit area. On the other hand, if an OCT operator decides to export its products to a deficit area of the Community it may align its prices with the derived intervention price, which is higher than the intervention price.

133 Since the fourth plea in law can likewise not be upheld, the action must be dismissed.

Costs

134 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs and the Kingdom of the Netherlands has been unsuccessful, the latter must be ordered to pay the costs. In accordance with Article 69(4) the Kingdom of Spain must bear its own costs.

On those grounds, the Court (Second Chamber) hereby:

1. Dismisses the action;

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

3. Orders the Kingdom of Spain to bear its own costs.

[Signatures]