JUDGMENT OF THE COURT (First Chamber)

26 October 2006 *

In Case C-248/04,

REFERENCE for a preliminary ruling under Article 234 EC, from the College van Beroep voor het bedrijfsleven (Netherlands), made by decision of 9 June 2004, received at the Court on 11 June 2004, in the proceedings

Koninklijke Coöperatie Cosun UA

v

Minister van Landbouw, Natuur en Voedselkwaliteit,

THE COURT (First Chamber),

composed of P. Jann, President of the Chamber, J.N. Cunha Rodrigues and M. Ilešič (Rapporteur),

* Language of the case: Dutch.

Advocate General: C. Stix-Hackl,
Registrar: M.M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 23 March 2006,

after considering the observations submitted on behalf of:

— Koninklijke Coöperatie Cosun UA, by N.J. Helder and M. Slotboom, advocaten,

— the Minister van Landbouw, Natuur en Voedselkwaliteit, by E.R. Kleijwegt, acting as Agent,

— the Kingdom of the Netherlands, by H.G. Sevenster, C.M. Wissels and by D.J.M. de Grave, acting as Agents,

— the Council of the European Union, by F. Ruggeri Laderchi and B. Driessen, and subsequently by B. Driessen and A. Gregorio Merino, acting as Agents,

— the Commission of the European Communities, by M. Nolin and X. Lewis, acting as Agents, and by F. Tuytschaever, advocaat,

after hearing the Opinion of the Advocate General at the sitting on 16 May 2006,

gives the following

Judgment

1 This preliminary reference concerns the validity of Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organisation of the markets in the sugar sector (OJ 1981 L 177, p. 4), as amended by Council Regulation (EEC) No 305/91 of 4 February 1991 (OJ 1991 L 37, p. 1), ('the basic regulation') and Commission Regulation (EEC) No 2670/81 of 14 September 1981 laying down detailed implementing rules in respect of sugar production in excess of the quota (OJ 1981 L 262, p. 14), as amended by Commission Regulation (EEC) No 3559/91 of 6 December 1991 (OJ 1991 L 336, p. 26), ('Regulation No 2670/81').

2 The reference was made in the context of a dispute between Koninklijke Coöperatie Cosun UA ('Cosun'), a co-operative established in the Netherlands, and the Minister van Landbouw, Natuur en Voedselkwaliteit (the Netherlands Minister for Agriculture, Nature and Food Quality; 'the Minister'), represented by the Hoofdproductschap Akkerbouw ('the HPA'), concerning a charge demanded from Cosun pursuant to Article 26 of the basic regulation and Article 3 of Regulation No 2670/81.

Legal context

The common organisation of the markets in the sugar sector

3 The basic regulation seeks, in the context of the common organisation of the markets in the sugar sector ('the COM in sugar'), to maintain the necessary guarantees in respect of employment and standards of living for producers of the

basic products and sugar manufacturers in the European Community and to ensure the continuous supply of sugar to all consumers at reasonable prices, by stabilising the sugar market.

4 Accordingly, it regulates the production, import and export of sugar. In particular, it provides for a system of production quotas which, according to the 15th recital in its preamble, constitutes a means of guaranteeing producers Community prices and an outlet for their production.

5 Under that quota system, Article 24 of the basic regulation fixes for each marketing year (that is to say, from 1 July in one year until 30 June in the following year) basic quantities for 'A sugar' and 'B sugar', to be allocated by each Member State to the sugar producers established in its territory. Each sugar-producing undertaking is thus allocated one A quota and one B quota for each marketing year. Any quantity of sugar which is produced in excess of its A and B quotas is termed 'C sugar'.

6 C sugar is not eligible for the price support system or for the export refunds system. Furthermore, C sugar may not be disposed of on the internal market and must, accordingly, be disposed of outside the Community and sold on the world market. Article 26 of the basic regulation provides in that regard:

'1. ... C sugar which is not carried forward pursuant to Article 27 ... may not be disposed of on the Community's internal market and must be exported in the natural state before 1 January following the end of the marketing year in question.

...

3. Detailed rules for the application of this article shall be adopted in accordance with the procedure laid down in Article 41.

These rules shall provide in particular for the levying of a charge on the C sugar ... referred to in paragraph 1 in respect of which proof of its export in the natural state within the prescribed period was not furnished at a date to be determined.'

7 Under Article 27(1) of the basic regulation, '[e]ach undertaking shall be free to decide to carry forward the whole or part of its sugar production outside its 'A' quota to the next marketing year to be treated as part of that year's production'.

8 Adopted on the basis of Article 26(3) of the basic regulation, Regulation No 2670/81 specifies the circumstances in which exports of C sugar are to be considered to have taken place.

9 Under Article 1(1) of Regulation No 2670/81:

'The export referred to in Article 26(1) of Regulation (EEC) No 1785/81 shall be considered to have taken place if:

(a) the C sugar ... is exported from the Member State on whose territory it was produced;

(b) the export declaration in question is accepted by the Member State referred to under (a) before 1 January following the end of the marketing year during which the C sugar ... was produced;

(c) the C sugar ... left the customs territory of the Community at the latest within 60 days from 1 January referred to under (b);

(d) the product has been exported without refund or levy ... from the Member State referred to under (a).

Except in the case of force majeure, if all of the conditions provided for in the first subparagraph are not complied with, the quantity of C sugar ... in question shall be considered to have been disposed of on the internal market.

In the case of force majeure, the competent agency of the Member State on whose territory the C sugar ... has been produced shall adopt the measures which are necessary by virtue of the circumstances invoked by the interested party.'

10 Under the third recital in the preamble to Regulation No 2670/81, 'when the charge to be levied in cases of disposal on the internal market is fixed, it is essential to place C sugar ... which has not been exported on a similar footing to sugar ... imported from non-member countries', and 'for this purpose the charge should be fixed taking account both of the import levy for sugar ... at the highest rate applicable during a period comprising the marketing year during which the sugar ... in question was produced and the six months following that marketing year, and also of a flat rate amount fixed on the basis of the cost of disposing of sugar imported from non-member countries'.

11 Article 3 of Regulation No 2670/81 provides:

'1. The Member State concerned shall impose on the quantities which, within the meaning of Article 1(1)[,] have been disposed of on the internal market, a charge equal to the sum of:

(a) for C sugar, per 100 kilograms:

— the highest import levy per 100 kilograms of white or raw sugar, as the case may be, applicable during the period comprising the marketing year during which the sugar in question was produced and the six months following that marketing year, and

— 1 [euro];

...

4. In the case of quantities of C sugar ... which prior to export, were destroyed or damaged without possibility of recovery, in circumstances recognised by the competent agency of the Member State concerned as a case of force majeure, the relevant amount referred to in paragraph 1 shall not be levied.'

The customs legislation

12 Article 13(1) of Council Regulation (EEC) No 1430/79 of 2 July 1979 on the repayment or remission of import or export duties (OJ 1979 L 175, p. 1), as amended by Council Regulation (EEC) No 3069/86 of 7 October 1986 (OJ 1986 L 286, p. 1), ('Regulation No 1430/79'), states:

'Import duties may be repaid or remitted in special situations ... , which result from circumstances in which no deception or obvious negligence may be attributed to the person concerned.

The situations in which the first subparagraph may be applied, and the detailed procedural arrangements to be followed for this purpose, shall be determined in accordance with the procedure laid down [for the adoption of implementing provisions]. Repayment or remission may be made subject to special conditions.'

13 Article 1(2)(a) of Regulation No 1430/79 provides that 'import duties' means 'customs duties and charges having equivalent effect, as well as agricultural levies and other import charges laid down within the framework of the common agricultural policy or in that of specific arrangements applicable, pursuant to Article 235 of the Treaty, to certain goods resulting from the processing of agricultural products'.

14 Article 4 of Commission Regulation (EEC) No 3799/86 of 12 December 1986 laying down provisions for the implementation of Articles 4a, 6a, 11a and 13 of Regulation No 1430/79 (OJ 1986 L 352, p. 19) lists a number of special situations resulting from circumstances in which no deception or obvious negligence may be attributed to the

person concerned, within the meaning of Article 13(1) of Regulation No 1430/79. Other facts may also be regarded as constituting such special situations following consideration case by case as part of a procedure which requires the intervention of the Commission of the European Communities.

The dispute in the main proceedings

15 Cosun, a co-operative established in the Netherlands, produced C sugar during the marketing years 1991/1992 and 1992/1993. In 1993 it sold a certain number of consignments of C sugar to various contractual partners for export to Croatia, Slovenia and Morocco.

16 Those transactions gave rise to fraud perpetrated, without Cosun's knowledge, by its contractual partners, consisting in particular of the incorrect stamping of T-5 documents, designed to prove that the consignments of C sugar had actually left the territory of the Community.

17 An investigation into the conduct of those contractual partners had been initiated by the competent Netherlands authorities which had informed the HPA, the body responsible in the Netherlands for the application of the provisions relating to the common organisation of the markets. Cosun, however, was not initially informed about that investigation.

18 By decision of 25 April 1994, amended by decision of 13 June 1994, the HPA, pursuant to Article 3 of Regulation No 2670/81, sought payment from Cosun of a charge of NLG 6 250 856.78 (EUR 2 836 515.14) on the ground that it had not furnished proof that certain consignments of C sugar had left the territory of the Community.

19 The HPA having rejected the objection lodged by Cosun, the latter then simultaneously brought an appeal against that rejection before the College van Beroep voor het bedrijfsleven and lodged an application with the HPA, on the basis of Article 13 of Regulation No 1430/79, for remission of the charge imposed.

20 As regards, first, the application for a remission, this was forwarded by the Netherlands authorities to the Commission, which was competent to examine it, together with a positive opinion. By its Decision REM 19/01 — also referred to under the number C(2002) 1580 final — of 2 May 2002, the Commission declared that application inadmissible. Cosun then brought an action for annulment of that decision before the Court of First Instance of the European Communities. By judgment of 7 December 2004 in Case T-240/02 *Koninklijke Coöperatie Cosun* v *Commission* [2004] ECR II-4237, the Court dismissed that action as unfounded. The appeal brought by Cosun against that judgment has been dismissed by the judgment delivered today in Case C-68/05 P *Koninklijke Coöperatie Cosun* v *Commission* [2006] ECR I-10367.

21 As regards, second, the appeal before the College van Beroep voor het bedrijfsleven against the HPA's decision rejecting Cosun's objection, that court first of all stayed proceedings until judgment was given by the Court of Justice, on 7 September 1999, in Case C-61/98 *De Haan* [1999] ECR I-5003.

22 In *De Haan*, in which customs duties were at issue, the Court ruled that the demands of an investigation conducted by the national authorities may, in the absence of any deception or negligence on the part of the person liable for customs duty, and where that person has not been informed that the investigation is being carried out, constitute a special situation within the meaning of Article 13 of Regulation No 1430/79 where the fact that the national authorities have, in the interests of the investigation, deliberately allowed offences or irregularities to be committed, thus causing the principal to incur a customs debt, places the principal in an exceptional situation in comparison with other operators engaged in the same business.

23 The main proceedings having resumed, the College van Beroep voor het bedrijfsleven dismissed several pleas raised by Cosun in support of its appeal. It found, inter alia, that the applicant was not justified in pleading force majeure in so far as the failure of a contractual partner to fulfil its obligations is a known and not unusual commercial risk.

24 In response to Cosun's submission that it was placed in an exceptional situation justifying a remission of duty in accordance with Article 13 of Regulation No 1430/79, the College van Beroep voor het bedrijfsleven found that, in factual terms, Cosun's situation was very similar to that of *De Haan Beheer BV* in the case which gave rise to the judgment in *De Haan*.

25 The College van Beroep voor het bedrijfsleven wishes to ascertain whether, if the possibility of granting a remission of duty pursuant to Article 13 of Regulation No 1430/79 does not apply to a charge due under Article 3 of Regulation No 2670/81, the absence, in the COM in sugar, of any basis on which such a remission may be granted invalidates, to that extent, the basic regulation and Regulation No 2670/81 and, if so, the consequences of invalidity of those regulations in a situation such as that at issue in the main proceedings.

26 It is in those circumstances that the College van Beroep voor het bedrijfsleven decided to stay proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) If the possibility of remission under Article 13 of Regulation (EEC) No 1430/79, now replaced by Article 239 of [Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing] the Community Customs Code [(OJ 1992 L 302, p. 1)], is not applicable to [charges] on C sugar, as in the present action, are

Regulation (EEC) No 1785/81 ... and ... Regulation (EEC) No 2670/81 ... wholly or partly invalid in view of the absence of the possibility of repaying or remitting [charges] on C sugar on equitable grounds?

(2) If so, does the legal liability to the [the charge] on C sugar no longer apply, or may the competent authority of the Member State concerned and/or the Commission decide not to impose the [charge] on quantities of C sugar in accordance with Article 3 of Regulation (EEC) No 2670/81 if the party liable for the [charge] cannot be accused of any deception or negligence which may have contributed to the fact that the export of those quantities intended by him has not taken place and that in the interests of an investigation by the national authorities into infringements and irregularities that party has not been informed of the investigation referred to?'

Preliminary findings

27 The national court assumes, first, that Article 13 of Regulation No 1430/79 does not apply to a charge due under Article 3 of Regulation No 2670/81 and, second, that, except in the case of force majeure, the basic regulation and Regulation No 2670/81 do not provide for any possibility of remission or repayment of such a charge.

28 Thus, in order to provide the national court with an answer which will be of use to it and enable it to determine the case in the main proceedings, it must be ascertained, at the outset, both whether an amount due under Article 3 of Regulation

No 2670/81 falls outside the ambit of Article 13 of Regulation No 1430/79 and whether the basic regulation and Regulation No 2670/81 must be interpreted as not providing for any possibility of remission or repayment of such an amount on equitable grounds.

Interpretation of Article 13 of Regulation No 1430/79

29 In the first place, it should be noted that all of the import duties laid down in Article 1(2)(a) of Regulation No 1430/79, namely, customs duties on imports and charges having equivalent effect to such duties, as well as agricultural levies and other import charges laid down within the framework of the common agricultural policy or in that of specific arrangements applicable, pursuant to Article 235 of the EC Treaty (now Article 308 EC), to certain goods resulting from the processing of agricultural products, are levied by reason of the crossing of the external frontiers of the Community.

30 Such is clearly the case as far as customs duties and charges having equivalent effect are concerned, the latter being any pecuniary charge, whatever its designation and mode of application, which is imposed unilaterally on goods by reason of the fact that they cross a frontier, and which is not a customs duty in the strict sense (see, in particular, Case C-347/95 *UCAL* [1997] ECR I-4911, paragraph 18, and Case C-517/04 *Koornstra* [2006] ECR I-5015, paragraph 15).

31 The same is true of agricultural levies on imports and other import charges which are levied by reason of agricultural goods or certain goods resulting from the processing of agricultural products crossing the external frontiers of the Community.

32 By contrast, a charge due under Article 3 of Regulation No 2670/81 is not levied by reason of the fact that a quantity of C sugar has crossed the external frontiers of the Community but, rather, because that quantity has not been exported outside the Community or because the conditions and time-limits laid down by Regulation No 2670/81 were not complied with when it was exported.

33 Therefore, such a charge does not correspond to any of the three categories listed in Article 1(2)(a) of Regulation No 1430/79 and, consequently, does not come under import duties within the meaning of Article 13 of the same regulation.

34 In the second place, none of the arguments put forward to that effect by Cosun, the Minister and the Netherlands Government prove that the Community legislature intended to treat a charge due under Article 3 of Regulation No 2670/81 in the same way as import duties within the meaning of Article 1(2)(a) of Regulation No 1430/79 for the purposes of the application of Article 13 of that regulation.

35 Firstly, such a charge and the import duties referred to in Article 1(2)(a) of Regulation No 1430/79 do not pursue the same objectives.

36 In that regard, it must be pointed out the COM in sugar is essentially based on a price system (providing, in particular, for the fixing of the target and intervention price), a trading system with third countries (including, in particular, the charging of a levy on imports from those countries), and a quota system (consisting of the allocation of production quotas and the setting of detailed rules for the disposal of sugar produced in excess of the quota).

37 The measures thereby put in place ultimately aim to stabilise the Community market in sugar and, consequently, to ensure that the necessary guarantees in respect of the employment and standard of living of Community producers and the availability of sugar supplies to all consumers are maintained.

38 Nevertheless, their immediate objectives differ significantly. Thus, it follows from the fifth recital in the preamble to the basic regulation that the aim of the trading system with third countries is to prevent price fluctuations of sugar on the world market from affecting prices within the Community.

39 Such is clearly not the objective of the quota system. In that regard, contrary to Cosun's submission, that objective is not specified in the 10th recital in the preamble to the basic regulation the aim of which is to justify the necessity of the measures laid down in Article 22 thereof.

40 According to the 15th recital in the preamble to the basic regulation, production quotas constitute a means of guaranteeing producers Community prices and an outlet for their production. In addition, regarding, more specifically, the charge due under Article 3 of Regulation No 2670/81, that provision is primarily deterrent in nature and is intended to ensure that the prohibition on the disposing of C sugar — produced in excess of the quotas — on the internal market is complied with.

41 Therefore, the levies on imports of sugar from third countries and the charge due under Article 3 of Regulation No 2670/81 for C sugar disposed of on the internal market do not pursue the same objectives.

42 Secondly, it does not follow from either Article 26 of the basic regulation or the third recital in the preamble to Regulation No 2670/81 or Article 3 thereof that the Community legislature intended that importers of sugar from third countries and producers of C sugar disposed of on the internal market be placed on an equal footing.

43 It is apparent from the third recital in the preamble to Regulation No 2670/81 and from Article 3 thereof that the reference to sugar imported from third countries is limited to the method of calculating the charge laid down in that article. That provision would not in effect achieve its immediate objective, which is to ensure compliance with the prohibition on disposing of C sugar on the internal market, if it were economically more attractive to purchase C sugar on the internal market than to import sugar from third countries. No reference is, however, made in either that recital or that article to the situation of sugar importers as compared with that of producers of C sugar.

44 As regards the fact that the levy on imports of sugar from third countries serves as the basis for calculating the charge levied under Article 3 of Regulation No 2670/81, that cannot justify those situations being treated in the same way since the justification for such a method of calculation lies in making sure that the charge is a deterrent, as pointed out in the previous paragraph of this judgment.

45 As regards Article 26 of the basic regulation, it is not possible to discern from its wording any intention on the part of the Community legislature to grant C sugar disposed of on the internal market the status of a product imported from a third country. That article merely states that C sugar may not be disposed of on the internal market.

46 Thirdly, the fact that the agricultural levies on imports and the other import charges referred to in Article 1(2)(a) of Regulation No 1430/79, on the one hand, and the

charge due under Article 3 of Regulation No 2670/81, on the other, form part of the Community's own resources is irrelevant for the purposes of determining whether that charge falls within the ambit of Article 13 of Regulation No 1430/79. The Community's own resources are made up of receipts of a very diverse nature which come under systems which are equally diverse (see, for example, value added tax receipts).

47 It must therefore be concluded that an amount due under Article 3 of Regulation No 2670/81 does not fall within the ambit of Article 13 of Regulation No 1430/79.

48 In the third place, relying on the judgment of the Court in Case 165/84 *Krohn* [1985] ECR 3997, Cosun and the Netherlands Government nevertheless submit that although, legally speaking, the scope of a regulation is determined therein and cannot, in principle, be extended to situations other than those for which it is intended, that is not necessarily so in certain exceptional cases. Thus, traders are entitled to rely on an application by analogy of a regulation which would not normally be applicable to them if they can show that the rules applicable to their case are very similar to those which it is sought to have applied by analogy and also contain an omission which is incompatible with a general principle of Community law and which can be remedied by the application by analogy of those other rules.

49 In the view of Cosun and the Netherlands Government, the two conditions laid down in that case-law are satisfied in the present case. On the one hand, C sugar disposed of on the internal market is in the same situation as sugar imported from third countries. On the other, the absence of the possibility of remission, in special situations and on equitable grounds, of a charge due under Article 3 of Regulation No 2670/81, although that possibility exists under Article 13 of Regulation No 1430/79 for import duties, is contrary to the principle of equality and, in Cosun's view, contrary to a supposed principle of equity.

50 In that regard, it should be noted that, in the case giving rise to the judgment in *Krohn*, importers of manioc originating in Thailand sought the benefit of provisions of secondary legislation applicable to importers of manioc originating in other third countries and which were intended to compensate for the consequences of an amendment of the Community system for granting import licences for manioc, since that amendment was applicable whatever the country of origin. In those circumstances, the Court held that importers of manioc originating in Thailand and importers of manioc originating in other third countries were in the same situation, and, therefore, the legal rules applicable to imports of manioc originating in Thailand were very similar to those governing, at the material time, imports of manioc originating in other third countries.

51 By contrast, as is apparent from paragraphs 35 to 46 of the present judgment, a Community sugar producer liable to pay a charge under Article 3 of Regulation No 2670/81 is not in the same situation as an importer of sugar from third countries who is subject to import duties. Therefore, the two types of trader are not subject to legal rules that are very similar within the meaning of *Krohn*.

52 Consequently, Article 13 of Regulation No 1430/79 cannot serve as a basis for remission or repayment of a charge due under Article 3 of Regulation No 2670/81.

Interpretation of the basic regulation and Regulation No 2670/81

53 Neither the basic regulation nor Regulation No 2670/81 authorise national authorities or Community authorities to grant remission or repayment, on equitable grounds, of a charge due under Article 3 of Regulation No 2670/81.

54 Cosun submits, however, firstly, that notwithstanding its wording Article 3 of Regulation No 2670/81 must be interpreted, in the light of the general principles of Community law, as enabling the competent national authorities to grant a remission on equitable grounds in special circumstances such as those at issue in the main proceedings.

55 In that regard, in Case C-329/01 *British Sugar* [2004] ECR I-1899, paragraphs 64 to 67, the Court found that in circumstances such as those in that case, in which there was no wrongful conduct on the part of the competent national agency, neither that agency nor the national courts enjoyed any discretion to vary downwards the charge to be paid pursuant to Article 3 of Regulation No 2670/81.

56 A fortiori, they do not therefore enjoy any discretion to grant repayment or remission of such a charge on equitable grounds in similar circumstances.

57 In a situation such as that at issue in the main proceedings, there was no wrongful conduct on the part of the national authorities.

58 Admittedly, if the competent national authorities inform the producer of the possibility that a fraud is being perpetrated by the contractual partners to whom he has entrusted the export of consignments of C sugar, that person is able to take the necessary steps, if not to avoid incurring the debt, at least to prevent or limit its increase.

59 However, the demands of an investigation aimed at identifying and apprehending the persons who have carried out or are planning a fraud, or the accomplices of those persons, may justify a deliberate omission to inform the principal concerned about the investigation fully or at all, even where the principal is in no way implicated in the perpetration of the fraud (see to that effect *De Haan*, paragraph 32).

60 Thus, there is no obligation, for national authorities informed of possible fraud consisting of the disposal on the internal market of C sugar which has been the subject of an export declaration, to inform the producer that it could incur liability to a charge under Article 3 of Regulation No 2670/81, even where it was not involved in carrying out the fraudulent acts (see, by way of analogy, *De Haan*, paragraph 36).

61 Secondly, Cosun submitted at the hearing that, in accordance with the judgment in Case C-290/91 *Peter* [1993] ECR I-2981, Community law does not preclude the application, in the context of the common agricultural policy, of a national legal principle of equity as long as such an application does not lead to discrimination between operators and does not make it practically impossible to implement the Community rules. According to Cosun, in the case in the main proceedings, the Netherlands authorities should grant remission of the charge in dispute.

62 In that regard, in Cosun's view, any producer of C sugar in the same objective factual circumstances — characterised by the fact that the national authorities allowed a fraud to be committed that consisted of the disposal on the internal market of C sugar which had been the subject of an export declaration, without informing the producer, even though the latter was not involved in carrying out the fraudulent acts — must be entitled to such remission.

63 However, it is settled case-law that there is no legal basis in Community law for exemption on equitable grounds from charges due under that law (Case 118/76 *Balkan-Import-Export* [1977] ECR 1177, paragraphs 7, 8 and 10; Case 299/84 *Neumann* [1985] ECR 3663, paragraph 24; and Case C-174/89 *Hoche* [1990] ECR I-2681, paragraph 31). In addition, without prejudice to the special cases expressly provided for by the Community legislature (see, for example, Case C-68/95 *T. Port* [1996] ECR I-6065, paragraphs 42 and 43), there is no general legal principle in Community law that a Community provision which is in force may not be applied by a national authority if it causes the person concerned hardship which the Community legislature would clearly have sought to avoid if it had envisaged that eventuality when enacting the provision (*Neumann*, paragraph 33, and *Hoche*, paragraph 31).

64 Equity cannot therefore be regarded as allowing any derogation from the application of provisions of Community law, save as provided for by the legislation or where the legislation is itself declared invalid (Case C-263/97 *First City Trading and Others* [1998] ECR I-5537, paragraph 48).

65 It is apparent that the Community legislature did not afford the national authorities the possibility of granting remission or repayment, on equitable grounds, of a charge due under Article 3 of Regulation No 2670/81.

66 Consequently, the basic regulation and Regulation No 2670/81 must be interpreted as not permitting, except in the case of force majeure, the grant of a remission or a repayment of such a charge.

The first question

67 By its first question, the national court asks whether, in view of the absence of the possibility of remitting or repaying a charge due under Article 3 of Regulation No 2670/81 for various reasons based on equity, the basic regulation and Regulation No 2670/81 are invalid as being contrary to the principles of equality and legal certainty and to equity.

The alleged breach of the principle of equality

68 Cosun, the Minister and the Netherlands Government submit that C sugar disposed of on the internal market is in the same situation as sugar imported from third countries, and must therefore be treated in the same way. Consequently, it is contrary to the principle of equality that an importer of sugar from third countries which is placed in a special situation for the purposes of Article 13 of Regulation No 1430/79 may, pursuant to that article, benefit from remission of duties, whereas such a possibility does not exist for a producer of C sugar placed in the same special situation.

69 Cosun, the Minister and the Netherlands Government thus consider that the absence of the possibility of remitting, in special situations and on equitable grounds, a charge due under Article 3 of Regulation No 2670/81 entails the partial invalidity of that regulation in so far as that lacuna is contrary to the principle of equality. The Minister and the Netherlands Government also submit that the basic regulation should be invalidated in part for the same reason.

70 At the hearing, Cosun also claimed that Article 3 of Regulation No 2670/81 infringes the second subparagraph of Article 40(3) of the EC Treaty (now, after amendment, the second subparagraph of Article 34(2) EC). In 1993, owing to the silence of the Netherlands authorities, Cosun was not in a position either to export the quantities of C sugar in question or to carry them forward to the following marketing year, whereas the other producers of C sugar were able to make such a choice and thus avoid being required to pay a charge under Article 3 of Regulation No 2670/81. Thus, contrary to the prohibition of any discrimination between producers within the Community laid down in the second subparagraph of Article 40(3) of the Treaty, Cosun was put in a special situation in relation to other operators in the same sector.

71 The Council of the European Union considers that the absence, in the legislation concerning COM sugar, of a general equity clause comparable to that which exists in the customs legislation and features in Article 13 of Regulation No 1430/79 does not constitute a breach of the principle of non-discrimination, since the customs rules and the rules of the COM of sugar apply to different sectors and the derogations for which they provide where appropriate concern different obligations in legal contexts which are very different.

72 In that regard, it must be pointed out, first, that compliance with the principle of equality and non-discrimination requires that comparable situations must not be treated differently and that different situations must not be treated in the same way unless such treatment is objectively justified (see, in particular, Case C-44/94 *Fishermen's Organisations and Others* [1995] ECR I-3115, paragraph 46, and Joined Cases C-87/03 and C-100/03 *Spain* v *Council* [2006] ECR I-2915, paragraph 48) and, second, that the second subparagraph of Article 40(3) of the Treaty, which prohibits all discrimination in the context of the common agricultural policy, is merely a specific expression of that principle (see, inter alia, Case C-292/97 *Karlsson and Others* [2000] ECR I-2737, paragraph 39).

73 As regards, first, the alleged discrimination against producers of C sugar such as Cosun in relation to importers of sugar from third countries, it is sufficient to state that that allegation is based on the premiss that the C sugar disposed of on the internal market is placed on the same footing as imported sugar and must be treated in the same way.

74 However, for the reasons given in paragraphs 35 to 46 of this judgment, such a premiss is incorrect.

75 As regards, second, the alleged discrimination against producers such as Cosun in relation to other Community sugar producers, the situation of a C sugar producer whose production gives rise to fraud cannot be compared to that of a producer whose C sugar is exported within the time-limit and under the conditions laid down in Article 1(1) of Regulation No 2670/81.

76 Furthermore, there is nothing in the file submitted to the Court to suggest that, if a producer other than Cosun had found itself in the same situation, the national authorities would have warned it that an investigation concerning its contractual partners was being undertaken.

77 Therefore, the absence of a possibility of remitting or repaying, on equitable grounds, a charge due under Article 3 of Regulation No 2670/81 in circumstances

such as those at issue in the main proceedings, does not constitute a breach of the principle of equality.

The alleged breach of the principle of legal certainty

78 Cosun also alleges that Article 3 of Regulation No 2670/81 is invalid owing to breach of the principle of legal certainty, on the ground that that article does not provide for the possibility of remitting or repaying the charge laid down therein.

79 In that regard, it should be noted that the Court has consistently held that the principle of legal certainty is a fundamental principle of Community law which requires, in particular, that rules should be clear and precise, so that individuals may be able to ascertain unequivocally what their rights and obligations are and may take steps accordingly (see, in particular, Case C-143/93 *Van Es Douane Agenten* [1996] ECR I-431, paragraph 27, and Case C-110/03 *Belgium* v *Commission* [2005] ECR I-2801, paragraph 30). The principle of legal certainty must be observed all the more strictly in the case of a measure liable to have financial consequences (Case 326/85 *Netherlands* v *Commission* [1987] ECR 5091, paragraph 24, and Case C-94/05 *Emsland-Stärke* [2006] ECR I-2619, paragraph 43).

80 Moreover, a penalty, even of a non-criminal nature, cannot be imposed unless it rests on a clear and unambiguous legal basis (see, in particular, Case 117/83 *Könecke* [1984] ECR 3291, paragraph 11; Case C-210/00 *Käserei Champignon Hofmeister* [2002] ECR I-6453, paragraph 52; and *Emsland-Stärke*, paragraph 44).

81 By providing for the levying of a charge in all cases, except in the case of force majeure, in which a consignment of C sugar is not exported under the conditions or within the time-limit laid down in Article 1(1) of Regulation No 2670/81, Article 3 of that regulation constitutes a clear and precise provision.

82 Consequently, the absence of a possibility of remitting or repaying, on equitable grounds, a charge owing under Article 3 of Regulation No 2670/81 in circumstances such as those at issue in the main proceedings does not constitute an infringement of the principle of legal certainty.

The alleged breach of a supposed principle of equity

83 Cosun submits, finally, that Article 3 of Regulation No 2670/81 is also invalid since it is contrary to a supposed principle of equity.

84 In that regard, Cosun is of the view that the alleged breach results from the fact that an importer, such as De Haan Beheer BV in the *De Haan* judgment, which has incurred a customs debt in respect of offences perpetrated without its knowledge, which the national authorities deliberately allowed to be committed in order to catch the offenders unaware, may be entitled to remission of that debt or repayment of the sum paid to clear the debt, whereas a producer of C sugar placed in the same special situation does not benefit from such a possibility.

85 It is thus apparent that the supposed principle of equity on which Cosun relies is in fact inseparable from the principle of equality, no breach of which, as was held in paragraphs 68 to 77 of the present judgment, was found in either the basic regulation or Regulation No 2670/81.

86 It follows that examination of the first question has disclosed nothing capable of affecting the validity of the basic regulation or of Regulation No 2670/81.

The second question

87 In view of the answer given to the first question, it is unnecessary to answer the second question.

Costs

88 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. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

Examination of the first question has disclosed nothing capable of affecting the validity of Council Regulation (EEC) No 1785/81 of 30 June 1981 on the

common organisation of the markets in the sugar sector, as amended by Council Regulation (EEC) No 305/91 of 4 February 1991, or of Commission Regulation (EEC) No 2670/81 of 14 September 1981 laying down detailed implementing rules in respect of sugar production in excess of the quota, as amended by Commission Regulation (EEC) No 3559/91 of 6 December 1991.

[Signatures]