JUDGMENT OF THE COURT
OF 15 FEBRUARY 1978 [1]

S.A. Ancienne Maison Marcel Bauche and S.à.r.l. François Delquignies v Administration Française des Douanes (preliminary ruling requested by the Tribunal d'Instance, Valenciennes)

'Replacement sugar'

Case 96/77

1. *Agriculture — Common organization of the markets — Sugar — Export to non-Member countries — Assignment of licences — Substitution of product — Deflection of trade — Application of monetary compensatory amounts — Commission Regulation No 101/77 — Validity*

2. *Measure adopted by an institution — Amendment of an earlier provision — Situations arising under the latter — Future effects — Application of the amending rule*

1. Commission Regulation (EEC) No 101/77 is valid.

2. A law amending a legislative provision applies, save as otherwise provided, to the future effects of situations which arose under the previous law.

In Case 96/77

REFERENCE to the Court under Article 177 of the EEC Treaty by the Tribunal d'Instance, Valenciennes, for a preliminary ruling in the action pending before that court between

S.A. ANCIENNE MAISON MARCEL BAUCHE

S.A.R.L. FRANÇOIS DELQUIGNIES

plaintiffs,

E. D. AND F. MAN LIMITED

intervener,

1 — Language of the Case: French.

and

ADMINISTRATION FRANÇAISE DES DOUANES (French Customs Administration),

defendant,

on the validity of Commission Regulation (EEC) No 101/77 of 19 January 1977 (Official Journal L 17 of 20 January 1977, p. 11)

THE COURT

composed of: H. Kutscher, President, M. Sørensen and G. Bosco, Presidents of Chambers, A. M. Donner, P. Pescatore, Lord Mackenzie Stuart and A. Touffait, Judges.

Advocate-General: F. Capotorti
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and issues

The facts of the case, the course of the procedure and the written observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and procedure

The law applicable to the sugar trade in 1976 was as follows: The basic regulation applicable to the sugar trade within the Community was Regulation (EEC) No 3330/74 of the Council of 19 December 1974 on the common organization of the market in sugar (Official Journal L 359 of 31 December 1974, p. 1).

Article 2 (2) of that regulation indicates that the sugar marketing year extends from 1 July of a particular year to 30 June of the following year.

Title III of the regulation lays down the following quota arrangements for sugar producers for the 1975/76 to the 1979/80 sugar marketing years inclusive:

1. As provided for in Article 24 of Regulation No 3330/74 each undertaking is allotted a so-called 'basic quota'. The sugar produced within this quota is usually called 'Sugar A'.

2. Pursuant to Article 25 of the regulation each sugar manufacturer may be allotted a maximum quota equal to its basic quota multiplied by a coefficient to be fixed for the sugar marketing year in question. The sugar produced within this additional quota is usually called 'Sugar B'.
3. The sugar produced over and above the maximum quota referred to in paragraph 2, above, which is usually called 'Sugar C', is subject to the special provisions of Article 236 of the regulation and in particular must be exported since it may not be disposed of on the internal market. Article 26 (1) lays down that sugar C must be exported by 31 December following the end of the marketing year during which sugar C was produced.

The export of sugar C is itself also made conditional by Article 12 of Regulation No 3330/74 upon the submission of an export licence which is valid throughout the Community and is issued to any person who has produced sugar C irrespective of the place of his establishment in the Community.

Detailed rules applicable to these licences have been laid down by the Commission. Regulation (EEC) No 2048/75 of 25 July 1975 (Official Journal L 213 of 11 August 1975, p. 31) which as from 30 December 1976 has ben replaced by Commission Regulation (EEC) No 2990/76 of 9 December 1976 (Official Journal L 341 of 10 December 1976, p. 14) applies to the 1976/77 marketing year.

Article 5 (3) of Regulation (EEC) No 2990/76 limits the validity of the licence to a period of three months following the month during which the licence was issued.

Supplementary provisions for sugar C had been adopted in Regulation (EEC) No 2645/70 of the Commission of 24 December 1970 (Official Journal, English Special Edition 1970 (III), p. 957.)

As far as concerns exports these provisions did not afford a producer the opportunity of replacing sugar C produced by him by other sugar which he had not produced.

Nevertheless Regulation (EEC) No 458/73 of the Commission of 2 February 1973 (Official Journal L 53 of 26 February 1973, p. 16) provided for the possibility of making a substitution. The Commission states in the second recital in the preamble to that regulation that it is desirable to provide that the sugar manufacturer may perform his obligation to export sugar by using sugar not produced by himself. The regulation simply provides in such case for a standard payment in order to offset any benefit derived from such substitution. That recital led to the addition by Article 1 of Regulation (EEC) No 458/73 of a paragraph (3) to Article 2 of Regulation (EEC) No 2645/70. According to these provisions sugar C could therefore be replaced pursuant to express legal provisions to that effect and the obligation to export sugar C could be fulfilled by exporting other sugar produced in the Community.

The mandatary export of sugar C was free of charges. No monetary compensatory amounts were levied. This resulted from Commission Regulation No 572/76 of 15 March 1976 (Official Journal L 68 of 15 March 1976, p. 5) which was based on Regulation (EEC) No 974/71 of the Council of 12 May 1971 (Official Journal, English Special Edition 1971 (I), p. 257) and in particular footnote (1) (a) to Part 7 of Annex I of Regulation No 572/76.

The abovementioned provisions provided the basis upon which the manufacture of and trade in sugar during the 1976/77 sugar marketing year were calculated.

In this connexion it must be noted that after the amount of sugar C produced

by the sugar manufacturers had been ascertained at the end of the marketing year they could not immediately apply for all the export licences required to carry out their obligation to export as their period of validity was limited to three months. An application for a licence for sugar which had to be exported for example after 30 April 1977 could not therefore be made before February 1977.

The Commission, with the object of dealing with the benefits, in its view excessive, which certain traders on the sugar market reaped from the substitution operation when sugar C was exported, decided to intervene during the 1976/77 sugar marketing year. According to the Commission these benefits were due to the currency margins which had developed between Member States whose currencies appreciated and those whose currencies depreciated. It therefore adopted Commission Regulation (EEC) No 101/77 of 19 January 1977 (Official Journal L 17 of 20 January 197, p. 11) which contains the followings provisions:

'Article 1

Footnote (1) to Part 7 of Annex I to Regulation (EEC) No 572/76 is amended to read as follows:

"(1) No monetary compensatory amount shall be applied to sugar exported to non-Member countries pursuant to Article 26 of Regulation (EEC) No 3330/74. It shall be levied, however, where the customs export formalities are completed in a Member State other than that in which the export licence was issued."

Article 2

This regulation shall enter into force on the day of its publication in the Official Journal of the European Communities.

However, it shall not apply to exports effected on the basis of licences issued before the date of entry into force of this regulation.'

S.A. Ancienne Maison Marcel Bauche, a company incorporated under French law, and E. D. and F. Man Limited, a company incorporated under English law, carry on business as dealers in sugar.

Pursuant to a firm and definite contract of 6 January 1977 August Töpfer & Co., a company incorporated under German law, assigned to E. D. and F. Man Ltd., (hereinafter referred to as 'Man') licences for the export to non-Member countries of 800 tonnes of white sugar in excess of the maximum quota (sugar C).

Taking advantage of the opportunity provided by Regulation (EEC) No 458/73 of choosing between the export of sugar C — without any refund (cf. Article 26 (2) of the basic 'sugar' regulation, No 3330/74), — and the export of corresponding amounts of sugar from quotas A and B — with a refund — Man elected to count the sugar covered by its licences against sugar C of French origin and assigned them to S.A. Ancienne Maison Bauche (hereinafter referred to as 'Bauche') which had the status of an exporter under the French customs rules in force since it was resident in metropolitan territory. The customs agent responsible for the exporting arrangements was the Delquignies company (hereinafter referred to as 'Delquignies').

Bauche was therefore entitled to export to non-Member countries, without any refund but also without any monetary compensatory amount, (pursuant to Commission Regulation (EEC) No 572/76 — cf. Footnote (1) (a) to Part 2 of Annex I) the amount of sugar C covered by the export licences issued on 14 February 1977 by the German intervention agency and the corresponding export declarations. These documents expressly state (translated from the German) 'The

product concerned is white sugar produced by the factory in excess of the maximum quota (production of the 1976/1977 sugar marketing year) for export in accordance with Article 26 (1) of Regulation (EEC) No 3330/74 without either refund or levy (in accordance with Article 3 of Regulation (EEC) No 2990/76)'.

The advantage of such an operation appears to lie in the fact that if, for example, sugar C is sold on the German market as part of a substitution operation for the export of sugar A or B from France, it attracts the benefit of the high intervention price fixed on the German market; this benefit exceeds the relative loss on the export without any refund of French sugar C from France.

However, at this stage Commission Regulation (EEC) No 101/77 of 19 January 1977 came into force. It amends Commission Regulation (EEC) No 572/76 by providing that a monetary compensatory amount shall be levied on the export of sugar C to non-Member countries 'where the customs export formalities are completed in a Member State other than that in which the export licence was issued'. In June 1977 the French customs, acting as the Commission's authorized agent, levied, pursuant to that regulation, monetary compensatory amounts on the 800 tonnes of sugar exported. The whole of these amounts was charged to Delquignies's customs clearance credit.

Bauche and Delquignies and also Man (as intervener) challenge the validity of this levy and have requested the Tribunal d'Instance, Valenciennes, to order the French customs authorities to refund the amount levied, their principle argument being that Commission Regulation (EEC) No 101/77 is a nullity or, at least does not apply to the transaction which they have carried out.

Before giving its decision the Tribunal d'Instance Valenciennes, by an order of 21 July 1977 stayed proceedings until the Court of Justice of the European Communities has given a preliminary ruling on the following questions:

'1. Does not Regulation No 101/77 constitute a basic regulation amending the general Regulation No 3330/74 on the common organization of the market in sugar in so far as it introduces the payment of a monetary compensatory amount in respect of a product expressly excluded from intervention measures?

2. Was the Commission entitled to adopt that measure without the express authorization of the Council?

3. If the first two questions are answered in the negative, was the Commission empowered to adopt Regulation No 101/77 describing a transaction expressly authorized by Regulation No 458/73 as "a deflection of trade" from which the trader "benefits ... unfairly", without repealing the said Regulation No 458/73, which provides for a standard payment of two units of account per 100 kg of sugar to offset any benefit derived from the substitution authorized?

4. Was the Commission empowered to introduce monetary compensatory amounts on exports to non-Member countries of products expressly excluded from the intervention arrangements and from the common organization of the market in sugar?

5. Was the Commission entitled to introduce a monetary compensatory amount in respect of a product excluded from the intervention system, when the sole purpose of monetary compensatory amounts is to prevent the intervention system from becoming disorganized by maintaining a single price for sugar within the common organization of the market?

6. Does the adoption in the course of a sugar marketing year of new rules having immediate application to transactions in progress make such rules retroactive, contrary to the principle of legal certainty?

7. In these circumstances, is Regulation No 101/77 null and void?

8. If the Court does not find that Regulation No 101/77 is null and void, must that regulation be applied to traders who, before its entry into force, had concluded firm and definite contracts by which they bound themselves subject to firm and definite conditions to purchase C quota sugar or to become assignees of C quota licences?'

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General the Court decided to open the oral procedure without any preparatory enquiry.

II — Summary of written observations submitted pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC

Bauche and Delquignies, the plaintiffs in the main action, and *Man,* the intervener in that action, submit in answer to the first two questions submitted by the national court that the Commission did not have the powers to adopt Regulation No 101/77. That regulation is in fact based on Regulation (EEC) No 974/71 of the Council, Article 1 (1) whereof authorizes a Member State which, for the purposes of commercial transactions, allows the exchange rate of its currency to increase in value by a margin wider than that permitted by international rules to charge on imports or grant on exports monetary compensatory amounts for the products referred to in subparagraph (2) of the same article in trade with other Member States and non-Member States. The products referred to in subparagraph (2) are those covered by intervention arrangements. However, under Article 26 of the basic regulation No 3330/74, intervention measures do not apply to sugar C. Until the Commission adopted Regulation No 101/77 it had never included nonquota sugar in the field of application of the regulations relating to compensatory amounts.

If Regulation No 101/77 is analysed it is found to be an official measure calling in question the provisions adopted by the Commission for the organization of the market in sugar and the introduction of the system of compensatory amounts.

If Regulation No 101/77 is analysed it is found to be an official measure calling in question the provisions adopted by the Commission for the organization of the market in sugar and the introduction of the system of compensatory amounts.

The only possible justification for an adoption by the Commission of appropriate measure pursuant to Article 22 of Regulation No 3330/74 was the risk of serious disturbances in trade which might jeopardize the objectives of Article 39 of the Treaty, provided however that the detailed rules for the application of those measures were laid down beforehand by the Council, which was not in fact done.

With regard to the first two questions it may be concluded that the Commission was not entitled to legislate as it did and that only the Council had the power to do so.

As to the third question the plaintiffs and the intervener in the main action submit that Regulation No 101/77 is vitiated by a formal defect concerning the statement of the reasons upon which the regulation is based and is in breach of the principle of legal certainty.

In the second recital in the preamble to that regulation the Commission in fact treats the substitution operation which is expressly authorized by Regulation No 458/73 (which it does not mention at all) and furthermore offset, as indicated in the recitals in the preamble to that regulation and to Commission Regulation (EEC) No 2365/75 (Official Journal L 243, p. 10), by a standard payment of two u. a. per 100 kg of sugar, as a deflection of trade and an unfair benefit. The Commission has thereby failed to fulfil its duty to provide the necessary information by giving a statement of the reasons upon which the regulation was based.

It was also in breach of the principle of legal certainty which must allow traders to complete transactions which have been expressly authorized without finding that they are subsequently treated as being unlawful.

The plaintiffs and the intervener submit that the fourth and fifth questions should be answered in the negative. Their argument is that the levying of compensatory amounts on a product such as sugar C (which they define as any sugar to which a C export licence relates) and which is not included in the common organization of the market in sugar, contravenes the provisions of the basic sugar regulation No 3330/74, and of the basic regulation introducing the system of compensatory amounts and is contrary to the spirit of the system thus established.

In fact as regards the calculation of compensatory amounts in the case of those Member States whose currencies have been withdrawn from the 'snake' the wording of Article 2 (1)(b) of Regulation No 974/71 as amended by Regulation (EEC) No 1112/73 of the Council makes it clear that the price taken into consideration is the intervention price of a product covered by intervention measures. However, there is no intervention price for sugar outside the quota. One link is therefore missing: the average of the currency/intervention price fluctuations for the calculation of compensatory amounts.

The last recital in the preamble to Regulation No 974/71 and various clarifications provided by the case-law of the Court (especially in its judgment of 24 October 1973 in Case 5/73, *Balkan-Import-Export GmbH* v *Hauptzollamt Berlin-Packhof* [1973] ECR 1091) show that compensatory amounts can be applied only to agricultural products covered by intervention prices and then only if currency measures cause disturbances in trade in those products (threat to the maintenance of single prices).

Regulation No 101/77 deflects compensatory amounts from their proper purpose and does not use them for the purpose of maintaining a single price and keeping in being the organization of the intervention system but for penalizing a transaction which is perfectly lawful, namely the export of sugar from a country other than the one where it was produced.

According to the plaintiffs and the intervener in the main action the sixth question is concerned with the retroactive effect of Regulation No 101/77 and the frustration of the legitimate expectation of traders that the rules in force would remain applicable at least during the sugar marketing year.

In order to comply with the principle that legitimate expectation must be safeguaded whenever a regulation is modified, transitional measures should be adopted for the protections of traders who have undertaken obligations under contracts which are irrevocable but have not yet been performed when the new regulation is implemented.

Producers and traders have based their price calculations for sugar C and

disposed of it in reliance on Community rules in force at the beginning of the sugar marketing year. Regulation No 101/77 which entered into force during the marketing year frustrates traders' legitimate expectation that those rules would remain in force.

In any event and in compliance with the principle of the protection of legitimate expectation the Commission should have introduced transitional measures for the implementation of Regulation No 101/77.

The second paragraph of Article 2 of the said regulation that it is not to apply to exports effected on the basis of licences issued before the date of entry into force of the regulation. But the reason why the C licences had not all been issued on the date when the regulation was adopted is that they remain valid only for a short period.

The Commission should at least have extended the exemption specified in the second paragraph of Article 2 of Regulation No 101/77 to traders who were under a firm and definite obligation before the date of entry into force of the regulation to export sugar C subject to conditions agreed beforehand as to the right of substitution and the exemption from compensatory amounts on the sugar being exported.

For the abovementioned reasons the plaintiffs and the intervener in the main action ask the Court for a declaration that Regulation No 101/77 is not valid.

The *Commission* points out when making its preliminary observations that the first seven questions raise the question of the validity of Regulation No 101/77 under three heads, the legality of the measure adopted as such, (Questions 1, 3, 4 and 5) the Commission's power to adopt the measure at issue (Question 2) and thirdly the possibility that the contested regulation may have retroactive effect (Question 6). The eighth question raises the problem of the temporal application of Regulation No 101/77 with special reference to transactions carried out pursuant to obligations undertaken before it entered into force.

The Commission then produces a statement of the situation referred to by Regulation No 101/77 — namely the export of sugar C to non-Member countries from a Member State other than the one which issued the export licence — in order to explain the objective which the measure seeks to attain and accordingly to justify its substantive legality. It lays special emphasis on the fact that in the autumn of 1976 large surpluses of sugar, including sugar C which had to be exported, had built up in the Community. The standard payment of two u.a. per 100 kg was at that time nothing like enough to offset the benefits which traders could reap from the 'currency margins' (to be understood as meaning the difference between the actual rate of exchange and the representative conversion rate used in the common agricultural policy) which had developed between Member States whose currencies had been revalued and those whose currencies had been devalued. According to the Commission the effect of these margins was that differences were created in Community prices so that the substitution of sugar C in a country where the price was high (The Federal Republic of Germany, the Benelux countries) for sugar produced within the limits of the maximum quota in a country where prices were lower (France, the United Kingdom) became a very profitable operation for traders. This was to the prejudice of the Community and diametrically opposed to the objective which the Community legislature sought to attain: for example the sale of sugar C on the German market by way of substitution for the export of sugar A or B from France benefited from the high intervention price fixed on the German market; this

benefit would be greater than the relative loss on the export without any refund of French sugar C from France. The same argument applies in the case of exports with the refund from Germany instead of selling on the home market. The Commission produces as an annex to its observations a table showing with figures the respective advantages obtained by these transactions.

Thus it is clear that there was a close link in the situation described between sugar C and the intervention system owing to the substitutions effected. This point is fundamental for an appraisal of the practical implications of Regulations No 101/77.

The Commission points out that from both the physical and the economic points of view sugar belonging to categories A, B or C cannot in practice be distinguished and concludes that the application of Article 1 (2) of Regulation No 974/71 concerning compensatory amounts to all sugar covered by the common organization cannot *a priori* be excluded. Furthermore, in the case in point, it is clear that the basic conditions for the application of compensatory amounts existed, account being taken of the situation described above, namely the differences found to exist between the actual and the agricultural exchange rates, the need to avoid the artificial production of sugar C in Germany, which would have been encouraged had it not been for the contested measure and lastly risks of disturbances in trade within the meaning of Article 1 (3) of Regulation No 974/71 as amended by Regulation (EEC) No 2746/72 of the Council, that is to say deflections of exports for purely artificial reasons.

On this point the Commission calls attention to the case-law of the Court concerning the application of Regulation No 974/71 according to which the Commission has a discretion to assess the risk of disturbances in trade together with the contrasted trend of currencies, both with reference to currency factors and to market conditions (judgment of 15 May 1974, paragraph No 22, in Case 74/74, *Comptoir National Technique Agricole (CNTA)* v *Commission of the European Communities* [1975] ECR 547) both as against non-Member countries and in Community trade (judgment of 22 January 1976, paragraph No 10, in Case 55/75, *Balkan-Import-Export GmbH* v *Hauptzollamt Berlin-Packhof* [1976] ECR 30 and 31).

The Commission completes its argument by submitting that the adoption of Regulation No 101/77 at the same time prevented traders from making, by exporting sugar C, profits comparable to those which could be made by substitution as a result of misapplying the system of compensatory amounts (which was made possible by the lack of any intra-Community supervision).

The Commission in answer specifically to the third question submits that the scope of the standard payment of two u.a. per 100 kg was — and still is — quite different from that of compensatory amounts: it is aimed primarily at the price advantage as well as the saving effected on transport costs enjoyed by the sugar manufacturer who does not himself do the exporting, whereas when Regulation 458/73 was adopted it had not been possible to take into consideration the situation referred to in Regulation No 101/77, namely the risk of deflections of trade by reason of the existence of currency margins.

With reference to the second question the Commission argues that its power to adopt the regulation in dispute is found in Article 6 of Regulation (EEC) No 974/71 of the Council which provides that detailed rules for the application of

the regulation 'which may include *other derogations* from the regulations on the common agricultural policy' shall be adopted in accordance with the so-called Management Committee procedure, that is to say by the Commission. It also quotes the judgment of the Court of 8 July 1977 in Case 97/76, *(Merkur Außenhandel GmbH & Co. KG* v *Commission of the European Communities* [1977] ECR 1063) in support of its submission that the regulation in question is in the nature of 'a legislative measure ... of economic policy' adopted in the *higher interest* of the proper functioning of the common organization of the market in sugar and of the system of agricultural compensatory amounts.

With regard to the sixth question the Commission points out that Regulation No 101/77 has not been applied to exports of sugar C effected pursuant to licences issued before 20 January 1977, the date when the said regulation entered into force. Consequently it is dificult to understand how the applicants can claim it has retroactive effect in the proper sense of the expression as far as they are concerned. Furthermore, even if the transactions carried out on the strength of licences issued before the entry into force of Regulation No 101/77 had not been exempted from payment of compensatory amounts, the Commission takes the view that there could not have been any such retroactive effect as could adversely affect any genuine acquired rights.

Finally the Commission refers to the eighth question raised by the Tribunal de Valenciennes as to whether Regulation No 101/77 could lawfully be applied to 'traders who had concluded firm and definite contracts' before 20 January 1977 'by which they bound themselves, subject to firm and definite conditions, to purchase C quota sugar or to become assignees of C quota licences'.

The Commission doubts whether arrangements between traders such as those mentioned by the court making the reference and which form contractual relations between individuals, may be invoked as against the Community as regards the protection of their legitimate expectation. In any case, by exempting from compensatory amounts exports covered by licences issued up to 20 January 1977, the Community fulfilled any legitimate expectation which it might have aroused on the part of traders by their issue.

Furthermore, the overriding interest of the Community upon which Regulation No 101/77 was based must be borne in mind. This interest, as has already been seen, consisted mainly in ensuring that an improper use of the opportunity for substitution afforded by Community rules did not adversely affect the proper functioning of the common organization of the market in sugar and the system of compensatory amounts. Even if it is assumed therefore that there existed a legitimate expectation on the part of individuals, such a situation cannot take precedence over the Community's overriding interest, which has just been invoked and which is opposed thereto.

Finally the foreseeable nature of the measure in dispute, at least as regards its objective, together with the prudence which every experienced trader should display make it impossible to allege that there has been a breach of the principle of the protection of legitimate expectation.

Finally the Commission submits that the Court should answer the questions referred to it by the Tribunal d'Instance, Valenciennes substantially on the following lines:

— Consideration of the questions raised has disclosed no factor of such a kind as to affect the validity of Commission Regulation (EEC) No 101/77 of 19 January 1977 amending

Regulation (EEC) No 572/76 fixing monetary compensatory amounts *inter alia* in the sugar sector (Questions 1 to 7).

— The aforementioned Commission Regulation (EEC) No 101/77 could lawfully be applied to all export transactions not expressly covered by licences issued before the date of entry into force of the said regulation (Question 8).

III — Oral procedure

The plaintiffs in the main action, represented by Mr Funck-Brentano of the Paris Bar, and the Commission of the European Communities, represented by its Agent P. Gilsdorf assisted by one of its legal advisers, J. Delmoly, submitted oral observations at the hearing on 7 December 1977.

The Advocate General delivered his opinion at the hearing on 24 January 1978.

Decision

1 By and order of 21 July 1977 received at the Court Registry on 29 July 1977 the Tribunal d'Instance, Valenciennes, referred to the Court under Article 177 of the EEC Treaty certain questions concerning the validity of Commission Regulation (EEC) No 101/77 of 19 January 1977 (Official Journal L 17 of 20 January 1977, p. 11) amending Commission Regulation (EEC) No 572/76 of 15 March 1976 (Official Journal L 68, p. 5) fixing monetary compensatory amounts, with special reference to sugar.

2 It emerges from the order making the reference that the French companies which are plaintiffs in the main action have asked the national court to declare Regulation No 101/77 null and void or at least to declare that it does not apply to them and accordingly order the French customs authorities to repay them the monetary compensatory amounts which they levied pursuant to the said regulation on a consignment of white sugar of French origin on its being exported from France to non-Member countries.

3 This consignment had been counted against export licences for 'sugar C' issued in the Federal Republic of Germany to a German undertaking and assigned by the latter to an English undertaking, the intervener in the main action and purchaser of the sugar in question from the first plaintiff, which exported it through its customs agent, the second plaintiff in the main action.

4 In order to determine whether Regulation No 101/77 is valid it is advisable in the first place to consider the legal situation before the entry into force of the said regulation on the common organization of the market in sugar.

5 As Article 2 (2) of Regulation (EEC) No 3330/74 of the Council on the common organization of the market in sugar (Official Journal L 359 of 31 December 1974, p. 1) indicates, the sugar marketing year commences on 1 July of each year and ends on 30 June of the following year.

6 Title III of the regulation provides quota arrangements for sugar producers for 1975/76 to 1979/80 inclusive on the following lines:

— In accordance with Article 24 each undertaking is allotted a basic quota, called 'quota A', and may sell the sugar produced within this quota, directly on the Community market at the intervention price.

— Pursuant to Article 25 each undertaking may in addition be allotted a maximum quota, called 'quota B', equal to its quota A multiplied by a coefficient, and may also sell on the Community market the sugar produced within the limits of the difference between the basic quota and the maximum quota on payment of a production levy (Article 27).

— The sugar produced over and above the maximum quota, called 'sugar C', may not be disposed of on the internal market and must be exported in the natural state on the world market before 1 January following the end of the sugar marketing year during which it has been produced (Article 26).

7 Article 12 of the regulation provides that exports of sugar C shall be made conditional upon submission of an export licence, valid throughout the Community, which is to be issued by Member States to any applicant irrespective of the place of his establishment in the Community.

8 Article 5 (3) of Commission Regulation (EEC) No 2990/76 of 9 December 1976 (Official Journal L 341 of 10 December 1976, p. 14) as amended by Commission Regulation (EEC) No 278/77 of 9 February 1977 (Official Journal L 39 of 10 February 1977, p. 17) limits the validity of an export licence to the end of the fifth month following that in which the licence was issued.

9 After the entry into force on 1 January 1971 of Commission Regulation (EEC) No 2645/70 of 28 December 1970 (Official Journal, English Special Edition 1970 (III), p. 957) a producer manufacturing sugar in excess of the maximum quota had no opportunity to replace it with sugar not produced by him, since Article 2 (2) (c) thereof provided that a producer who exports sugar C must submit a statement to the effect that the exported sugar was produced by him.

10 Nevertheless, Regulation (EEC) No 458/73 of the Commission of 2 February 1973 (Official Journal L 53 of 26 February 1973, p. 16) afforded the opportunity for such a substitution.

11 The second recital in the preamble to the said regulation states that it is desirable that the manufacturer concerned be afforded the possibility of exporting sugar not produced by himself and that it is also necessary to provide in such case for a standard payment which may in any event be regarded as offsetting any benefit derived from such substitution.

12 These considerations were given specific expression by Article 1 of Regulation No 458/73, paragraph (1) of which repeals subparagraph (c) of Article 2 (2) of Regulation (EEC) No 2645/70, referred to above, and paragraph (2) of which adds a paragraph (3) to the said Article 2, providing *inter alia* that where the sugar exported was not produced by the manufacturer concerned the latter is to pay a sum of two u.a./per 100 kg of sugar.

13 The Commission explains that the standard payment was intended to offset any savings, on transport for example, caused by the substitution.

14 In accordance with Article 3 of Regulation No 458/73 the provisions of Article 1 referred to above apply retroactively from 1 January 1971 being the date of the entry into force of Regulation No 2645/70.

15 It must also be noted that the provisions of Commission Regulation (EEC) No 572/76 and in particular footnote (1) (a) to Part 7 of Annex I to that regulation shows that no monetary compensatory amount was applied when sugar C was exported.

16 All the provisions referred to above provided the basis for the calculation of the production of and trade in sugar before the sugar marketing year 1976/77.

17 It emerges from the file that the currency margins during the years subsequent to the entry into force of Regulation No 458/73 between Member States whose currencies appreciated (for instance the Federal Republic of Germany) and those whose currencies depreciated (for instance France) widened to such an extent that in January 1977 for example, although the intervention price for 100 kg of white sugar expressed in units of account remained the same throughout the Community, its value expressed in national currency converted, for the purposes of comparison, into American dollars was, owing to the exchange rates used in the agricultural sector, $49·63 in the Federal Republic of Germany and $37·83 in France.

18 Consequently the opportunities for substitution afforded by Regulation No 458/73 together with the fixed parities maintained by the compensatory amounts offered considerable advantages to manufacturers established in the Federal Republic of Germany, who held sugar in excess of the maximum quota.

19 In fact when such a manufacturer assigned the export licence for such sugar to a manufacturer established in France who exported from France to non-Member countries a corresponding quantity of sugar produced by him within the limits of the maximum quota he was then in a position to sell his sugar as though it were part of his own quota and in this way to take advantage of the Community intervention prices which were higher in real terms in the Federal Republic of Germany or, if the sugar was exported, to receive the monetary compensatory amount.

20 Furthermore such a transaction was equivalent to importing into Germany, free of any monetary compensatory amount, a quantity of French sugar produced within the limits of quotas A or B corresponding to the original amount of German sugar C.

21 The file also shows that during the first half of the 1976/77 sugar marketing year two-thirds of German sugar C was involved in substitution transactions.

22 Since the Commission took the view that such practices ran counter to the objective which Community rules were seeking to attain and adversely affected the Community, it adopted Regulation No 101/77 amending Regulation No 572/76.

23 The Commission states in the second recital in the preamble to Regulation No 101/77 that the export of sugar C 'may give rise to deflections of trade since it may be replaced in intra-Community trade by sugar which has been produced within the limits of the quota and is subject to the application of compensatory amounts' and that a trader 'who engages in such deflections benefits therefrom unfairly'.

24 In order to prevent such practices Article 1 of the regulation provides that the footnote to Part 7 of Annex I to Regulation No 572/76 shall be amended to read as follows:

'No monetary compensatory amount shall be applied to sugar exported to non-Member countries pursuant to Article 26 of Regulation (EEC) No 3330/74. It shall be levied, however, where the customs export formalities are completed in a Member State other than that in which the export licence was issued.'

25 Article 2 of the regulation provides for its entry into force on 20 January 1977 but states that it is not to apply to exports effected on the basis of licences issued before that date.

26 Since the first, second, fourth and fifth questions submitted by the national court are concerned with various aspects of the Commission's powers to apply monetary compensatory amounts to a product 'expressly excluded' from the intervention arrangements, it is advisable to deal with these questions together.

27 The system of monetary compensatory amounts was introduced by Regulation (EEC) No 974/71 of the Council of 12 May 1971 on certain measures of conjunctural policy to be taken in agriculture following the temporary widening of the margins of fluctuation for the currencies of certain Member States (Official Journal, English Special Edition 1971) (I), p. 257) and the detailed rules for its application were laid down subsequently by the Commission and amended *inter alia*, as far as this case is concerned, by Regulation No 572/76 referred to above.

28 Article 1 (2) of Regulation No 974/71 provides that paragraph (1) thereof shall apply:

'(a) to products covered by intervention arrangements under the common organization of agricultural markets;

(b) to products whose price depends on the price of the products referred to under (a) and which are governed by the common organization of the market or are the subject of a specific arrangement under Article 235 of the Treaty'.

29 According to the plaintiffs and the intervener in the main action, since sugar C is not a product for which intervention measures have been provided, Regulation No 101/77 has no legal basis.

30 This argument fails to take into account the real purpose of Regulation No 101/77.

31 In fact the latter regulation does not affect the principle that 'no monetary compensatory amount shall be applied to sugar exported to non-Member countries pursuant to Article 26 of Regulation (EEC) No 3330/74 ...' set out in footnote (1) (a) to Part 7 of Annex I to Regulation No 572/76.

32 The second recital in the preamble to Regulation No 101/77 states that it applies to exports of sugar C only in so far as it 'may be replaced in intra-Community trade by sugar which has been produced within the limits of the quota and is thus subject to the application of compensatory amounts'.

33 Hence the charge introduced by the regulation is in fact imposed upon sugar A or B exported on the basis of an export licence for sugar C.

34 The plaintiff companies and the intervener in the main action also submit that by levying monetary compensatory amounts on sugar C, Regulation No 101/77 has illegally amended Regulation (EEC) No 3330/74 of the Council on the common organization of the market in sugar, which exempted sugar C from the application of any Community intervention measure and consequently from the application of compensatory amounts.

35 This argument cannot be upheld.

36 In fact the foregoing makes it clear that Regulation No 101/77 leaves intact the common organization of the markets in sugar established by Regulation No 3330/74 and that its sole effect is to make a minor amendment to the detailed rules for the application of the system of monetary compensatory amounts laid down by Regulation No 974/71 for the purpose of dealing with very specific and restricted circumstances.

37 Consequently the answer to the national court must be that consideration of the first, second, fourth and fifth questions has disclosed no factor of such a kind as to affect the validity of Regulation No 101/77.

38 The third question asks whether the Commission was empowered to adopt Regulation No 101/77, describing a transaction expressly authorized by Regulation No 458/73 as a 'deflection of trade' from which the trader concerned 'benefits ... unfairly' without repealing the latter regulation, which provides for a standard payment of two u.a. per 100 kg of sugar to offset any benefit derived from the substitution authorized.

39 The plaintiff companies and the intervener in the main action take the view that Regulation No 101/77 is inconsistent with Regulation No 458/73 which it does not mention either in the references or in the recitals in its preamble and which has not been repealed by the Commission.

40 They allege that when the Commission described the transaction of sugar substitution expressly authorized by Regulation No 458/73, which is moreover offset by the standard payment referred to above, as a deflection of trade from which the trader concerned benefits unfairly, it was in breach of its duty to give a statement of the reasons upon which its regulations are based.

41 They further allege that the Commission was also in breach of the principle of legal certainty which should allow traders to carry out authorized transactions without having them subsequently declared to be illegal.

42 It must be pointed out in the first place that Regulation No 101/77 neither prohibits substitution transactions nor makes them impossibles but merely

imposes charges on such transactions as are effected by means of exports from Member States with soft currencies and which yield a profit not contemplated by Regulation No 458/73.

43 Thus the objective which the two regulations seek to attain are not incompatible.

44 In fact the aim of Regulation No 458/73 is to facilitate trade by allowing substitution transactions whereas Regulation No 101/77 is designed to prevent deflections of trade which are caused not by the system of substitution as such, but by artificial transactions made attractive under the system of compensatory amounts by such substitution.

45 Lastly there is no inconsistency between the introduction by Regulation No 458/73 of the standard payment to offset the benefits derived from substitution as such and the introduction by Regulation No 101/77 of monetary compensatory amounts for the reduction of benefits, arising purely from currency fluctuations, which did not exist when Regulation No 458/73 was adopted and which, in the form of speculative profits, were only subsequently realized.

46 Hence the statement of the reasons upon which Regulation No 101/77 is based is not defective and the regulation is not in breach of the principle of legal certainty in the sense referred to above.

47 In its sixth question the national court asks whether the adoption during the sugar marketing year of new rules having immediate application to transactions in progress does not make such rules retroactive, contrary to the principle of legal certainty.

48 According to a generally accepted principle a law amending a legislative provision applies, save as otherwise provided, to the future effects of situations which arose under the previous law.

49 It must be borne in mind that Regulation No 101/77 does not apply to exports of sugar effected on the basis of licences issued before 20 January 1977, the date of the entry into force of that regulation.

50 None of the provisions of Regulation No 974/71 gives exporters the right to the retention in force of a given method of calculating compensatory amounts or to protection, as regards products coming within the field of application of the said regulation, from the application of new monetary compensatory amounts.

51 In pursuance of Article 1 of the abovementioned regulation the right to receive a compensatory amount or the duty to pay it is created only by the performance of the export transaction and only from the moment when this takes place.

52 Accordingly the answer to the national court must be that Regulation No 101/77 does not have any retroactive effect capable of adversely affecting acquired rights.

53 The national court's last question is whether Regulation No 101/77 could be lawfully applied to 'traders who ... had concluded firm and definite contracts' before 20 January 1977 'by which they bound themselves subject to firm and definite conditions to purchase C quota sugar or to become assignees of C quota licencers'.

54 It in fact raises the question of the application of the principle of the protection of legitimate expectation to the system of monetary compensatory amounts.

55 The Court held in its judgment of 14 May 1975 in Case 74/74, *Comptoir National Technique Agricole (CNTA) S.A.* v *Commission of the European Communities* [1975] ECR 549, paragraph 39: 'The conditions governing the application and abolition of the system of compensatory amounts in a specific sector do not take into account the individual situations of traders and do not guarantee them a continuous application of the system'.

56 Taking into account the objective of the system of monetary compensatory amounts the same reasoning applies to the introduction of a monetary compensatory amount in circumstances covered by the field of application of the system but which had not previously arisen.

57 Furthermore, since Regulation No 101/77 aimed at discouraging transactions in progress in the sugar sector which were capable of leading to deflections of trade, such a regulation, justified by the existence of an overriding Community interest, was to be expected by the traders concerned.

58 So the argument based on an alleged breach of the principle of the protection of legitimate expectation cannot be upheld.

Costs

59 The costs incurred by the Commission of the European Communities which has submitted observations to the Court are not recoverable.

60 As the proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the national court, the decision as to costs is a matter for that court.

On those grounds

THE COURT,

in answer to the questions referred to it by the Tribunal d'Instance, Valenciennes, by order dated 21 July 1977 hereby rules:

Consideration of the questions raised by the Tribunal d'Instance, Valenciennes, has disclosed no factor of such a kind as to affect validity of Commission Regulation (EEC) No 101/77 of 19 January 1977.

Kutscher Sørensen Bosco

Donner Pescatore Mackenzie Stuart Touffait

Delivered in open court in Luxembourg on 15 February 1978.

A. Van Houtte — Registrar

H. Kutscher — President