JUDGMENT OF THE COURT

8 February 2000 *

In Case C-17/98,

REFERENCE to the Court under Article 177 of the EC Treaty (now Article 234 EC) by the President of the Arrondissementsrechtbank te 's-Gravenhage (Netherlands) for a preliminary ruling in the proceedings pending before that court between

Emesa Sugar (Free Zone) NV

and

Aruba

on the validity of Council Decision 97/803/EC of 24 November 1997 amending at mid-term Decision 91/482/EEC on the association of the overseas countries and territories with the European Economic Community (OJ 1997 L 329, p. 50),

* Language of the case: Dutch.

THE COURT,

composed of: G.C. Rodríguez Iglesias, President, J.C. Moitinho de Almeida and D.A.O. Edward (Presidents of Chambers), P.J.G. Kapteyn, J.- P. Puissochet, G. Hirsch, P. Jann, H. Ragnemalm and M. Wathelet (Rapporteur), Judges,

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: H.A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

— Emesa Sugar (Free Zone) NV, by G. van der Wal, of the Brussels Bar,

— the Government of Aruba, by P.V.F. Bos and M.M. Slotboom, of the Rotterdam Bar,

— the Spanish Government, by M. López-Monís Gallego, Abogado del Estado, acting as Agent,

— the French Government, by K. Rispal-Bellanger, Head of subdirectorate in the Legal Affairs Directorate of the Ministry of Foreign Affairs, and C. Chavance, Foreign Affairs Secretary in that directorate, acting as Agents,

— the Italian Government, by Professor U. Leanza, Head of the Legal Affairs Department, Ministry of Foreign Affairs, acting as Agent, assisted by D. Del Gaizo, Avvocato dello Stato,

— the United Kingdom Government, by S. Ridley, of the Treasury Solicitor's Department, acting as Agent, and K. Parker QC,

— the Council of the European Union, by J. Huber and G. Houttuin, of its Legal Service, acting as Agents,

— the Commission of the European Communities, by T. van Rijn, Legal Adviser, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of Emesa Sugar (Free Zone) NV, the Government of Aruba, the Spanish, French and Italian Governments, and the Council and the Commission at the hearing on 16 March 1999,

after hearing the Opinion of the Advocate General at the sitting on 1 June 1999,

gives the following

Judgment

1 By order of 19 December 1997, received at the Court on 23 January 1998, the President of the Arrondissementsrechtbank te 's-Gravenhage (District Court, The Hague) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty (now Article 234 EC) twelve questions on the validity of Council Decision 97/803/EC of 24 November 1997 amending at mid-term Decision 91/482/EEC on the association of the overseas countries and territories with the European Economic Community (OJ 1997 L 329, p. 50).

2 Those questions were raised in proceedings between Emesa Sugar (Free Zone) NV ('Emesa') and the Government of Aruba concerning the conditions for importation into the Community of quantities of sugar which Emesa processes and packs on that island.

Legal background

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

4 Aruba is one of the OCTs.

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

6 Pursuant to the second and third paragraphs of Article 131 of the EC Treaty (now, after amendment, the second and third paragraphs of Article 182 EC):

'The purpose of association shall be to promote the economic and social development of the countries and territories and to establish close economic relations between them and the Community as a whole.

In accordance with the principles set out in the Preamble to this Treaty, association shall serve primarily to further the interests and prosperity of the inhabitants of these countries and territories in order to lead them to the economic, social and cultural development to which they aspire.'

7 To that end, Article 132 of the EC Treaty (now Article 183 EC) sets out a number of objectives, which include the application by the Member States 'to their trade with the countries and territories [of] the same treatment as they accord each other pursuant to this Treaty'.

8 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 that Treaty.

9 According to Article 136 of the EC Treaty (now, after amendment, Article 187 EC):

'For an initial period of five years after the entry into force of this Treaty, the details of and procedure for the association of the countries and territories with the Community shall be determined by an Implementing Convention annexed to this Treaty.

Before the Convention referred to in the preceding paragraph expires, the Council shall, acting unanimously, lay down provisions for a further period, on the basis of the experience acquired and of the principles set out in this Treaty.'

10 On the basis of the second paragraph of Article 136 of the Treaty, on 25 February 1964 the Council adopted Decision 64/349/EEC on the association of the OCTs with the European Economic Community (*Journal Officiel* 1964, 93, p. 1472). That decision was intended to replace, as from 1 June 1964 (the date of the entry into force of the internal agreement on the financing and management of Community aid signed in Yaoundé on 20 July 1963), the Implementing Convention on the association of the overseas countries and territories with the European Economic Community, annexed to the Treaty and concluded for a period of five years.

11 Thereafter, several decisions relating to the association of OCTs with the European Economic Community were adopted by the Council. On 25 July 1991 the Council adopted Decision 91/482/EEC (OJ 1991 L 263, p. 1, hereinafter 'the OCT Decision'), which, by virtue of Article 240(1) thereof, applies for a period of

10 years from 1 March 1990. Article 240(3)(a) and (b) provide, however, that before the end of the first five years, the Council, acting unanimously on a proposal from the Commission, is to establish where necessary, in addition to Community financial assistance, any amendments to be made for the next five-year period to the association of the OCTs with the Community. To that end, the Council adopted Decision 97/803/EC.

12 In its original version, Article 101(1) of the OCT Decision provided:

'Products originating in the OCT shall be imported into the Community free of customs duties and charges having equivalent effect'.

13 Article 102 of the same decision provided:

'The Community shall not apply to imports of products originating in the OCT any quantitative restrictions or measures having equivalent effect.'

14 The first indent of Article 108(1) of the OCT Decision refers to Annex II thereto (hereinafter 'Annex II') for definition of the concept of originating products and the methods of administrative cooperation relating thereto. Under Article 1 of Annex II, a product is to be considered as originating in the OCTs, the

Community or the African, Caribbean and Pacific States (hereinafter 'the ACP States') if it has been either wholly obtained or sufficiently worked or processed there.

15 Article 3(3) of Annex II lists a number of operations that are to be considered as insufficient working or processing to confer the status of OCT originating products. Article 6(2) of that annex states:

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

16 Furthermore, under Article 12 of Annex II, proof of origin of the products is provided by a 'movement certificate EUR. 1' (paragraph 1), issued by the customs authorities of the exporting OCT country (paragraph 6), who are to verify whether the goods qualify to be regarded as originating products by carrying out any check which they consider appropriate (paragraph 7).

17 In its proposal for a decision for mid-term amendment of Decision 91/482, sent to the Council on 16 February 1996 (COM(95) 739 Final, OJ 1996 C 139, p. 1), the Commission expressed the view, in the sixth and seventh recitals in the preamble to that proposal, that free access for all products originating in the

OCTs and the maintenance of the ACP/OCT cumulation of origin rule had given rise to the risk of conflict between two Community policy objectives, namely the development of the OCTs and the common agricultural policy.

18 In the seventh recital in the preamble to Decision 97/803, which followed that proposal, the Council observes that it is appropriate for 'fresh disruption [to] be avoided by taking measures to create a framework conducive to regular trade flows and at the same time compatible with the common agricultural policy'.

19 To that end, Decision 97/803 inserted in the OCT Decision, among other amendments, Article 108b, which allows ACP/OCT cumulation of origin for sugar up to a specified annual quantity. Article 108b(1) and (2) provide:

'1. The 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 ...

2. For the purposes of implementing the ACP/OCT cumulation rules referred to in paragraph 1, forming sugar lumps or colouring shall be considered as sufficient to confer the status of OCT-originating products' (but there is no mention of the milling of sugar).

The dispute before the national court

20 Emesa has operated a sugar factory in Aruba since April 1997 and exports sugar to the Community.

21 Since Aruba produces no sugar, the sugar is bought from cane sugar refineries in Trinidad and Tobago, one of the ACP States. After purchase, the sugar is taken to Aruba where it undergoes working and processing, after which the product is regarded as finished. Those operations consist in cleaning and milling the sugar (to give it the degree of fineness specified by the customer) and packing it. According to the defendant in the main proceedings, its factory processes at least 34 000 tonnes of sugar a year.

22 After the adoption of Decision 97/803, Emesa sought an interim order from the President of the Arrondissementsrechtbank te 's-Gravenhage prohibiting:

— the Netherlands State from charging import duties on sugar originating in the OCTs which it proposed importing;

— the Hoofdproductschap voor Akkerbouwproducten (Central Board for Agricultural Products) ('the HPA') from refusing to grant it import licences;

— the Aruba authorities from refusing to grant it movement certificates EUR. 1 for the sugar produced by it in Aruba where those certificates were not withheld under the OCT Decision before it was amended.

23 In support of those claims, the plaintiff in the main proceedings argued essentially that the review of the OCT Decision, which, in its view, should be seen as a

quantitative restriction in so far as *de facto* it excluded sugar imports from OCTs, was contrary to Community law in that it reintroduced structural restrictions, not applicable under the OCT Decision even though no significant Community interests could justify such adjustments after such a brief period of application and despite the fact that the effects of the OCT Decision were entirely foreseeable.

24 In his order for reference, the President of the Arrondissementsrechtbank te 's-Gravenhage declared the claims directed against the Netherlands State and the HPA inadmissible on the ground that, in order to challenge the implementation of the OCT Decision, as amended, an administrative remedy was available to Emesa before the College van Beroep voor het Bedrijfsleven; however, he upheld the claim against Aruba. In his provisional assessment, the President of the national court expressed doubts as to the legality of Decision 97/803, in particular in the light of the objectives of the scheme of association with the OCTs, as set out in Articles 131, 132 and 133 of the Treaty, which are to promote the economic and social development of the OCTs and to establish close economic relations between the OCTs and the Community as a whole; the national court also doubts whether Decision 97/803 is consistent with the principle of proportionality.

25 The national court also observes that Emesa is liable to suffer serious and irreparable harm since, if the contested provisions were maintained, its plant, which had only just come into operation, would have to be closed. In its view, the Community interest does not preclude, where serious doubts have arisen as to the legality of the amendment of the OCT Decision, an interim order allowing Emesa to continue importing into the Community, particularly since the imports are still very limited.

26 In those circumstances, the President of the Arrondissementsrechtbank te 's-Gravenhage stayed proceedings and referred the following questions to the Court of Justice for a preliminary ruling:

'1. Is the mid-term amendment of the OCT Decision on 1 December 1997 by Council Decision 97/803/EC of 24 November 1997 (OJ L 329, p. 50) proportionate, more specifically the insertion of Article 108b(1) and deletion of "milling" as a relevant method of processing for the purposes of origin?

2. Is it acceptable for the restrictive consequences of that Council decision — more specifically the insertion of Article 108b(1) and deletion of "milling" as a relevant method of processing for the purposes of origin — to be (far) more serious than would have been the case had recourse been had to safeguard measures pursuant to Article 109 of the OCT Decision?

3. Is it compatible with the EC Treaty, in particular Part IV thereof, for a Council decision of the kind referred to in the second paragraph of Article 136 of the Treaty (in the present case, Decision 97/803/EC) to include quantitative restrictions on imports or measures having equivalent effect?

4. Is the answer to the third question different

(a) if those restrictions or measures are in the form of tariff quotas or limitations to the provisions relating to origin or a combination of the two

or

(b) if the provisions in question comprise safeguard measures or not?

5. Does it follow from the EC Treaty, in particular Part IV thereof, that for the purposes of the second paragraph of Article 136, the experience acquired — in the form of measures favourable to the OCTs — may not subsequently be reviewed or annulled to the detriment of the OCTs?

6. If that is indeed the case, are the Council decisions at issue therefore void and can individuals then rely on that in proceedings before the national court?

7. To what extent must the 1991 OCT Decision (91/482/EEC, OJ 1991 L 263, p. 1; corrigendum in OJ 1993 L 15, p. 33) be deemed to apply without amendment during the 10-year period referred to in Article 240(1) thereof, given that the Council did not amend that decision before the expiry of the first (period of) five years referred to in Article 240(3) thereof?

8. Is the Council's amending Decision (97/803/EC) contrary to Article 133(1) of the EC Treaty?

9. Is Council Decision 97/803/EC valid, having regard to the expectations aroused by the information brochure (DE 76) distributed by the Commission

in October 1993, given that, at page 16, the brochure states that the period of validity of the Sixth OCT Decision is now 10 (previously five) years?

10. Is Article 108b, which was inserted on 1 December 1997, so unworkable that it must be deemed to be invalid?

11. Does the national court have jurisdiction, in circumstances such as those described in Joined Cases C-143/88 and C-92/89 *Zuckerfabrik Süderdithmarschen and Others* and subsequent cases, to adopt an interim measure in advance, in the event of an imminent breach of Community law by a non-Community enforcement body designated by Community law, in order to prevent that breach?

12. On the assumption that the answer to Question 11 is in the affirmative and that assessment of the circumstances referred to in Question 11 is a matter for the Court of Justice, rather than the national court, are the circumstances described in this judgment at points 3.9 to 3.11 inclusive [exclusion of milling and introduction of quantitative restrictions, serious and irreparable harm to Emesa and consideration of the Community interest] such as to justify a measure of the kind referred to in Question 11?'

The first ten questions

27 In its first ten questions, the national court expresses uncertainty as to the validity of the OCT Decision, as amended by Decision 97/803 (hereinafter 'the amended OCT Decision'), in particular Article 108b thereof, in so far as it allows ACP/OCT cumulation of origin for an annual quantity of 3 000 tonnes only for sugar

and fails to mention milling, in paragraph 2, as one of the types of working or processing regarded as sufficient for the attribution of such origin.

28 To answer those questions, it must be borne in mind at the outset that association of the OCTs with the Community is to be achieved by a dynamic and progressive process which may necessitate the adoption of a number of measures in order to attain all the objectives mentioned in Article 132 of the Treaty, having regard to the experience acquired through the Council's previous decisions (see Case C-310/95 *Road Air* v *Inspecteur der Invoerrechten en Accijnzen* [1997] ECR I-2229, paragraph 40, and Case C-390/95 P *Antillean Rice Mills and Others* v *Commission* [1999] ECR I-769, paragraph 36).

29 However, 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 (see Opinion 1/78 of 4 October 1979 [1979] ECR 2871, paragraph 62, and Opinion 1/94 of 15 November 1994 [1994] ECR I-5267, paragraph 17). In particular, free movement of goods between the OCTs and the Community does not exist without restriction at this stage, in accordance with Article 132 of the Treaty (*Antillean Rice Mills,* cited above, paragraph 36).

30 Furthermore, the second paragraph of Article 136 of the Treaty authorises the Council to adopt decisions concerning the association 'on the basis of the experience acquired and of the principles set out' in the Treaty. It follows that whilst the Council, when adopting such decisions, must take account of the principles embodied in Part Four of the Treaty, and in particular of the experience acquired, it must also take into account the other principles of Community law, including those relating to the common agricultural policy (*Antillean Rice Mills,* cited above, paragraphs 36 and 37).

The possibility of reviewing the OCT Decision after the first five years of its application (seventh and ninth questions)

31 By its seventh question, the national court seeks essentially to ascertain whether, after the end of the first five-year period referred to in Article 240(1) of the OCT Decision, it was still open to the Council, under that provision, to review that decision. By its ninth question, the national court queries the validity of Decision 97/803 in relation to the legitimate expectations entertained by traders as a result of the distribution by the Commission, in October 1993, of information brochure No DE 76, entitled 'The European Community and the Overseas Countries and Territories', in which it was stated that the OCT Decision was applicable for ten years.

32 According to Emesa and Aruba, the period allowed for review in Article 240(3) of the OCT Decision constitutes a mandatory time-limit, so that the Council had no competence *ratione temporis* to amend the decision two-and-a-half years after the end of that period.

33 That argument cannot be upheld. Although Article 240(3) of the OCT Decision provides that, before the end of the first five years, the Council is to establish, where necessary, any amendments to be made to the provisions governing the association between the OCTs and the Community, that cannot, as the Advocate General observes in point 43 of his Opinion, deprive the Council of its competence, conferred directly by the Treaty, to amend the acts which it has adopted under Article 136 thereof in order to attain all the objectives set out in Article 132 of the Treaty.

34 Moreover, as the Court has repeatedly stated, whilst the protection of legitimate expectations is one of the fundamental principles of the Community, traders cannot have a legitimate expectation that an existing situation which is capable of being altered by the Community institutions in the exercise of their discretion will be maintained; this is particularly true in an area such as the common

organisation of the markets whose purpose involves constant adjustments to meet changes in the economic situation (see, in particular, Case C-372/96 *Pontillo* [1998] ECR I-5091, paragraphs 22 and 23).

35 That necessarily applies with greater force where the hopes purportedly entertained by the traders were raised by a publicly distributed leaflet having no legal status, such as Commission brochure No DE 76. Furthermore, in October 1993, when that brochure appeared, the Commission was fully entitled to state that the OCT Decision had been adopted for a period of 10 years and was under no obligation to give details in such a document of any amendments that might be made.

36 Furthermore, it is clear from the documents before the Court that, when first making investments in Aruba, Emesa was in possession of sufficient information to enable it, as a normally diligent trader, to foresee that the rules allowing cumulation of origin might be made more restrictive. In particular, the Commission proposal for a mid-term amendment of the OCT Decision was published in the *Official Journal of the European Communities* of 10 May 1996, that is to say nearly a year before Emesa started production in Aruba.

Irreversibility of the progress achieved under Article 136 of the Treaty (fifth and sixth questions)

37 By its fifth question, the national court inquires as to the existence, having regard in particular to the second paragraph of Article 136 of the Treaty, of a 'locking' principle whereby the advantages accorded to the OCTs as the process of association is taken forward in stages cannot be detracted from and, by its sixth question, as to the consequences for individuals of failure to observe that principle.

38 It should be noted that although the dynamic and progressive process characterising the association of the OCTs with the Community requires that account be taken by the Council of the experience acquired as a result of its earlier decisions, the fact nevertheless remains, as is made clear in paragraph 30 of this judgment, that the Council, when adopting measures under the second paragraph of Article 136 of the Treaty, must take account both of the principles set out in Part Four of the Treaty and of the other principles of Community law, including those relating to the common agricultural policy.

39 In weighing the various objectives laid down by the Treaty, whilst taking overall account of the experience acquired as a result of its earlier decisions, the Council, which enjoys for that purpose a considerable margin of discretion reflecting the political responsibilities entrusted to it by Articles 40 to 43 (now, after amendment, Articles 34 EC to 37 EC) and 136 of the EC Treaty, may be prompted, in case of need, to curtail certain advantages previously granted to the OCTs.

40 In this case, it is common ground that the reduction to 3 000 tonnes a year of the quantity of sugar which may qualify for ACP/OCT cumulation of origin constitutes a restriction as compared with the OCT Decision. However, provided it is established that the application of the rule on cumulation of origin in the sugar sector was liable to lead to significant disturbances in the functioning of a common market organisation (a matter which will be considered in paragraphs 51 to 57 of this judgment), the Council, after weighing the objectives of association of the OCTs against those of the common agricultural policy, was entitled to adopt, in compliance with the principles of Community law circumscribing its margin of discretion, any measure capable of bringing to an end or mitigating such disturbances, including the removal or limitation of advantages previously granted to the OCTs.

41 That is particularly true, as the Advocate General observes in point 57 of his Opinion, where the advantages in question are of an extraordinary nature, having

regard to the rules on the functioning of the Community market. The rule which allows certain products from the ACP States, after certain operations have been carried out, to be classified as being of OCT origin falls into that category.

42 Moreover, the review of the OCT Decision did not merely bring about restrictions or limitations as compared with the rules previously in force since, as the Commission has stated without being contradicted, various advantages were granted to the OCTs regarding establishment within the Community (Articles 232 and 233a of the amended OCT Decision), mutual recognition of professional qualifications (Article 233b) and access to Community programmes (Article 233c). Furthermore, Community financial aid for the OCTs was increased by 21% (Article 154a).

The existence of quantitative restrictions on imports contrary to Articles 133(1) and the second paragraph of Article 136 of the Treaty (third, fourth and eighth questions)

43 By its third, fourth and eighth questions, the national court inquires as to the existence and the validity of a quantitative restriction, deriving from Article 108b of the amended OCT Decision, in the light of Article 133(1) and the second paragraph of Article 136 of the Treaty.

44 The Council expresses doubts as to the very existence of a quantitative restriction resulting from the implementation of Article 108b of the amended OCT Decision. That article does certainly limit the quantity of certain products for which cumulation of origin is allowed and which may therefore be imported free of duty. However, the Council contends that, after that quantity is used up, products may nevertheless be imported against payment of the prescribed customs duties.

45 Without its being necessary to dispose of the question whether the tariff quota laid down in Article 108b of the amended OCT Decision may be regarded as a quantitative restriction or the question whether ACP/OCT cumulation rules confer on the goods in question an OCT origin for the purpose of applying the import rules laid down in Article 133(1) of the Treaty, it should be noted that the products concerned can be imported in excess of the quota only against payment of customs duties.

46 However, Article 133(1) of the Treaty provides that customs duties on imports from the OCTs into the Community are to be completely abolished 'in conformity with the progressive abolition of customs duties between Member States in accordance with the provisions of this Treaty'.

47 In that connection, it should be observed, as the Commission has done, that, as far as trade in sugar is concerned, dismantling of the intra-Community customs tariff came about only after the creation of a common organisation of the market in sugar, which led to the simultaneous establishment of a common external tariff and determination of a minimum price applicable in all the Member States, with the aim, in particular, of eliminating distortions of competition. Thus, in the absence of any common agricultural policy as between the OCTs and the Community, measures designed to prevent distortions of competition or disturbance of the Community market, which may take the form of a tariff quota, cannot, merely because of their adoption, be regarded as contrary to Article 133(1) of the Treaty.

48 As to whether the tariff quota fixed by Article 108b of the amended OCT Decision is compatible with the second paragraph of Article 136 of the Treaty, it need merely be observed that that provision states expressly that the Council is to act 'on the basis of the experience acquired and of the principles set out in this Treaty'. As the Court held in *Antillean Rice Mills,* cited above, paragraph 37, those principles include the ones relating to the common agricultural policy.

49 Consequently, the Council cannot be criticised for having taken into account, in implementing the second paragraph of Article 136 of the Treaty, the requirements of the common agricultural policy.

50 It follows from the foregoing that the validity of the measure provided for in Article 108b of the OCT Decision cannot be called in question in the light of Article 133(1) and the second paragraph of Article 136 of the Treaty on the ground that it fixed a quota for sugar imports under the ACP/OCT cumulation of origin rules.

The proportionality of the measures laid down by Decision 97/803 (first and second questions)

51 By its first and second questions, the national court seeks to ascertain whether the introduction of the tariff quota and the alleged removal of milling from the types of working and processing regarded as sufficient for the purpose of allowing ACP/OCT cumulation of origin, in accordance with Article 108b(1) and (2) of the amended OCT Decision, are compatible with the principle of proportionality and the limits laid down in Article 109 of the OCT Decision for the adoption of safeguard measures.

52 According to Emesa and Aruba, it is the excess Community production itself and the total volume of Community imports that are liable to disturb the Community sugar market and affect fulfilment of the Community's World Trade Organisation ('WTO') commitments and not the negligible imports of OCT sugar into the Community, which in the aggregate account for less than 4% of the preferential imports of sugar (in particular from the ACP States). In any event, in the case of severe disturbances, recourse to the safeguard measures provided for in Article 109 of the OCT Decision, within the limits there specified, would have been more appropriate.

53 It should be borne in mind that in a sphere such as this, in which the Community institutions have a broad discretion, the lawfulness of a measure can be affected only if the measure is manifestly inappropriate having regard to the objective pursued. The Court's review must be limited in particular if the Council has to reconcile divergent interests and thus select options within the context of the policy choices which are its own responsibility (see Case C-280/93 *Germany* v *Council* [1994] ECR I-4973, paragraphs 90 and 91; Case C-44/94 *Fishermen's Organisations and Others* [1995] ECR I-3115, paragraph 37; and Case C-150/94 *United Kingdom* v *Council* [1998] ECR I-7235, paragraph 87).

54 First of all, the introduction of the quota fixed by Article 108b of the amended OCT Decision cannot be considered, in this context, to have manifestly exceeded what was necessary to attain the objectives pursued by the Council.

55 In that connection it is clear from the seventh recital in the preamble to Decision 97/803 that the Council introduced Article 108b, first, because it formed the view that 'free access for all products originating in the OCTs and the maintenance of cumulation for ACP and OCT originating products' had given rise to the 'risk of conflict' between the objectives of Community policy in relation to the development of the OCTs and those of the common agricultural policy and, second, to take account of the fact that 'serious disruption on the Community market for certain products subject to a common organisation of the market has led on a number of occasions to the adoption of safeguard measures'.

56 It is clear from the documents before the Court that at the date of Decision 97/803, first, Community production of beet sugar 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 WTO agreements. Second, 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, the Council 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 market in sugar, the balance of which was precarious, and would have been contrary to the objectives of the common agricultural policy.

57 Furthermore, it is clear both from the order for reference and from the figures given by the Council and the Commission that the annual quota of 3 000 tonnes is not lower than the level of traditional imports of sugar from the OCTs, a product which the latter do not themselves produce. Moreover, since the goods from the ACP States have only a limited value added to them within the OCTs, the industry affected by Decision 97/803 could make only a limited contribution to their development. Furthermore, the possibility could not be excluded that unlimited application of the cumulation of origin rule might entail a risk of artificial diversion of products from the ACP States to the OCTs with a view to gaining access to the Community market for sugar in quantities exceeding those for which those States enjoyed, by agreement, guaranteed duty-free access to that market.

58 Consequently, the measure relating to imports of sugar covered by the ACP/OCT cumulation of origin rule contained in Article 108b(1) of the amended

OCT Decision cannot be regarded as contrary to the principle of proportionality.

59 Second, as regards the alleged removal of milling from the types of working or processing which confer entitlement to cumulation of origin, it is to be noted, as pointed out by the Council and the Commission, that Article 108b(2) merely mentions two examples of operations which may be regarded as sufficient to confer the status of OCT originating products and does not give an exhaustive list.

60 In those circumstances, Emesa has no basis for claiming that Article 108b(2) removed milling from the operations which may be taken into account for the purpose of allowing cumulation of origin.

61 Third, with respect to the conditions for the adoption of safeguard measures under Article 109 of the OCT Decision, it should be noted that such conditions are not relevant in assessing the validity of Decision 97/803 since the measure contained in Article 108b(1) of the amended OCT Decision does not constitute a safeguard measure designed to cope, on an exceptional and temporary basis, with the emergence of exceptional difficulties which the trade conditions normally applicable cannot obviate, but amends the ordinary regime itself in accordance with the same criteria as those observed for the adoption of the OCT Decision.

62 Consequently, when adopting Article 108b of the amended OCT Decision, the Council was not required to comply with the particular requirements linked to the adoption of safeguard measures under Article 109 of the OCT Decision.

The unworkable nature of Article 108b (tenth question)

63 By its tenth question, the national court seeks to ascertain whether the unworkable nature of Article 108b affects its validity.

64 According to Aruba, that article is unworkable because the OCT authorities do not themselves have any means of ascertaining when the 3 000 tonne sugar quota has been used up, and are not therefore in a position to issue or decline to issue certificates of origin in each specific case.

65 It should be noted that Article 108b of the amended OCT Decision confines itself to fixing the tariff quota of 3 000 tonnes for the application of the cumulation of origin rule, without laying down the rules for its implementation. As the Council and the Commission have observed, those rules were adopted by Commission Regulation (EC) No 2553/97 of 17 December 1997 on rules for issuing import licences for certain products covered by CN codes 1701, 1702, 1703 and 1704 and qualifying as ACP/OCT originating products (OJ 1997 L 349, p. 26).

66 Since the rules for implementing Article 108b of the amended OCT Decision have been adopted by the Commission, the charge that that provision is unworkable cannot be upheld.

67 It follows from all the foregoing considerations that examination of the first 10 questions submitted has disclosed no factor of such a kind as to affect the validity of Decision 97/803.

The eleventh and twelfth questions

68 By its eleventh question, the national court seeks essentially to ascertain whether Community law allows a national court hearing an application for interim measures to adopt protective measures *vis-à-vis* a non-Community authority where an infringement of Community law is imminent, in order to prevent any such infringement.

69 That question must be answered in the affirmative, subject to fulfilment of the conditions laid down by the Court in Joined Cases C-143/88 and C-92/89 *Zuckerfabrik Süderdithmarschen and Zuckerfabrik Soest* [1991] ECR I-415, paragraph 33, according to which interim measures may be ordered by a national court only:

— if that court entertains serious doubts as to the validity of the Community measure implemented by the authority against which the interim measures are applied for and, should the question of the validity of the contested measure not already have been brought before the Court of Justice, itself refers that question to the Court of Justice;

— if there is urgency and a threat of serious and irreparable damage to the applicant;

— and if the national court takes due account of the Community's interests.

70 The fact that such interim measures would be ordered *vis-à-vis* an authority of an OCT by a court of a Member State, in accordance with its domestic law, is not such as to affect the conditions under which the temporary protection of individuals must be ensured in proceedings before the national courts when the dispute concerns a matter of Community law.

71 By its twelfth question, the national court asks the Court to rule, having regard to the circumstances of the main proceedings, as to whether it would serve any useful purpose for the national court to adopt interim measures *vis-à-vis* a non-Community authority responsible for applying Community law.

72 In view of the answers given to the first ten questions, which have disclosed no factor affecting the validity of Article 108b of the amended OCT Decision, it is unnecessary to answer the twelfth question since the answer would manifestly not be relevant to the decision to be given in the main proceedings.

73 It follows from the foregoing that the answer to be given to the 11th question must be that interim measures *vis-à-vis* a non-Community authority can be ordered by a national court in the event of an infringement of Community law being imminent only:

— if that court entertains serious doubts as to the validity of the Community measure implemented by that authority and, should the question of the

validity of the contested measure not already have been brought before the Court of Justice, itself refers that question to the Court of Justice;

— if there is urgency and a threat of serious and irreparable damage to the applicant;

— and if the national court takes due account of the Community's interests.

The fact that such interim measures would be ordered *vis-à-vis* an authority of an overseas country or territory (OCT) by a court of a Member State, in accordance with its domestic law, is not such as to affect the conditions under which the temporary protection of individuals must be ensured in proceedings before the national courts when the dispute concerns a matter of Community law.

Costs

74 The costs incurred by the Spanish, French, Italian and United Kingdom Governments and by the Council and the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the questions referred to it by the President of the Arrondissementsrechtbank te 's-Gravenhage by order of 19 December 1997, hereby rules:

1. **Examination of the first ten questions submitted has disclosed no factor of such a kind as to affect the validity of Council Decision 97/803/EC of 24 November 1997 amending at mid-term Decision 91/482/EEC on the association of the overseas countries and territories with the European Economic Community.**

2. **Interim measures *vis-à-vis* a non-Community authority can be ordered by a national court in the event of an infringement of Community law being imminent only:**

   — **if that court entertains serious doubts as to the validity of the Community measure implemented by that authority and, should the question of the validity of the contested measure not already have been brought before the Court of Justice, itself refers that question to the Court of Justice;**

— if there is urgency and a threat of serious and irreparable damage to the applicant;

— and if the national court takes due account of the Community's interests.

The fact that such interim measures would be ordered *vis-à-vis* an authority of an overseas country or territory (OCT) by a court of a Member State, in accordance with its domestic law, is not such as to affect the conditions under which the temporary protection of individuals must be ensured in proceedings before the national courts when the dispute concerns a matter of Community law.

Rodríguez Iglesias Moitinho de Almeida

Edward Kapteyn Puissochet Hirsch

Jann Ragnemalm Wathelet

Delivered in open court in Luxembourg on 8 February 2000.

R. Grass

Registrar

G.C. Rodríguez Iglesias

President