JUDGMENT OF THE COURT (Sixth Chamber)

19 February 2004 *

In Case C-329/01,

REFERENCE to the Court under Article 234 EC by for a preliminary ruling in the proceedings pending before the High Court of Justice (England and Wales), Queen's Bench Division (Administrative Court) between

The Queen, on the application of **British Sugar plc,**

and

Intervention Board for Agricultural Produce,

on the interpretation 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 (OJ 1981 L 262, p. 14), as amended by Commission Regulation (EC) No 158/96 of 30 January 1996 (OJ 1996 L 24, p. 3), and on the interpretation and validity of Commission Regulation (EEC)

* Language of the case: English.

No 3719/88 of 16 November 1988 laying down common detailed rules for the application of the system of import and export licences and advance-fixing certificates for agricultural products (OJ 1988 L 331, p. 1), as amended by Commission Regulation (EC) No 1199/95 of 29 May 1995 (OJ 1995 L 119, p. 4),

THE COURT (Sixth Chamber),

composed of: V. Skouris, acting for the President of the Sixth Chamber, C. Gulmann, J.-P. Puissochet, F. Macken and N. Colneric (Rapporteur), Judges,

Advocate General: C. Stix-Hackl,
Registrar: R. Grass,

after considering the written observations submitted on behalf of:

— British Sugar plc, by T. Sharpe QC and D. Jowell, Barrister, instructed by A. Lidbetter and D. Green, Solicitors,

— the United Kingdom Government, by J.E. Collins, acting as Agent, and K. Parker QC and R. Haynes, Barrister,

— the Commission of the European Communities, by M. Condou-Durande and K. Fitch, acting as Agents,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 10 September 2003,

gives the following

Judgment

1 By order of 20 July 2001, received at the Court on 4 September 2001, the High Court of Justice (England and Wales), Queen's Bench Division (Administrative Court), referred to the Court for a preliminary ruling under Article 234 EC seven questions on the interpretation 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 (OJ 1981 L 262, p. 14), as amended by Commission Regulation (EC) No 158/96 of 30 January 1996 (OJ 1996 L 24, p. 3), and on the interpretation and validity of Commission Regulation (EEC) No 3719/88 of 16 November 1988 laying down common detailed rules for the application of the system of import and export licences and advance-fixing certificates for agricultural products (OJ 1988 L 331, p. 1), as amended by Commission Regulation (EC) No 1199/95 of 29 May 1995 (OJ 1995 L 119, p. 4, 'the contested regulation').

2 Those questions were raised in proceedings between British Sugar plc ('British Sugar') and the Intervention Board for Agricultural Produce ('IBAP') concerning the latter's decision to demand payment from the former of a charge pursuant to Article 3(1) of Regulation No 2670/81 on the ground that British Sugar had failed to supply the requisite proof that certain quantities of sugar had been exported.

The relevant provisions

3 In connection with the common organisation of the markets in the sugar sector, 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 (EC) No 3290/94 of 22 December 1994 (OJ 1994 L 349, p. 105, 'the basic regulation'), seeks to maintain the necessary guarantees in respect of employment and standards of living for producers of basic products such as European Community sugar-beet producers and to ensure the continuous supply of sugar to all consumers at reasonable prices, by stabilising the sugar market.

4 To those ends it regulates the production, import and export of sugar. The essential features of this scheme are summarised in paragraphs 5 to 8 below.

5 The basic regulation defines and fixes certain quantities of A and B production. Each Member State has to divide those A and B basic quantities between the sugar producers established in their territory. An A quota and a B quota are allocated to the producing undertakings, on certain conditions, in respect of every marketing year (that is to say, from 1 July in any one year to 30 June the

following year). Sugar produced by an undertaking under its A and B quotas is known as 'A sugar' and 'B sugar', respectively. Any quantity of sugar produced in excess of the A and B quotas is known as 'C sugar'.

6 Article 13 of the basic regulation provides for a system of compulsory import and export licences, the issue of which is conditional upon the lodging of a deposit to guarantee that the transaction for which the licence is sought will be effected. An export licence for C sugar is valid from the date of issue until the end of the third month after that date. The deposit is forfeit in whole or in part if the transaction is not effected or is only partly effected during the period of that licence's validity.

7 C sugar is eligible for neither the system of price supports nor the system of export refunds. Nor is it subject to set prices for beet or to production levies. In addition, except in the circumstances described below, C sugar must be disposed of outside the Community to be sold on the world market.

8 Article 26 of the basic regulation provides:

'(1) Without prejudice to paragraph 2, C sugar not carried forward pursuant to Article 27, C isoglucose and C inulin syrup 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.

Articles 8, 9, 17 and 20 shall not apply to this sugar, and Articles 9, 17 and 20 shall not apply to this isoglucose or this inulin syrup.

(2) Exceptionally, and to the extent necessary to guarantee the Community's sugar supplies, it may be decided that Article 20 shall apply to C sugar. In that event it shall be decided at the same time that the entire quantity of the C sugar in question may finally be disposed of on the internal market without the amount laid down in paragraph 3 being levied.

(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, C isoglucose and C inulin syrup 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.'

9 Regulation No 2670/81 lays down the detailed implementing rules in respect of sugar production in excess of quota. Article 1 provides:

'(1) The products referred to in Article 26(1) of Regulation (EEC) No 1785/81 shall be considered to have been exported if:

(a) without prejudice to the other provisions of this Regulation, the proof referred to in Article 2 is in the possession of the competent agency of the Member State of production, whichever the Member State of export of the C sugar, C isoglucose or C inulin syrup may have been;

(b) the export declaration in question is accepted by the Member State of export before 1 January following the end of the marketing year during which the C sugar, C isoglucose or C inulin syrup was produced;

(c) the C sugar, C isoglucose or C inulin syrup or a corresponding quantity within the meaning of Article 2(3) has left the customs territory of the Community not later than 60 days after the 1 January referred to in point (b);

(d) the product has been exported without either refund or levy as white sugar or raw sugar that has not been denatured or as syrups obtained prior to sugar in solid form and falling within CN codes 1702 60 90 and 1702 90 99, such as isoglucose in its natural state or inulin syrup in its natural state.

Except in cases of *force majeure*, if any of the conditions provided for in the first subparagraph are not fulfilled, the quantity of C sugar, C isoglucose or C inulin syrup concerned shall be considered to have been disposed of on the internal market.

...'

10 Article 2(2) of Regulation No 2670/81 provides that the proof referred to in Article 1 'shall be furnished by the production of:

(a) an export licence issued pursuant to Article 3 of Commission Regulation (EEC) No 2630/81 of 10 September 1981 laying down special detailed rules

for application of the system of import and export licences in the sugar sector (OJ 1981 L 258, p. 16) to the manufacturer by the competent agency of the Member State referred to...;

(b) the documents referred to in Articles 30 and 31 of Regulation (EEC) No 3183/80 required for the release of the security;

(c) a statement by the manufacturer to the effect that the C sugar, C isoglucose or C inulin syrup was produced by him'.

11 Article 3(1) of Regulation No 2670/81 is worded as follows:

'The Member State concerned shall levy on quantities which, within the meaning of Article 1(1), have been disposed of on the internal market, a charge for C sugar per 100 kilograms of white or raw sugar as appropriate... equal to the sum of:

— the highest import charges applicable to the product concerned during the period comprising the marketing year during which the C sugar... concerned was produced and the six months following that marketing year

and

— ECU 1.21.'

12 Article 3(2) of Regulation No 2670/81 provides that the Member State concerned must notify to those manufacturers who are required to pay the charge referred to in paragraph 1 the total amount to be paid by 1 May following 1 January following the end of the marketing year during which the C sugar was produced.

13 Special detailed rules for the application of the system of import and export licences in the sugar sector were laid down in Commission Regulation (EC) No 1464/95 of 27 June 1995 on special detailed rules for the application of the system of import and export licences in the sugar sector (OJ 1995 L 144, p. 14), as amended by Commission Regulation (EC) No 2136/95 of 7 September 1995 (OJ 1995 L 214, p. 19), which replaced Regulation No 2630/81.

14 Article 4 of Regulation No 1464/95 provides:

'(1) For C sugar, C isoglucose and C inulin syrup produced for export in accordance with Article 26(1) of Regulation (EEC) No 1785/81, Section 20 of the licence application and of the licence shall contain at least one of the following indications:

...

— for export under Article 26(1) of Regulation (EEC) No 1785/81

...

(2) Section 22 of the licence shall contain at least one of the following indications:

...

— for export without refund or levy... (quantity for which the licence is issued) kg

...

(3) Paragraph 1 shall not apply to C sugar when, in accordance with Article 26(2) of Regulation (EEC) No 1785/81, it is subject to the export levy referred to in Article 20 of that Regulation.

(4) Article 8(4) of Regulation (EEC) No 3719/88 shall not apply to the export licences for C sugar, C isoglucose and C inulin syrup.'

15 In accordance with Article 5 of Regulation No 1464/95:

'An export licence for C sugar, C isoglucose and C inulin syrup may be issued only after the manufacturer in question has provided the competent body with proof that the quantity for which the licence is requested, or an equivalent quantity, has actually been produced in excess of the A and B quotas of the undertaking concerned...'.

16 Import and export licences for sugar are also regulated by Commission Regulation (EEC) No 3719/88, which replaced Commission Regulation (EEC) No 3183/80 of 3 December 1980 laying down common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products (OJ 1980 L 338, p. 1), referred to in Article 2(2)(b) of Regulation No 2670/81. The first paragraph of Article 8(1) of Regulation No 3719/88 provides:

'The import or export licence shall constitute authorisation and give rise to an obligation respectively to import or to export under the licence, and, except in case of *force majeure*, during its period of validity, the specified quantity of the relevant product...'.

17 According to the second paragraph of Article 8(1) of Regulation No 3719/88, the obligations referred to in that paragraph are primary requirements within the meaning of Article 20 of Commission Regulation (EEC) No 2220/85 of 22 July 1985 laying down common detailed rules for the application of the system of securities for agricultural products (OJ 1985 L 205, p. 5), as amended by Commission Regulation (EC) No 3403/93 of 10 December 1993 (OJ 1993 L 310, p. 4).

18 Article 10 of Regulation No 3719/88 provides:

'Extracts from licences or certificates shall have the same legal effects as the licences or certificates from which they are extracted, within the limits of the quantity in respect of which such extracts are issued.'

19 Under Article 20 of that regulation:

'(1) On application by the titular holder of the licence or certificate or by the transferee, and on submission of copy No 1 of the document, one or more extracts therefrom may be issued by the competent agencies of Member States.

...

The agency issuing the extract shall, on copy No 1 of the licence or certificate, attribute the quantity for which the extract has been issued, increased by the relevant tolerance. The word "extract" shall be entered beside the attributed quantity shown on copy No 1 of the licence or certificate.

(2) No further extract may be made from an extract of a licence or certificate.

...'

20 Article 21(1) of Regulation No 3719/88 provides:

'For the purpose of determining their period of validity, licences or certificates shall be considered to have been issued on the day on which the application for them was lodged, that day being included in the calculation of such period of validity.'

21 Article 22(1) of that regulation is worded as follows:

'Copy No 1 of the licence or certificate shall be submitted to the office where:

...

(b) in the case of an export licence or of a certificate of advance fixing of the refund, the declaration relating to:

— export from the Community

...'

22 Article 24 of that regulation provides:

'(1) Entries made on licences, certificates or extracts may not be altered after their issue.

(2) Where the accuracy of entries on the licence, certificate or extract is in doubt, such licence, certificate or extract shall, on the initiative of the party concerned or of the competent authorities of the Member State concerned, be returned to the issuing agency.

If the issuing agency considers a correction to be required, it shall withdraw the extract or the licence or certificate as well as any extracts previously issued and shall issue without delay either a corrected extract or a corrected licence or certificate and the corrected extracts corresponding thereto. On such further documents, which shall include the entry "licence (or certificate) corrected on..." or "extracts corrected on...", the former attributions shall be reproduced, as appropriate, on each copy.

Where the issuing agency does not consider it necessary to correct the licence or certificate or the extract, it shall enter thereon the endorsement "verified on... in accordance with Article 24 of Regulation (EEC) No 3719/88" and apply its stamp.'

23 The 17th recital in the preamble to Regulation No 3719/88 states:

'Whereas, in the interest of sound administration, licences or certificates and extracts therefrom may not be amended after issue; whereas, however, in cases of doubt relating to an error attributable to the issuing agency or to obvious

inaccuracies and concerning the items appearing on the licence or certificate or extract, a procedure should be introduced whereby inaccurate licences or certificates or extracts may be withdrawn and corrected documents issued'.

24 Articles 30 and 31 of Regulation No 3719/88 provide:

'*Article 30*

(1) Fulfilment of a primary requirement shall be shown by production of proof:

...

(b) for exports, of acceptance of the declaration referred to in Article 22(1)(b) relating to the product concerned; furthermore:

(i) in the case of either export from the customs territory of the Community, or supplies treated as exports within the meaning of Article 34 of Regulation (EEC) No 3665/87, proof shall be required that the product has, within 60 days from the day of acceptance of the export declaration,

unless prevented by *force majeure*, as the case may be, either, in the case of supplies treated as exports, reached its destination or, in other cases, left the customs territory of the Community...

...

Article 31

(1) The proof required under Article 30 shall be furnished as follows:

...

(b) in cases as referred to in Article 30(1)(b) and (2) and subject to the provisions of paragraph 2, by production of copy No 1 of the licence or certificate and, where appropriate, of copy No 1 of the extract or extracts of the licence or certificate, endorsed as provided for in Article 22 or Article 23.

(2) Furthermore, in the case of export from the Community or of supplies to a destination specified in Article 34 of Regulation (EEC) No 3665/87 or the placing of products under the arrangements provided for in Article 38 of that Regulation, additional proof shall be required.

Such additional proof:

(a) shall be left to the choice of the Member State concerned where the following operations take place within that Member State:

(i) the licence or certificate is issued; and

(ii) the declaration referred to in Article 22(1)(b) is accepted; and

(iii) the product...:

— leaves the customs territory of the Community [...]

[...]

[...]'

The dispute in the main proceedings and the questions referred for a preliminary ruling

25 On 7 August 1997 British Sugar applied to IBAP for an export licence for 20 million kilograms (specified in words and figures) of C sugar. On 8 August 1997 IBAP issued export licence number 3SG00070 for 20 000 tonnes of C sugar ('the head licence'), valid up to 30 November 1997 inclusive, with security against failure to export this quantity marked at GBP 43 249.74. On the same day IBAP, at British Sugar's request, issued the first extract from that licence directly to the Applicant's shipping agent, Oughtred & Harrison ('O & H').

The first shipment at issue

26 On 8 August 1997 (the date on which the head licence and the first extract were issued), British Sugar made four further separate applications for extracts (extracts 2 to 5) from that licence. The *pro forma* application for the third extract, as for the first extract and in accordance with British Sugar's current practice, requested that the relevant extract should be forwarded directly to O & H.

27 The application for the third extract stated, under 'Tonnage required', '2 900' in figures and beneath, 'Two thousand nine hundred kilogrammes' in words. British Sugar argues that the application for the third extract contained an error in that the true intention of the Applicant was to apply for 2 900 tonnes of sugar and not 2 900 kg. Nevertheless, British Sugar entered in its own records an export of 2.9 tonnes and proceeded to request licence extracts on that basis.

28 An extract in the amount of 2.9 tonnes was issued by IBAP on 11 August 1997 and an attribution in the sum of 2.9 tonnes was made by IBAP against the head licence which it retained. As requested, the licence extract was forwarded directly to O & H. British Sugar claims that it did not see the extract. Nor was the head licence retained by IBAP ever seen by British Sugar at any time.

29 IBAP is not in a position to confirm when the relevant export declaration (Customs Form C88) was drawn up, but states that Customs Form C88 was typed by O & H from a *pro forma* C88 provided by British Sugar. In accordance with the *pro forma*, the C88 form declared for export 2 900 kg in box 38; that was corrected by O & H and replaced with 2 900 000 kg. Further, O & H described the packages as 58 000 x 50 kg (i.e. 2 900 tonnes) with a value of GBP 551 493. In box 47, which provides for basic details concerning quantity, in the column headed 'net mass' a figure of 2 900 was declared and the column headed 'unit' was left blank. However, the column headed 'export licence' referred to licence number 3SG00070/03, which was issued for a quantity of 2 900 kg.

30 On 14 August 1997 O & H presented Form C88 and the licence extract to H.M. Customs & Excise, under cover of a letter seeking permission to load 3 000 tonnes of sugar. O & H asked the customs authorities to stamp the letter as proof that permission to load had been granted. The letter was stamped by the Customs & Excise and dated 14 August 1997. The Form C88 declared the date of the goods' export from the United Kingdom as 22 August 1997, although the declaration was accepted by the customs authorities on 29 August 1997 following the late submission on that date of a notification of completion of loading. It is not disputed that the customs authorities endorsed the C88 on the date of acceptance, stamping it against an attribution for 'Two million nine hundred thousand kilos'. IBAP is not in a position to confirm when the

manuscript addition to box 38 of the C88 was made, but notes that British Sugar states that that correction was made by O & H, which was aware that the company intended to export 2 900 000 kg of C sugar.

31 On 22 August 1997 2 900 tonnes of sugar were shipped to a destination outside the European Union.

32 On 29 August 1997 the customs authorities attributed the licence extract with '2 900 T' and 'Two million nine hundred thousand kilos' (i.e. 2 900 tonnes) by stamping and signing the document. While the ship had indeed sailed on 22 August 1997, proof of departure was not furnished until 29 August 1997, which explains the delay in attribution, notwithstanding the earlier punctual receipt of the Customs declaration and licence extract.

33 The Form C88 was endorsed by Customs by their stamp in the top right-hand corner and in box 38, marked 'Net mass (kg)', containing the figures 2 900 000. Customs endorsed the reverse of the Form C88 with their stamp halfway down the right-hand side and in the bottom right-hand corner, and ticked box A1, marked 'Satisfied that the goods specified have left the UK... for export to a non-member country'.

34 IBAP received the relevant licence on 15 September 1997.

35 As a result of post-clearance inspection of the relevant export documents, which began on that date, it appeared to IBAP both that the Form C88 and, possibly, the licence had been lodged after shipment of the goods, and that the net mass declared in box 38 in that form did not conform to the quantity stated in boxes 17 and 18 of the extract from that licence. In various letters sent to British Sugar between 9 and 15 October 1997 IBAP drew the latter's attention to those facts.

36 On 9 October 1997 there remained 29 525 tonnes of unused capacity on the head licence. On 16 October 1997 that quantity was exported under that licence.

37 By letter of 20 April 1998 British Sugar formally requested IBAP to use its powers of amendment under Article 24 of Regulation No 3719/88 in order to 'regularise the position and remove the inaccuracies'. IBAP took the view it had no option but to refuse to make any amendment of the head licence or of any extract from it.

The second shipment at issue

38 According to paragraphs 33 to 35 of the annex to the order for reference addressed to the Court:

'Following the third extract, there were a further 57 extracts taken from the head licence which extinguished the quantity thereon. On 11 September 1997, [British Sugar] was issued with an extract for 298.2 tonnes (the 46th extract and the amount for which [it] applied). Though one consignment of 140 tonnes was

shipped under this extract on 10 October 1997 (i.e before the last day of validity of the head licence and extract), a second consignment of 158.2 tonnes was not exported until 3 December 1997 (i.e 3 days after the last day of validity of the head licence and extract).

Customs, acting as the Respondent's agent, attributed the licence extract with "158.2T" and "One hundred and fifty-eight thousand, two hundred kilograms" (i.e. 158.2 tonnes) by placing its stamp and signature on it.

A Form C88 in respect of this consignment of 298.2 tonnes was endorsed by Customs by its stamp in the top right-hand corner and, on the reverse, on the right-hand side half way down and in the bottom right-hand corner. Customs also ticked box A1 on the reverse, marked "Satisfied that the goods specified have left the UK... for export to a non-member country".'

39 On receipt of a C88 export declaration form on 9 December 1997, IBAP reviewed the declaration on 11 and 12 December 1997 and discovered that 158.2 tonnes of sugar had been exported on 3 December 1997 under the 46th extract, after the head licence and relevant extract had expired. British Sugar was informed by letter of that irregularity soon after that review.

Levying of the charge payable pursuant to Article 3(1) of Regulation No 2670/81

40 IBAP considered that it must demand that British Sugar should pay a charge under Article 3 of Regulation No 2670/81 for failure to supply the required proof

that the goods had been exported, namely, a valid licence for the full volume exported in respect of exports made under the third and 46th extracts.

41 On 30 April 1998 IBAP issued an invoice for a charge calculated according to the terms of Article 3(1) of that regulation. That charge concerns a quantity of 3 055.3 tonnes, that is to say, the principal element of the application in the main proceedings (2 897.1 tonnes, or 2 900 less 2.9) to which is added the second element (158.2 tonnes). The charge comes to GBP 1 455 520.49. The basis for levying that charge is the finding that British Sugar had not satisfied the conditions laid down in Article 2(2) of Regulation No 2670/81.

42 The order to pay that charge was sent to British Sugar on 30 April 1998 and it was IBAP's decision of 23 December 1999 to seek recovery of that charge which is the subject-matter of the case in the main proceedings.

43 Those were the circumstances in which the High Court of Justice (England and Wales), Queen's Bench Division (Administrative Court), decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) In circumstances where:

(a) a trader has exported a quantity of C sugar which exceeds the amount for which export was authorised by the licence concerned; and/or

(b) a trader has exported C sugar after the expiry of the validity of the licence authorising the said export; and

(c) even if, as a matter of fact, the relevant C sugar left the Customs territory of the Community;

has the proof required by the first indent of Article 2(2) of Regulation No 2670/81 been furnished in relation to that export, or that element of the relevant export, which was not covered by a valid licence?

(2) In the circumstances described in paragraph 1(a) above, is the answer to the above question different in circumstances where:

(a) the trader presented to the customs authority a customs declaration form (C 88) amended in manuscript to reflect the amount actually exported; and

(b) the customs authority has endorsed the relevant licence extract against the trader's entry in the actual amount exported?

(3) Is the answer to question 1 above different on the assumption that the circumstances were as follows:

(a) the trader intended to apply for an extract for 2 900 tonnes;.

(b) owing to an error on the part of the trader, a licence extract was issued for 2.9 tonnes and this [*sic*] 2.9 tonnes was [*sic*] recorded in the records of both the Intervention Board and the trader;

(c) the licence extract was attributed, with the authority of the trader, by the trader's agent, accurately to record the trader's intention of exporting 2 900 tonnes;

(d) that licence extract was subsequently endorsed by H.M. Customs & Excise to certify the export of 2 900 tonnes of sugar;

(e) the sugar was subject to a Form C88 export licence for 2 900 tonnes, which was subsequently attributed and endorsed by H.M. Customs & Excise;

(f) 2 900 tonnes of sugar were in fact exported;

(g) licence extracts were subsequently applied for, and granted, on the basis that only 2.9 tonnes had earlier been authorised for export;

(h) each subsequent licence extract was duly attributed and endorsed and all sugar tonnages so noted were in fact exported;

(i) in the result, 2 897.1 tonnes of sugar were exported in excess of the volume authorised in the original licence?

(4) Does Article 24 of Regulation No 3719/88 enable the competent authority to withdraw the extract or the licence or certificate as well as any extracts previously issued and require the competent authority to issue without delay a corrected licence or extract or any attribution thereto in circumstances where:

(a) there is no obvious or manifest error on the face of the licence or extract itself and where there has been no error on the part of the issuing agency; and/or

(b) the amendment is sought to be made after the expiry of the validity of the relevant extract or head licence?

(c) does it make a difference if the trader intended to apply for a licence extract (from a licence already issued) in respect of a quantity greater than that for which he called off [*sic*]?

(5) If the answers to the above questions are negative, do the provisions of Article 24 of Commission Regulation 3719/88 infringe the Community law principles of proportionality and/or equality in that the absence of any power

to amend the head licence, licence extract or attributes thereto may, in the circumstances referred to above, lead to the imposition of a fine under Article 3 of Commission Regulation No 2670/81?

(6) (a) Does the national court and/or the national authority have a discretion to vary (downwards) the amount of the penalty to be imposed under Article 3 of Commission Regulation No 2670/81?

(b) If so, are there any factors in this case which the Court regards as relevant to the exercise of that discretion?

(7) In the circumstances referred to in paragraphs 33 to 35 above [reproduced in paragraph 38 above], is a penalty under Article 3 of Regulation No 2670/81 properly levied?'

Consideration of the first three questions

44 The first three questions, which may appropriately be examined together, concern the interpretation of Article 2(2)(a) of Regulation No 2670/81.

45 In accordance with that provision, the proof referred to in Article 1 of that regulation requires the production of an export licence issued pursuant to Article 3 of Regulation No 2630/81 — replaced by Article 4 of Regulation No 1464/95 — to the manufacturer by the competent agency of the Member State.

46 In paragraph 43 of its judgment in Case C-161/96 *Südzucker* [1998] ECR I-281, the Court held that, despite the fact that the quantity of sugar at issue had left the customs territory of the Community, the Commission could legitimately consider that production of the export licence bearing the required attributions and endorsements was necessary in order to ensure compliance with the requirements relating to the export of C sugar. In paragraph 34 of that judgment, it noted that the obligation to prove that the requirements relating to the export of C sugar had been complied with by means of such a licence was essential to the proper functioning of the quota system.

47 As is apparent from the ninth recital in the preamble to the basic regulation, it must be made possible for the competent authorities to keep a constant watch on movements in trade with non-member countries in order to enable them to assess trends in such movements and, where appropriate, to apply the measures provided for in that regulation. To this end, provision was made for a system of export licences.

48 Licences for the export of C sugar do not thus have the sole purpose of proving the quantity exported and the date of export, but also the objective of quantitative and temporal regulation of the related exports in order to avoid undesired effects on the common organisation of the sugar market.

49 It follows from the above that the proof provided for in Article 2(2)(a) of Regulation No 2670/81 has not been supplied in respect of a quantity of C sugar

actually exported where that quantity exceeds the total quantity stated on the export licence or where the export takes place after the period of that licence's validity has expired. The fact that the C sugar at issue in the case in the main proceedings did actually leave the Community's customs territory is not conclusive in that respect.

50 As regards the fact, referred to in the second question, that the customs authorities endorsed the licence extract at issue against the manufacturer's customs declaration in a corrected form corresponding to the amount actually exported, it is sufficient to state that those authorities do not act as the person vested with the legal representation of IBAP. In any case, the fact that the amount actually exported was attributed and endorsed on the licence extract does not alter the manufacturer's obligation to produce a licence extract valid for the quantity actually exported.

51 Nor is the reply to be given to the first question altered by the hypotheses suggested in the third question, which relate in some detail to the situation under consideration in the second question, on the one hand, and to the fact that, as regards the applications for licence extracts, the trader's mistake was not corrected, and to the consequences of that fact, on the other.

52 The answer to be given to the first three questions must therefore be that the proof provided for in Article 2(2)(a) of Regulation No 2670/81 has not been supplied in respect of a quantity of C sugar actually exported where that quantity exceeds the total quantity stated on the export licence or where the export takes place after the period of that licence's validity has expired. The fact that the C sugar at issue in the case in the main proceedings did actually leave the Community's customs territory is not conclusive in that respect. The same is true where the customs authorities have endorsed the licence extract for a quantity applied for, but which does not reflect the manufacturer's real intentions having regard to a customs declaration in a corrected form corresponding to the amount actually exported.

Consideration of the fourth question

53 A correction made pursuant to Article 24(2) of Regulation No 3719/88 presupposes that an entry in the export licence or licence extract is inaccurate.

54 There is no inaccuracy within the meaning of that provision where the tonnage entered in the application for an extract is accurately transcribed on that extract.

55 That finding holds good regardless of whether or not the entries made in the application reflect the applicant's real intentions. It is not the objective of Article 24(2) to correct applications for export licences or extracts therefrom. Moreover, if the applicant has not made any such request, the agency issuing those licences is not even entitled to issue an extract from a licence in excess of the amount of tonnage expressly requested.

56 Consequently, the answer to be given to the fourth question must be that, on a proper construction of Article 24 of Regulation No 3719/88, the competent authority is not permitted to carry out a correction of the tonnage stated on the export licence or extract therefrom where there is no inaccuracy in the entries made in those documents themselves.

57 Given that, in circumstances such as those of the case in the main proceedings, there is no inaccuracy within the meaning of Article 24 of Regulation No 3719/88, there is no need to reply to the question concerning the validity of corrections made after the period of the export licence's validity has expired.

Consideration of the fifth question

58 According to the Court's case-law, in order to establish whether a provision of Community law complies with the principle of proportionality, it must be ascertained whether the means which it employs are suitable for the purpose of achieving the desired objective and whether they do not go beyond what is necessary to achieve it (see, inter alia, Case C-426/93 *Germany* v *Council* [1995] ECR I-3723, paragraph 42, and Case C-491/01 *British American Tobacco (Investments) and Imperial Tobacco* [2002] ECR I-11453, paragraph 122).

59 It cannot be maintained that rules which do not themselves interfere with protected interests are capable of infringing the principle of proportionality.

60 The sole purpose of Article 24(2) of Regulation No 3719/88, as is made clear by the 17th recital in the preamble to that regulation, is to allow errors attributable to the issuing agency or to obvious inaccuracies to be corrected. Such a provision does not give rise to any interference with the manufacturers' interests and it cannot, therefore, constitute a breach of the principle of proportionality.

61 As regards the principle of equality, it must be stated that British Sugar has not put forward any arguments capable of establishing that Article 24(2) of Regulation No 3719/88 itself is invalid by reason of breach of that principle.

62 It must be added that when, as a result of an error contained in an extract from an export licence and falling within the applicant's sphere of responsibility, an extract has been issued in respect of a quantity which is too low in relation to the

applicant's intentions, the regulation does not prevent the manufacturer from avoiding the payment of a charge under Article 3(1) of Regulation No 2670/81, by requesting the issue of another extract to cover the missing amount, before exporting the quantity of goods actually intended.

63 In light of the foregoing, the answer to be given to the fifth question must be that examination of Article 24 of Regulation No 3719/88 has disclosed nothing which might affect its validity.

Consideration of the sixth question

64 Nothing in the wording of Article 3 of Regulation No 2670/81 indicates that the competent authorities have any power to alter the charge in question.

65 British Sugar observes, however, that if a clearly wrongful act or omission can be attributed to IBAP, Community law not only authorises the latter to vary a penalty but even requires it.

66 It is not necessary to decide whether that interpretation must be upheld. In the case in the main proceedings no argument has been put forward which would make it possible to conclude that there was any wrongful conduct on IBAP's part. The one and only argument alleging fault supposedly committed by IBAP is the

argument concerning its refusal to correct the licence extracts in question, conduct which, as paragraphs 53 to 56 above make clear, does not lay it open to any complaint.

67 In consequence, the answer to be given to the first part of the sixth question must be that, in circumstances such as those in the case in the main proceedings, neither the national court nor the competent authorities enjoy any discretion to vary downwards the charge to be paid pursuant to Article 3 of Regulation No 2670/81.

68 Having regard to that answer, there is no longer any need to reply to the second part of that question.

Concerning the seventh question

69 By its seventh question the court making the reference seeks in essence to ascertain whether, in the circumstances described in paragraphs 33 to 35 of the order for reference (reproduced in paragraph 38 above), the charge was rightfully imposed pursuant to Article 3 of Regulation No 2670/81.

70 It ought here to be borne in mind that the procedure under Article 234 EC is based on a clear separation of functions between the national courts and the Court of Justice.

71 The Court has no jurisdiction to give a ruling on the facts in an individual case or to apply the rules of Community law which it has interpreted to national

measures or situations, since those questions are matters for the exclusive jurisdiction of the national court (Joined Cases C-175/98 and C-177/98 *Lirussi and Bizzaro* [1999] ECR I-6881, paragraphs 37 and 38).

72 None the less, in order to supply the national court with a helpful reply, it must be stated that nothing in Regulation No 2670/81 authorises a manufacturer to export C sugar after the corresponding export licence has expired. Attribution of the quantities exported on the extract from that licence and endorsements made by the customs authorities to a Form C88 corresponding to the export at issue cannot call that conclusion in question, because those measures do not involve an extension of the export licence's validity.

73 The answer to be given to the seventh question must therefore be that Article 3 of Regulation No 2670/81 is to be interpreted as applying to an export of C sugar effected after the corresponding export licence has expired.

Costs

74 The costs incurred by the United Kingdom Government 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 (Sixth Chamber),

in answer to the questions referred to it by the High Court of Justice, England and Wales, Queen's Bench Division (Administrative Court), by order of 20 July 2001, hereby rules:

1. **The proof provided for in Article 2(2)(a) 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 (EC) No 158/96 of 30 January 1996, has not been supplied in respect of a quantity of C sugar actually exported where that quantity exceeds the total quantity stated on the export licence or where the export takes place after the period of that licence's validity has expired. The fact that the C sugar concerned did actually leave the Community's customs territory is not conclusive in that respect. The same is true where the customs authorities have endorsed the licence extract for a quantity applied for, but which does not reflect the manufacturer's real intentions having regard to a customs declaration in a corrected form corresponding to the amount actually exported.**

2. **On a proper construction of Article 24 of Commission Regulation (EEC) No 3719/88 of 16 November 1988 laying down common detailed rules for the application of the system of import and export licences and advance-fixing certificates for agricultural products, as amended by Commission Regulation (EC) No 1199/95 of 29 May 1995, the competent authority is not permitted to carry out a correction of the tonnage stated on the export licence**

or extract therefrom where there is no inaccuracy in the entries made in those documents themselves.

3. **Examination of Article 24 of Regulation No 3719/88, as amended by Regulation No 1199/95, has disclosed nothing which might affect its validity.**

4. **In circumstances such as those in the case in the main proceedings neither the national court nor the competent authorities enjoy any discretion to vary downwards the charge to be paid pursuant to Article 3 of Regulation No 2670/81, as amended by Regulation No 158/96.**

5. **Article 3 of Regulation No 2670/81 as amended is to be interpreted as applying to an export of C sugar effected after the corresponding export licence has expired, if the export was made after the expiry of the corresponding export licence.**

Skouris Gulmann Puissochet

Macken Colneric

Delivered in open court in Luxembourg on 19 February 2004.

R. Grass V. Skouris

Registrar President