or syrups into products which do not fall within heading No 17.01 of the Common Customs Tariff and are not subject tot the levy.

2. The phrase "syrups produced prior to the crystallizing stage and marketed in their natural state" within the meaning of the third subparagraph, under (a), of Article 8 (1) of Regulation No 3330/74 must be interpreted as not including syrups which, during the manufacturing process, are produced from sugars which have been dissolved by the addition of water as a first stage towards the production of invert sugar.

3. The phrases "sugar produced" within the meaning of the first indent, under (a), of the third subparagraph of Article 8 (1) of Regulation No 3330/74 of the Council and "white ... sugar ... produced and marketed" within the meaning of Article 6 (4) of Council Regulation No 1358/77 must be interpreted as also including a transitional product which appears only temporarily during a continuing manufacturing process, even if that product cannot be quantified, stored or marketed without further treatment, and whether or not that product, in the same state, may qualify for reimbursement of storage costs.

In Case 121/83

REFERENCE to the Court of Justice under Article 177 of the EEC Treaty by the Finanzgericht München (Finance Court, Munich) for a preliminary ruling in the proceedings pending before that court between

ZUCKERFABRIK FRANKEN GMBH, Ochsenfurt,

and

HAUPTZOLLAMT [Principal Customs Office] WÜRZBURG,

on the validity of certain provisions of Commission Regulation (EEC) No 1998/78 of 18 August 1978 laying down detailed rules for the offsetting of storage costs for sugar (Official Journal 1978, L 31, p. 5) and on the interpretation of the provisions of Regulation (EEC) No 3330/74 of the Council of 19 December 1974 on the common organization of the market in sugar (Official Journal 1974, L 359, p. 1), as amended by Council Regulation (EEC) No 1396/78 of 20 June 1978 (Official Journal 1978, L 170, p. 1) and of Council Regulation (EEC) No 1358/77 of 20 June 1977 laying down general rules for offsetting storage costs for sugar and repealing Regulation (EEC) No 750/68 (Official Journal 1977, L 156, p. 4),

THE COURT (Third Chamber)

composed of: Y. Galmot, President of Chamber, U. Everling and C. Kakouris, Judges,

Advocate General: G. F. Mancini
Registrar: P. Heim

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the observations submitted pursuant to 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

1. Rules of Community law concerning the levy in respect of storage costs for sugar

The subject-matter of these proceedings is the question whether the products known as "Grundsorte-Kristallmasse" [basic-category crystalline mass] and "Kläre" [clarified syrup], which are both yielded as transitional products during the maunfacture of invert sugar, are subject to the levy in respect of storage costs for sugar. In order to obtain a better grasp of that question, it seems appropriate to begin with a brief outline of the provisions of Community law for offsetting the storage costs for sugar.

(a) The legal basis for offsetting storage costs is Article 8 of 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, p. 1), as amended by Council Regulation (EEC) No 1396/78 of 20 June 1978 (Official Journal, L 170, p. 1). According to the first subparagraph of Article 8 (1) "the storage costs in respect of:

white sugar,

raw sugar,

syrups obtained prior to the crystallizing stage,

and

syrups obtained by dissolving crystallized sugar,

manufactured from beet or cane harvested in the Community shall be reimbursed at a flat rate by the Member States."

In order to finance the reimbursement of storage costs, the Member States are to impose a levy which is calculated in such a way as to ensure that the total amount reimbursed is equal to the total amount levied. The third subparagraph of Article

8 (1) contains the following rules for imposing the levy:

"The Member States shall, according to the circumstances, impose a levy:

(a) on each sugar manufacturer, as appropriate:

by unit of weight of sugar produced,

by unit of weight of syrups referred to in the first subparagraph, produced prior to the crystallizing stage and marketed [1] in their natural state;

(b) . . .;

(c) . . . ."

According to Article 8 (3) of that regulation, the Council is to adopt the general rules for the implementation of that article and the Commission is to adopt the detailed rules for its implementation.

(b) Council Regulation (EEC) No 1358/77 of 20 June 1977 laying down general rules for offsetting storage costs for sugar and repealing Regulation (EEC) No 750/68 (Official Journal, L 156, p. 4) contains general rules for the implementation of the system for offsetting storage costs. Article 6 (4) of that regulation provides as follows:

"The Member State shall collect the levy from each sugar manufacturer in respect of the white and raw sugar and of the syrups, referred to under (a) of the third subparagraph of Article 8 (1) of Regulation (EEC) No 3330/74, produced and marketed [1] within his maximum quota.

. . .

(c) The rules for offsetting storage costs are set out in detail in Commission Regulation (EEC) No 1998/78 of 18 August 1978 laying down detailed rules for the offsetting of storage costs for sugar (Official Journal, L 231, p. 5) which provides in Article 8 (2):

" 'Syrups obtained prior to the crystallizing stage' means those syrups which fall within subheading 17.02 D II of the Common Customs Tariff and are subsequently processed into solid sugar under customs control, or under an administrative control providing equivalent safeguards, and which are stored in special containers separated from the sugar manufacturing plant."

Article 12 (1) of Regulation No 1998/78 provides as follows:

"The levy shall be incurred in respect of products as referred to in (a) of the third subparagraph of Article 8 (1) of Regulation (EEC) No 3330/74 at the moment of disposal.

For purposes of calculating the amount of the levy, in so far as it has not already been incurred, 'disposal' shall mean:

(a) exit of the sugar from the factory in which it was produced, except in so far as the sugar enters an approved warehouse of the manufacturer thereof situated in the same Member State;

(b) exit from the approved warehouse of the manufacturer; however, transfer of the sugar from an approved warehouse to another approved warehouse of the same manufacturer situated in the same Member State shall not be considered as disposal;

(c) transfer of property rights to the sugar without exit of the sugar from the approved warehouse of the manufacturer;

(d) processing by the manufacturer of the sugar and syrups into products other than those falling within heading No 17.01 of the Common Customs Tariff;

(e) the addition to the sugar or syrups of flavouring or colouring matter, or

1 — *Translator's note:* The term "marketed" corresponds to "écoulé[e]s" in the French text. However, in the case of Commission Regulation (EEC) No 1998/78 (see *infra*), where the term "écoulement" is used in the French text the English text has "disposal" and not "marketing".

the mixing of the sugar or the syrups with products other than those referred to in Article 8 of Regulation (EEC) No 3330/74 in such a way that, pursuant to Article 9, the mixture is no longer eligible for the reimbursement of storage costs;

(f) denaturing of the sugar;

(g) in the case of the syrups referred to in Article 8 (2), exit from the manufacturer's containers following transfer of ownership;

(h) the placing of the sugar or the syrups under one of the arrangements referred to in Articles 2 and 3 of Regulation (EEC) No 441/69."

2. Background to the main proceedings

Amongst the products manufactured by the plaintiff in the main proceedings, Zuckerfabrik Franken GmbH, Ochsenfurt, in 1978 and 1979 was invert sugar. The primary material for that product — which is purer than white sugar and, on account of its greater degree of purity and of its being made up of several kinds of sugar, is used with preference for racking alcohol-free beverages — is a crystalline sugar which is yielded at an interim stage during the manufacture of white sugar and which has a moisture content of between approximately 0.5% and 2% and a temperature of approximately 70° to 75°C (the plaintiff calls the product "Grundsorte-Kristallmasse" [basic-category crystalline mass]). It is obtained by separating the mother syrup from the crystalline magma which has been produced by crystallization of the thick juice and is continously dissolved, by the addition of water, into syrup in the same manufacturing process. The syrup, which is know as "clarified syrup" ["Kläre"], is processed into invert sugar either immediately of after interim storage.

The Hauptzollamt (Principal Customs Office) Würzburg, the defendant in the main proceedings, determined a levy in respect of storage costs for the months of September to December 1978 at first in accordance with the information provided by the plaintiff, which did not mention the "Grundsorte-Kristallmasse" used in the production of invert sugar. However, on the basis of the results of a business inspection, the defendant, by decision of 16 December 1979, demanded payment of DM 1 202 570.53 by way of levy in respect of storage costs for the period in question, basing its calculation of that amount on a processed quantity of 276 756 decitonnes of "Rohkläre" [clarified raw syrup] corresponding to 178 510 decitonnes of white sugar.

In determining the levy in respect of storage costs for the months of September and October 1979, the Hauptzollamt incorporated from the outset, in the basis of assessment, the "Grundsorte-Kristallmasse" which had been dissolved into clarified syrup for the production of invert sugar at the plaintiff's plant during those months. The decisions of 15 November 1979 and 7 December 1979 which were adopted in that regard show that the "Grundsorte-Kristallmasse" accounted for DM 22 391.61 of the levy in respect of storage costs for September 1979 and DM 449 855.34 of that for October 1979.

After lodging an unsuccesful objection, the plaintiff brought an action before the Finanzgericht München [Finance Court, Munich]. The plaintiff contends essentially that the levy in respect of storage costs may be imposed only on sugar which is produced. Such sugar is to be understood as covering only those products which are finished and marketable. Nor, moreover, should a levy be imposed on sugar in respect of which no reimbursement is granted for storage.

The Hauptzollamt claims that the Finanzgericht should dismiss the action. It contends, in particular, that the "Grundsorte-Kristallmasse" is a white sugar in solid form and is therefore a sugar which is produced and which,

according to Community law, is subject to the levy in respect of storage costs.

By order of 13 May 1983, rectified by order of 2 February 1984, the Finanzgericht München stayed the proceedings and referred to the Court of Justice under Article 177 of the EEC Treaty the following questions for a preliminary ruling:

"1. Is the second subparagraph of Article 12 (1) of Regulation (EEC) No 1998/78 valid, having regard to the enabling power contained in the third sentence of Article 8 (3) of Regulation (EEC) No 3330/74 on which it is based and to the first subparagraph of Article 6 (4) of Regulation (EEC) No 1358/77 in so far as it provides, under (d), that disposal is to mean the processing of the sugar by the manufacturer into products other than those falling within heading No 17.01 of the Common Customs Tariff?

2. If the first question is answered in the affirmative, how is the phrase 'syrups produced prior to the crystallizing stage and marketed in their natural state' within the meaning of the third subparagraph, under (a), of Article 8 (1) of Regulation (EEC) No 3330/74, to be interpreted with regard to Article 8 (2) of Regulation (EEC) No 1998/78?

   Does it include sugars which, during the manufacturing process, have been dissolved by the addition of water as a first stage towards the production of invert sugar?

3. If the second question is answered in the negative, how are the phrases 'sugar produced' within the meaning of the first indent, under (a), of the third subparagraph of Article 8 (1) of Regulation (EEC) No 3330/74, as amended by Article 1 of Regulation (EEC) No 1396/78, and 'white ... sugar ... produced and marketed' contained in Article 6 (4) of Regulation (EEC) No 1358/77 to be interpreted?

   (a) Do they include a transitional product which appears only temporarily during a continuing manufacturing process?

   (b) If part (a) of the third question is answered in the affirmative, is it also an important factor whether such a transitional product can be quantified directly and is capable of being stored and marketed without further treatment?

   (c) If part (b) of the third question is answered in the negative, is it a precondition of the charging of the levy in respect of storage costs pursuant to the third subparagraph of Article 8 (1) of Regulation (EEC) No 3330/74, that the storage costs must be capable of reimbursement in respect of the same product in the same state?"

3. Procedure before the Court of Justice

The order making the reference was lodged at the Court Registry on 29 June 1983.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted by Zuckerfabrik Franken GmbH, represented by Dr Dietrich Ehle und Partner, Rechtsanwälte, Cologne, by the Hauptzollamt Würzburg, represented by Mr Johns, acting as Agent, and by the Commission of the European Communities, represented by Jürgen Grunwald, a member of its Legal Department, acting as Agent.

On hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court, by order of 18 January 1984, assigned the case to the Third Chamber, pursuant to Article 95 of the Rules of Procedure, and to

open the oral procedure without any preparatory inquiry.

II — Written observations

1. Background to the main proceedings and the system for offsetting storage costs

(a) *Zuckerfabrik Franken* maintains that the so-called "Grundsorte-Kristallmasse", which is a transitional product yielded during the manufacture of invert sugar syrup, comes into being during production only for short, scarcely definable periods. It cannot be quantified accurately in units of weight and is not capable of being stored or marketed since, in view of its high moisture content and high temperature, the water adhering to the surface of the crystals would evaporate and the sugar would harden into lumps. Moreover, the product easily deteriorates microbially and therefore cannot be stored or marketed also for hygienic reasons.

During the same manufacturing process, the "Grundsorte-Kristallmasse" is continuously dissolved into clarified syrup, from which liquid invert sugar (invert sugar syrup) is then produced. Clarified syrup is a syrup for the purposes of the common organization of the market in sugar (heading No 17.02 of the Common Customs Tariff), that is to say a watery solution of white sugar or raw sugar not containing added flavouring or colouring matter. As in the case of the "Grundsorte-Kristallmasse", the clarified syrup is neither marketed nor disposed of, but is merely used as a primary material for manufacturing invert sugar. No reimbursement of storage costs was claimed in respect of either transitional product.

(b) The *Hauptzollamt Würzburg* observes that the offsetting of storage costs constitutes a closed system within the common organization of the market in sugar. Its purpose is to ensure that throughout the entire business year the market is provided with a steady supply of sugar which is produced only during a few months. Manufacturers and certain traders are granted a reimbursement for each month in which they store sugar. In order to finance the reimbursement, a single levy is collected from sugar manufacturers.

According to subparagraph 1 of Article 8 (1) of the basic regulation, No 3330/74, in the version currently in force, reimbursement may be granted in respect of white sugar, raw sugar, syrups obtained prior to the crystallizing stage, and syrups obtained by dissolving crystallized sugar. According to the third subparagraph, under (a), of that article, a levy is to be imposed in respect of sugar produced (white sugar or raw sugar) and syrups produced prior to the crystallizing stage and marketed in their natural state, that is to say those syrups which, contrary to the original intention, are not used for manufacturing sugar in solid form. The absence of a special basis for imposition of the levy in respect of syrups obtained by dissolving crystallized sugar means that, in such cases, the general basis for the levy in respect of sugar which is produced is applicable. If it were otherwise, the obligation to pay the levy in respect of sugar which is produced could be circumvented by dissolving the sugar in water. The "Grundsorte-Kristallmasse" which is at issue in this case is therefore beet sugar (white sugar) in solid form falling within heading No 17.01 of the Common Customs Tariff which, as in the case of clarified syrup, is subject to the levy but also qualifies for reimbursement.

(c) The *Commission* explains the conditions in which liability to the levy arises under the system for offsetting storage costs. First of all, such liability

presupposes that a levy is payable on the manufacture of the product in question and, furthermore, that the levy was due at the time at which it was collected.

The basic question whether a levy is payable is governed by the third subparagraph of Article 8 (1) of Regulation No 3330/74. According to that provision a levy is to be imposed, as appropriate, "by unit of weight of sugar produced" or "by unit of weight of syrups ... produced prior to the crystallizing stage and marketed in their natural state".

The second alternative must be rejected since, even if the present case were concerned with syrups within the meaning of that provision, in any event they are not "marketed in their natural state". As regards the first alternative, the question arises whether the "Grundsorte-Kristallmasse", which is sugar within the meaning of heading No 17.01 of the Common Customs Tariff, is "sugar produced" within the meaning of the aforesaid provision. It is doubtful whether the temporary and short-lived manufacture of that transitional product can be regarded as "production".

The answer to that question must be deduced from the provisions of the legislation adopted by the Council and by the Commission for the application and implementation of the basic regulation, No 3330/74.

According to Article 6 (4) of Council Regulation No 1358/77, the Member States are to collect the levy in respect of the "white and raw sugar ... produced and marketed". On the one hand, that provision repeats the requirement, laid down by the third subparagraph of Article 8 (1) of the basic regulation, that the sugar must be "produced". On the other hand, however, it is more far-reaching than the provision contained in the basic regulation since, for the first time it specifies the time from which the levy on the sugar produced may be collected. The relevant time is when the quantities produced have been disposed of, that is to say, as a rule, when they have been sold and have left the sugar factory. Accordingly, the first sentence of Article 12 (1) of Commission Regulation No 1998/78 provides that "the levy shall be incurred ... at the moment of disposal". It follows from that provision *a contrario* that a levy cannot (yet) be collected in respect of sugar which has not (yet) been disposed of but is still in the process of being produced by the manufacturer.

However, the second subparagraph of Article 12 (1) provides for certain exceptions to that rule in cases in which assimilation to a genuine disposal is required or allowed on grounds of an economic nature or of market policy. In the present case, only the operation referred to under (d) is relevant ("processing by the manufacturer of the sugar and syrups into products other than those falling within heading No 17.01 of the Common Customs Tariff") and, from a logical point of view, it is closely related to that referred to under (f) ("denaturing of the sugar"). It must however be pointed out that the plaintiff in the main proceedings has processed the transitional products not into another product but into sugar following within tariff heading No 17.01, with the result that the situation referred to under (a) does not arise.

It follows that, in the absence of an actual or notional disposal under Article 6 (4) of Regulation No 1358/77 in conjunction with Article 12 (1) of Regulation No 1998/78, liability to the levy for the short-lived transitional products which have temporarily come into being has not (yet) arisen and the levy becomes

payable only following actual disposal or one of the notional forms of disposal referred to in Regulation No 1998/78.

2. *First question*

This question is answered in the negative by Zuckerfabrik Franken and in the affirmative by the Hauptzollamt Würzburg and by the Commission.

(a) According to *Zuckerfabrik Franken*, the second subparagraph, under (d), of Article 12 (1) of Commission Regulation No 1998/78 is invalid since it goes beyond the substantive shpere of the superior legislation enacted by the Council and finds no basis in any enabling powers conferred on the Commission by the Council.

According to the wording of the abovementioned provisions of Regulations No 1358/77 and No 3330/74, the levy in respect of storage costs is intended to apply only to syrups produced prior to the crystallizing stage and marketed in their natural state. On the other hand, a syrup such as the clarified syrup which is yielded during the manufacturing process and is used for manufacturing products other than sugar, is not covered by any of the operations which cause the levy to be incurred.

That is confirmed by the meaning and purpose of the rules relating to storage costs. It is clear from the rectials in the preamble to Regulation No 1396/78 that the obligation to pay the levy is intended to extend only to those syrups which, since they may be marketed in their natural state, necessarily require storage. However, there can be said to be a "disposal" only when a product is sold, that is to say transferred to a third party, but not when it undergoes further treatment during the manufacturing process.

Accordingly, the answer to the first question should be as follows:

"Having regard to the first sentence of Article 6 (4) of Regulation No 1358/77 and to the second indent, under (a), of the third subparagraph of Article 8 (1) of Regulaiton No 3330/74, the second subparagraph of Article 12 (1) of Regulation No 1998/78 is invalid, in so far as it provides, under (d), that disposal is to mean the processing by the manufacturer of the sugar into products other than those falling within heading No 17.01 of the Common Customs Tariff."

(b) The *Hauptzollamt Würzburg* contends that the second subparagraph, under (d), of Article 12 (1) of Regulation No 1998/78 merely gives concrete form to Article 8 (1) of the basic regulation, No 3330/74. Furthermore, that provision is indispensible if all the loopholes as regards the collection of the levy are to be closed since, otherwise, it would not be possible for the levy in respect of storage costs to be collected at any time for solid sugar, capable of storage, which is dissolved in water by the manufacturer and thus processed into a product falling outside heading No 17.01 of the Common Customs Tariff.

Accordingly the answer to the first question should be as follows:

"Consideration of the question submitted has disclosed no factor of such a kind as to affect the validity of the second subparagraph, under (d), of Article 12 (1) of Regulation No 1998/78, which provides that disposal is to mean the processing by the manufacturer of the sugar into products other than those falling within heading No 17.01 of the Common Customs Tariff."

(c) The *Commission* maintains that the contested provision of Regulation No 1998/78 has a sufficient basis for its adoption in the aforesaid Council regulations. The processing of sugar into products other than those covered by heading No 17.01 of the Common

Customs Tariff is closely related to denaturing. Since processing changes the sugar into another product it ceases to exist as such and cannot be recorded in accounting terms. Accordingly, the second subparagraph, under (d), of Article 12 (1) provides that "for purposes of calculating the amount of the levy, in so far as it has not already been incurred, disposal shall mean" processing, for example by actual disposal to a purchaser who intends to process the goods.

Accordingly, the answer to the first question should be as follows:

"Consideration of the question submitted for a preliminary ruling has disclosed no factor of such a kind as to affect the validity of the second subparagraph, under (d), of Article 12 (1) of Commission Regulation No 1998/78 of 18 August 1978."

3. Second question

All those taking part in the proceedings consider that the second question should be answered in the negative.

(a) *Zuckerfabrik Franken* expresses the view that the phrase "syrups . . . produced prior to the crystallizing stage and marketed in their natural state" within the meaning of the third subparagraph of Article 8 (1) of the basic regulation, no 3330/74, must be interpreted by itself and cannot be construed in the light of Regulation No 1998/78 which is subordinate legislation enacted by the Commission.

It is clear from the wording of the abovementioned provision of Regulation No 3330/74, first, that it applies only to syrups which are produced prior to the crystallizing stage, that is to say, it does not cover any sugars which have been dissolved by the addition of water as a first stage towards the production of liquid invert sugar. Secondly, the syrups must be marketed in their natural state. However, disposal can occur only in the event of sale or of an assimilated operation and not if the syrup/sugar immediately undergoes further treatment during the manufacturing process.

That is confirmed by the meaning and purpose of the rules relating to the levy in respect of storage costs. According to the recitals in the preamble to Regulation No 1396/78, the rules for offsetting storage costs were intended to apply also to syrups produced prior to the crystallizing stage and marketed in their natural state, since market trends in the products show a significant increase in demand. It follows that storage costs are payable only in respect of "finished" products actually produced for storage and disposal, and not in respect of transitional products.

Moreover, Article 8 (2) of Commission Regulation No 1998/78 clearly demonstrates that liability to the levy exists only in respect of sugar which is subsequently to be processed into solid sugar and which, until then, is stored under customs control, or under an administrative control providing equivalent safeguards, and in special containers separated from the sugar manufacturing plant.

Accordingly, the answer to the second question should be as follows:

"The second indent, under (a), of the third subparagraph of Article 8 (1) of Regulation No 3330/74 within the meaning of Regulation No 3330/74 must, in the light of Article 8 (2) of Regulation No 1998/78, be interpreted as excluding any sugars which during the manufacturing process have been dissolved by the addition of water as a first stage towards the production of

invert sugar and which are themselves incapable of being stored or marketed."

(b) The *Hauptzollamt Würzburg* considers first of all the process whereby solid sugar is manufactured from sugar beet. During that process, certain substances known as raw juice and thick juice are yielded which are also stored by many manufacturers. Reimbursement in respect of the storage costs thus incurred may also be granted under the conditions laid down by Article 8 (2) of Regulation No 1998/78, in accordance with the basic regulation, No 3330/74.

If, in accordance with the manufacturer's stated intention, the products undergo, after storage, further processing into solid sugar, the levy in respect of storage costs is collected only upon disposal of the solid sugar and the further processing is not regarded as disposal. If, however, the sugar manufacturer changes his mind, that should not result in exemption from the levy in respect of storage costs. In those circumstances, the levy payable in respect of the syrups marketed in their natural state is collected in accordance with the second indent, under (a), of the third subparagraph of Article 8 (1) of Regulation No 3330/74 and one of the operations referred to in the second subparagraph, under (d), (e), (g) or (h), of Article 12 (1) of Regulation No 1998/78 is regarded as disposal.

If, however, solid sugar is manufactured from the abovementioned syrups and is then once again dissolved in water, the product thus formed falls within the category of "syrups obtained by dissolving crystallized sugar", within the meaning of the fourth indent of the first subparagraph of Article 8 (1) of the basic regulation, which also qualify for reimbursement in the event of storage. That also applies where those syrups are intended to be used for the production of invert sugar.

Accordingly, the answer to the second question should be as follows:

"Syrups obtained by dissolving solid sugar are not syrups produced prior to the crystallizing stage, not even where they are intended to be used for the production of invert sugar."

(c) The *Commission* maintains that Article 8 (2) of Regulation No 1998/78 contains implementing provisions regarding the offsetting of storage costs in respect of syrups produced or obtained "prior to the crystallizing stage" within the meaning of the second indent, under (a), of the third subparagraph of Article 8 (1) and of the third indent of the first subparagraph of Article 8 (1) of the basic regulation, No 3330/74. Article 8 (2) makes it quite clear that the phrase in question covers only syrups falling within subheading 17.02 D II of the Common Customs Tariff which "are subsequently processed into solid sugar under customs control, or under an administrative control providing equivalent safeguards, and which are stored in special containers separated from the sugar manufacturing plant". The last-mentioned requirement is not satisfied in the present case.

Accordingly, the answer to the second question should be as follows:

"Sugars which during the manufacturing process have been dissolved by the addition of water as a first stage towards the production of invert sugar and which, contrary to the definition contained in Article 8 (2) of Commission Regulation No 1998/78 of 18 August 1978, are not subsequently processed into solid sugar under customs control, or under an administrative control providing equivalent safeguards, and are not stored in special containers separated from the sugar manufacturing plant, are not included in the category of 'syrups' produced prior to the crystallizing stage and marketed in their natural state, within the meaning of the second indent,

under (a), of the third subparagraph of Article 8 (1) of Regulation No 3330/74 of the Council of 19 December 1974."

4. Third question

In reply to the third question, Zuckerfabrik Franken suggests that part (a) should be answered in the negative and parts (b) and (c) in the affirmative. On the other hand, the Hauptzollamt Würzburg and the Commission take the view that part (a) should be answered in the affirmative and part (b) in the negative. The Hauptzollamt and the Commission suggest a qualified answer to part (c).

(a) According to *Zuckerfabrik Franken*, the phrase "sugar produced" implies that a finished product which is not merely temporary is involved. Thus it excludes transitional products which appear only temporarily during a continuing manufacturing process. The phrase "produced and marketed" implies that the sugar is in fact capable of being stored, disposed of and marketed. That is apparent from the very wording of the provisions in question and is confirmed by the meaning and purpose of the rules relating to storage costs. An obligation to pay the levy should arise only in respect of sugar which is actually borne by the market in sugar as a finished product.

Accordingly, the answer to *Question 3 (a)* should be as follows:

"The phrase 'sugar produced' within the meaning of the first indent, under (a), of the third subparagraph of Article 8 (1) of Regulation No 3330/74, as amended by Regulation No 1396/78, and the phrase 'white ... sugar ... produced and marketed' contained in Article 6 (4) of Regulation No 1358/77 are to be interpreted as excluding any sugar which appears only temporarily as a transitional product during a continuing manufacturing process."

Zuckerfabrik Franken has adopted a position on *Question 3 (b)* only as a secondary consideration. In its view, the rules for offsetting storage costs are by no means fictitious. As is clear from the recitals in the preamble to Regulation No 1396/78, those rules apply only to products which are actually capable of being stored and marketed. Regulation No 1358/77 confirms that reimbursement may be granted only in respect of sugar which is "stored in a warehouse". Furthermore, only a transitional product which can be quantified directly can give rise to an obligation to pay the levy, for otherwise there is no guarantee that the product can be quantified for the purpose of determining the levy.

Accordingly, the answer to Question 3 (b) should be that the important factor is whether the transitional product in question can be quantified directly, is capable of being stored without further treatment and can be marketed.

With regard to *Question 3 (c)*, Zuckerfabrik Franken takes the view that sugar in respect of which no reimbursement is granted for storage, cannot be subjected to a levy either. That follows from the system for offsetting storage costs in which reimbursement, as an illustration of the principle of solidarity, constitutes a consideration for the levies paid by the undertakings. Therefore only one and the same operation can give rise to a grant of reimbursement and to the collection of a levy.

Accordingly, the answer to Question 3 (c) should be as follows:

"The collection of the levy in respect of storage costs under the third subparagraph of Article 8 (1) of Regulation No 3330/74 presupposes that the same product in the same state is liable to give rise to storage costs."

(b) The *Hauptzollamt Würzburg* contends that the phrase "sugar produced" which, moreover, is also to be found in Title III ("Quota arrangements") of Regulation No 3330/74, is to be interpreted in accordance with objective criteria which are to be deduced from the provisions on classification for tariff purposes, and not in accordance with the manufacturer's subjective assessment. Thus, a given product such as white sugar may be a finished product or, as in the present case, a transitional product or even a basic product. Accordingly, for the purposes of Regulation No 3330/74, sugar must be regarded as "produced" as soon as for the first time during the manufacturing process a product comes into being which is sugar within the meaning of the Common Customs Tariff.

With regard to the phrase "white ... sugar ... produced and marketed" it is necessary, in the first place, to proceed on the basis that "produced", according to normal usage, has the same meaning as "manufactured". The rest of the phrase "white ... sugar marketed" establishes the time at which liability to the levy arises.

That time, however, does not affect the grant of reimbursement in respect of storage costs. If, as in the present case, white sugar is merely dissolved in water, a reimbursement is also granted to the manufacturer, upon application, in respect of the clarified syrup thus produced. Finally, if the clarified syrup is disposed of by being sold or by being subjected to further processing into invert sugar, no additonal levy is payable in respect thereof.

Accordingly, Question 3 (a) should be answered in the affirmative.

Question 3 (b) should be answered in the negative. The question of determining the quantity of white sugar subject to the levy is a purely administrative problem which does not affect the question whether white sugar is capable of being stored and marketed must be disregarded since it does not affect classification of the sugar under the Common Customs Tariff.

Question 3 (c) should also be answered in the negative. The objections raised by the court making the reference would be justified only if products which, even in the event of storage, would never be able to qualify for reimbursement either before or after collection of the levy, were subject thereto. However, that is not the case since, in the event of storage, both the clarified syrup, which is manufactured from white sugar subject to the levy, and the "Grundsorte-Kristallmasse" qualifiy for reimbursement. The circumstance that the "Grundsorte-Kristallmasse" is in fact incapable of being stored does not affect the fact that, legally, it may qualify for the reimbursement.

Accordingly, the answer to the third question should be as follows:

"Sugar is to be regarded as produced or manufactured, within the meaning of Regulation No 3330/74, as amended by Regulation No 1396/78, and within the meaning of Regulation No 1358/77, as soon as for the first time during the manufacturing process a product comes into being which is sugar within the meaning of the Common Customs Tariff. That also applies where the sugar immediately undergoes further processing into products other than those falling within heading No 17.01 of the Common Customs Tariff and therefore constitutes only a transitional product for the manufacturer. The suitability for storage and marketing of the sugar which is produced and which undergoes further processing and the method whereby the quantity of that sugar can be determined are equally unimportant. The collection of the levy in respect of storage costs, pursuant to the third

subparagraph of Article 8 (1) of Regulation No 3330/74, does not presuppose that reimbursement in respect of storage costs can also be claimed for a product in the same state which is subject to the levy."

(c) According to the *Commission*, it is clear from the relationship between the phrase "sugar produced", within the meaning of the third subparagraph of Article 8 (1) of Regulation No 3330/74, and the phrase "white ... sugar ... produced and marketed", within the meaning of Article 6 (4) of Regulation No 1358/77, that white sugar "produced" or "manufactured" is subject to a levy which, however, becomes payable only upon disposal of the white sugar produced or manufactured.

In relation to *Question 3 (a)*, that means that a levy is also to be paid in respect of a transitional product which appears only temporarily during a continuing manufacturing process, where the product concerned is white sugar, but that the levy becomes payable only upon disposal of the product or the finished product or where one of the cases of notional disposal under the second subparagraph of Article 12 (1) of Regulation No 1998/78 arises.

Accordingly, the answer to Question 3 (a) should be as follows:

"A transitional product which appears only temporarily during a continuing manufacturing process comes within the category of sugar produced within the meaning of the first indent, under (a), of the third subparagraph of Article 8 (1) of Regulation No 3330/74 of the Council of 19 December 1974, if it is white sugar within the meaning of Article 1 (2) of the aforesaid regulation. However, liability to the levy in respect of the finished product arises only upon disposal, in accordance with Article 6 (4) of Council Regulation No 1358/77 of 20 June 1977 in conjunction with Article 12 (1) of Commission Regulation No 1998/78 of 18 August 1978."

In that connection, it is unimportant, in the Commission's opinion, "whether such a transitional product can be quantified directly and is capable of being stored and marketed without further treatment" *(Question 3 (b)*.

It is unnecessary to determine the quantity of the transitional product since, for the calculation of the amount of the levy, it is sufficient to determine the quantity of the finished product. That is clear, in particular, from Articles 5 to 7, 13, 15 and 16 of Regulation No 1998/78.

Nor is suitability for storage an important factor since the presence of any crystallized water which may diminish such suitability does not affect the properties of the sugar as white sugar within the meaning of the definition contained in the first indent of Article 1 (2) of Regulation No 3330/74. That provision defines white sugar as

"... sugar falling within heading No 17.01 of the Common Customs Tariff and containing, in the dry state, 99.5% or more by weight of sucrose determined by the polarimetric method."

Nor, finally, is the transitional product's marketability an important factor since, for the obligation to pay the levy to come into existence and for liability to the levy to arise, it is sufficient if one of the derived products or the finished product is capable of disposal for the purposes of Article 12 (1) of Regulation No 1998/78. Accordingly, Question 3 (b) should be answered in the negative.

Question 3 (c), if slightly amended as regards its wording, should be answered in the affirmative, which is to say that liability to the levy can arise only in respect of products which, in different manufacturing stages and in different forms, qualified for reimbursement of storage costs until the time of their disposal or until the time when one of the cases of notional disposal under Article 12 (1) of Regulation No 1998/78 arose.

That is clear from the system for offsetting storage costs whose financial neutrality is assured precisely by the fact that storage costs are reimbursed only in respect of products on which a levy can be collected following their disposal and, conversely, by the fact that a levy is collected only in respect of products which, prior to their disposal, were capable of qualifying for reimbursement of storage costs.

Accordingly, the answer to Question 3 (c) should be as follows:

"The collection of a levy in respect of storage costs for sugar which is produced, in accordance with the first indent, under (a), of the third subparagraph of Article 8 (1) of Regulation No 3330/74, presupposes that the sugar in question has been disposed of, within the meaning of Council Regulation No 1358/77 of 20 June 1977 in conjunction with Article 12 (1) of Commission Regulation No 1998/78 of 18 August 1978, and that, prior to its disposal it qualified for reimbursement of storage costs under the first subparagraph of Article 8 (1) of Regulation No 3330/74."

III — Oral procedure

At the sitting on 9 February 1984 oral argument was presented by Zuckerfabrik Franken GmbH, represented by V. Schiller, Rechtsanwalt of Cologne, and by the Commission of the European Communities, represented by its Legal Adviser, J. Grunwald, acting as Agent.

Zuckerfabrik Franken pointed out at the sitting that it had no objection to the obligation to pay the levy as such but only to the time at which that obligation arises. In its view, the levy is incurred only upon disposal of the invert sugar syrup which is obtained by processing the clarified syrup.

The *Commission,* having amended its written observations, treats clarified syrup as a product falling within heading No 17.02 of the Common Customs Tariff (and not within heading No 17.01 thereof) which is now within the scope of Article 12 (1) (d) of Regulation No 1998/78. In its view, the levy is therefore incurred as soon as the transitional products are processed into clarified syrup and not merely upon disposal of the said product or of the finished product.

The last sentence of the Commission's proposed answer to Question 3 (a) must therefore be deleted.

The Advocate General delivered his opinion at the sitting on 29 March 1984.

Decision

1 By order of 13 May 1983 which was received at the Court Registry on 29 June 1983 and amended by order of 2 February 1984, received at the

Registry on 3 February 1984, the Finanzgericht München [Finance Court, Munich] referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty three questions on the validity of the second subparagraph, under (d), of Article 12 (1) of Commission Regulation No 1998/78 of 18 August 1978 laying down detailed rules for the offsetting of storage costs for sugar (Official Journal 1978, L 231, p. 5) and on the interpretation of the provisions of Regulation (EEC) No 3330/74 of the Council of 19 December 1974 on the common organization of the market in sugar (Official Journal 1974, L 359, p. 1), as amended by Council Regulation (EEC) No 1396/78 of 20 June 1978 (Official Journal 1978, L 170, p. 1) and of Council Regulation (EEC) No 1358/77 of 2 June 1977 laying down general rules for offsetting storage costs for sugar and repealing Regulation (EEC) No 750/68 (Official Journal 1977, L 156, p. 4).

2 Those questions were raised in a dispute between the Hauptzollamt [Principal Customs Office], Würzburg, and Zuckerfabrik Franken GmbH, Ochsenfurt. In 1978 and 1979 that undertaking produced, *inter alia*, invert sugar (subheading 17.02 D II of the Common Customs Tariff) the primary material for which is a crystalline sugar which is yielded at an interim stage during the manufacture of white sugar. The crystalline sugar, which is known as basic-category crystalline mass (heading No 17.01 of the Common Customs Tariff), is obtained by separating by centrifugal turbine action the mother syrup from the crystalline magma which has been produced by crystallization of the juice and is continuously dissolved, by the addition of water, into syrup during the same manufacturing process. The syrup, which is known as clarified syrup (subheading 17.02 D II of the Common Customs Tariff) is processed into invert sugar either immediately or after interim storage.

3 By decisions of 15 November and of 7 and 16 December 1979, the Hauptzollamt Würzburg claimed payment from Zuckerfabrik Franken GmbH, on the basis of the Community provisions on the offsetting of storage costs for sugar, of the levies in respect of sugar produced in 1978 and 1979. The basic-category crystalline mass was incorporated in the basis of assessment for the amounts fixed by the Hauptzollamt. In its action before the Finanzgericht, Zuckerfabrik Franken GmbH seeks respectively the annulment of the abovementioned decisions and their amendment inasmuch as they incorporate the basic-category crystalline mass in the basis of assessment.

The system for offsetting storage costs for sugar

4 The legal basis of the system for offsetting storage costs for sugar is contained in Article 8 of Regulation No 3330/74, as amended by Council Regulation No 1396/78, cited above. The first subparagraph of Article 8 (1) provides that the storage costs in respect of white sugar, raw sugar and syrups obtained prior to the crystallizing stage are to be reimbursed at a flat rate by the Member States.

5 In order to finance the reimbursement of storage costs, levies, which are calculated in such a way as to ensure that the total amount levied is equal to the total amount reimbursed, are imposed by the Member States on sugar manufacturers, importers and refiners. As far as sugar manufacturers are concerned, the third subparagraph, under (a), of Article 8 (1) provides that the Member States are, according to the circumstances, to impose the levy, as appropriate, by unit of weight of sugar produced or by unit of weight of syrups produced prior to the crystallizing stage and marketed in their natural state.

6 According to Article 8 (3) of the same regulation, the Council is to adopt the general rules for the implementation of that article and the Commission is to adopt the detailed rules for its implementation in accordance with the management committee procedure.

7 The general rules for offsetting storage costs for sugar are contained in Council Regulation No 1358/77 of 20 June 1977, cited above. Article 6 (4) of the regulation provides that "the Member State shall collect the levy from each sugar manufacturer in respect of the white and raw sugar and of the syrups, referred to under (a) of the third subparagraph of Article 8 (1) of Regulation (EEC) No 3330/74, produced and marketed within his maximum quota".

8 On the other hand, the detailed rules for the implementation of the system for offsetting storage costs are contained in Commission Regulation No 1998/78 of 18 August 1978, cited above. Article 8 (2) of that regulation provides that "syrups obtained prior to the crystallizing stage means those syrups which fall within subheading 17.02 D II of the Common Customs

Tariff and are subsequently processed into solid sugar under customs control, or under an administrative control providing equivalent safeguards, and which are stored in special containers separated from the sugar manufacturing plant".

9 The first subparagraph of Article 12 (1) of the same regulation provides that the levy is incurred in respect of the products referred to in the third subparagraph, under (a), of Article 8 (1) of Regulation No 3330/74 at the moment of disposal. According to the second subparagraph of Article 12 (1), for purposes of calculating the amount of the levy, in so far as it has not already been incurred, disposal is to mean *inter alia* "(d) processing by the manufacturer of the sugar and syrups into products other than those falling within heading No 17.01 of the Common Customs Tariff."

10 Taking the view that its decision depended on the answer to the questions concerning the validity and interpretation of the provisions of the Community regulations referred to earlier, the Finanzgericht München stayed the proceedings and referred to the Court the following questions for a preliminary ruling:

"1. Is the second subparagraph of Article 12 (1) of Regulation (EEC) No 1998/78 valid, having regard to the enabling power contained in the third sentence of Article 8 (3) of Regulation (EEC) No 3330/74 on which it is based and to the first subparagraph of Article 6 (4) of Regulation (EEC) No 1358/77, in so far so it provides, under (d), that disposal is to mean the processing of the sugar by the manufacturer into products other than those falling within heading No 17.01 of the Common Customs Tariff?

2. If the first question is answered in the affirmative:

How is the phrase 'syrups produced prior to the crystallizing stage and marketed in their natural state' within the meaning of the third subparagraph, under (a), of Article 8 (1) of Regulation (EEC) No 3330/74, to be interpreted with regard to Article 8 (2) of Regulation (EEC) No 1998/78?

Does it contain sugars which, during the manufacturing process, have been dissolved by the addition of water as a first stage towards the production of invert sugar?

3. If the second question is answered in the negative:

How are the phrases 'sugar produced' within the meaning of the first indent, under (a), of the third subparagraph of Article 8 (1) of Regu-

lation (EEC) No 3330/74 as amended by Article 1 of Regulation (EEC) No 1396/78 and 'white . . . sugar produced and marketed' contained in Article 6 (4) of Regulation (EEC) No 1358/77 to be interpreted?

(a) Do they include a transitional product which appears only temporarily during a continuing manufacturing process?

(b) If part (a) of the third question is answered in the affirmative, is it also an important factor whether such a transitional product can be quantified directly and is capable of being stored and marketed without further treatment?

(c) If part (b) of the third question is answered in the negative, is it a precondition of the charging of the levy in respect of storage costs pursuant to the third subparagraph of Article 8 (1) of Regulation (EEC) No 3330/74, that the storage costs must be capable of reimbursement in respect of the same product in the same state?"

First question

11 The first question seeks in substance to ascertain whether the second subparagraph of Article 12 (1) of Commission Regulation No 1998/78 of 18 August 1978 is valid in so far as it provides, under (d), that disposal is to mean the processing of the sugar and syrups by the manufacturer into products other than those falling within heading No 17.01 of the Common Customs Tariff.

12 The plaintiff in the main proceedings contends that the contested provision is not valid since it goes beyond the sphere of the superior legislation enacted by the Council. In its view, according to that legislation the levy in respect of storage costs applies only to sugar marketed and to syrups produced prior to the crystallizing stage and disposed of without further treatment. The concept of disposal implies that the product is transferred to a third party, but not that it undergoes further treatment during the manufacturing process.

13 It is appropriate to state that, according to Article 8 (3) of the basic regulation, No 3380/74, it is for the Council to adopt the general rules for the

implementation of that article, whilst the adoption of the detailed rules for its implementation is a matter for the Commission. That provision must be understood as meaning that, in the exercise of its powers, the Commission is authorized to adopt all the measures which are necessary or appropriate for the implementation of the basic legislation, provided that they are not contrary to such legislation or to the implementing legislation adopted by the Council.

14 In the present case the Commission has adhered to that division of powers. The third subparagraph of Article 8 (1) of Regulation No 3330/74 of the Council merely lists the persons liable to the levy, namely sugar manufacturers, importers and refiners and, in addition, it establishes the basic unit for calculating the amount of the levy, namely the weight of the products in question. As regards the implementing regulation adopted by the Council, No 1358/77, its purpose is to make it clear that the levy may not be collected from sugar manufacturers until after the sugar or syrups produced have been marketed. None of those regulations contains a precise definition of the concept of disposal as the operative factor which gives rise to the obligation to pay the levy.

15 In those circumstances the Commission was justified in defining the said concept in the contested provision of its legislation containing detailed rules for the implementation of the system for offsetting storage costs. Having regard to the aim of that system, which is to ensure that the levy is collected in respect of all the products covered by the basic legislation, the Commission cannot be reproached for including in the concept of actual disposal of the products in question certain operations which produce an equivalent effect in relation to the system for offsetting storage costs, in this case the processing of the sugar or syrups into products which do not fall within heading No 17.01 of the Common Customs Tariff and are not subject to the levy.

16 The answer to the first question must therefore be that consideration of the question raised has disclosed no factor of such a kind as to affect the validity of the second subparagraph of Article 12 (1) of Commission Regulation No 1998/78 of 18 August 1978 in so far as it provides, under (d), that disposal is to mean the processing by the manufacturer of sugar into products other than those falling within heading No 17.01 of the Common Customs Tariff.

Second question

17 The second question seeks in substance to ascertain whether the phrase "syrups produced prior to the crystallizing stage and marketed in their natural state", within the meaning of the third subparagraph, under (a), of Article 8 (1) of Regulation No 3330/74 of the Council of 19 December 1974 is to be interpreted as also including syrups which, during the manufacturing process, are produced from sugars which have been dissolved by the addition of water as a first stage towards the production of invert sugar.

18 It is clear from the very system for offsetting storage costs for sugar that the contested provision applies to the case of disposal in their material state of syrups which are capable of being processed into solid sugar. Since, in the event of such processing, the levy is collected only upon disposal of the finished product, the purpose of the provision in question is to ensure that, even in the absence of such further processing, the syrup remains subject to the levy.

19 However, that provision does not cover syrups which are manufactured by dissolving solid sugar in water, whether or not those syrups are intended for the manufacture of invert sugar, since, in those circumstances, the syrup is actually obtained after the crystallizing stage.

20 The answer to the second question must therefore be that the phrase "syrups produced prior to the crystallizing stage and marketed in their natural state" within the meaning of the third subparagraph, under (a), of Article 8 (1) of Regulation No 3330/74 of the Council of 19 December 1974 must be interpreted as not including syrups which, during the manufacturing process, are produced from sugars which have been dissolved by the addition of water as a first stage towards the production of invert sugar.

Third question

21 The third question seeks in substance to ascertain whether the phrases "sugar produced" within the meaning of the first indent, under (a), of the third

subparagraph of Article 8 (1) of Regulation No 3330/74 of the Council of 19 December 1974 and "white . . . sugar . . . produced and marketed" within the meaning of Article 6 (4) of Council Regulation No 1358/77 of 20 June 1977 are to be interpreted as also including a transitional product which appears only temporarily during a continuing manufacturing process, even if that product cannot be quantified directly, stored and marketed without further treatment, and whether or not the storage costs may be reimbursed in respect of that product in the same state.

22 In that regard, the plaintiff in the main proceedings considers that the very concept "sugar produced" covers only a finished product in solid form, and not transitional products which appear only temporarily during a continuing manufacturing process. The reason for this, in its view, is that such a product, which cannot be quantified, stored or marketed, is not actually borne by the market in sugar. In any event, it is clear from the principle of the financial neutrality of the system for offsetting storage costs that only sugar in respect of which storage costs are reimbursed may be subjected to the levy which represents the consideration for the reimbursement.

23 However, the Hauptzollamt and the Commission maintain that the sugar must be regarded as a product as soon as during the manufacturing process a product which is sugar within the meaning of the Common Customs Tariff comes into being, whether or not it is a finished product and can be stored and marketed. Nor is it important to determine whether such a product can be quantified, provided that the finished product can be quantified. Finally, the financial neutrality of the system for offsetting storage costs is assured in so far as the storage costs may be reimbursed in respect of the product subject to the levy at different manufacturing stages prior to its disposal.

24 It must be stated in the first place that the abovementioned provisions do not subject the collection of the levy from sugar manufacturers to any condition other than that the sugar in question, in this case white sugar, must have been produced and disposed of, in view of the fact that the concept of disposal also includes the operations listed in Article 12 (1) of Commission Regulation No 1998/78.

25 The additional criteria referred to by the court making the reference cannot be accepted either, regard being had to the spirit and the purpose of the system for offsetting storage costs. As has already been stated, that system is intended to ensure that the levy is collected in respect of all products which are sugar within the meaning of the tariff heading in question. Accordingly, it is unnecessary to ascertain whether or not a product which is sugar within the meaning of the Common Customs Tariff is a finished product or a transitional product and whether or not it can be stored and marketed. For the same reason, no requirement may be imposed that the product whose disposal gives rise to the obligation to pay the levy must be quantifiable without further treatment since the quantity may be calculated from a derived product.

26 It must be emphasized, moreover, that financial neutrality — the principle on which the system for offsetting storage costs is based — is achieved precisely by the fact that storage costs are reimbursed only in respect of products on which a levy may be collected following their disposal and, conversely, by the fact that a levy is collected only in respect of products which are capable of qualifying for the reimbursement of storage costs, without there being any need for such a reimbursement actually to be made in respect of the product in question. That principle is complied with where the products subject to the levy are capable of qualifying for reimbursement of storage costs at any manufacturing stage; such a stage may be different from that at which the levy is collected.

27 For those reasons the answer to the third question must be that the phrases "sugar produced" within the meaning of the first indent, under (a), of the third subparagraph of Article 8 (1) of Regulation No 3330/74 of the Council of 19 December 1974 and "white ... sugar ... produced and marketed" within the meaning of Article 6 (4) of Council Regulation No 1358/77 of 20 June 1977 must be interpreted as also including a transitional product which appears only temporarily during a continuing manufacturing process, even if that product cannot be quantified, stored or marketed without further treatment, and whether or not that product, in the same state, may qualify for reimbursement of storage costs.

Costs

28 The costs incurred by the Commission of the European Communities which have submitted observations to the Court are not recoverable. As these

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 on costs is a matter for that court.

On those grounds,

THE COURT (Third Chamber),

in answer to the questions submitted to it by the Finanzgericht München by orders of 13 May 1983 and 2 February 1984, hereby rules:

1. **Consideration of the question raised has disclosed no factor of such a kind as to affect the validity of the second subparagraph of Article 12 (1) of Commission Regulation No 1998/78 of 18 August 1978 in so far as it provides, under (d), that disposal is to mean the processing, by the manufacturer, of sugar into products other than those falling within heading No 17.01 of the Common Customs Tariff;**

2. **The phrase "syrups produced prior to the crystallizing stage and marketed in their natural state" within the meaning of the third subparagraph, under (a), of Article 8 (1) of Regulation No 3330/74 of the Council of 19 December 1974 must be interpreted as not including syrups which, during the manufacturing process, are produced from sugars which have been dissolved by the addition of water as a first stage towards the production of invert sugar;**

3. **The phrases "sugar produced" within the meaning of the first indent, under (a), of the third subparagraph of Article 8 (1) of Regulation No 3330/74 of the Council of 19 December 1974 and "white ... sugar ... produced and marketed" within the meaning of Article 6 (4) of Council Regulation No 1358/77 of 20 June 1977 must be interpreted as also including a transitional product which appears only temporarily during a continuing manufacturing process, even if that**

produce cannot be quantified, stored or marketed without further treatment, and whether or not that product, in the same state, may qualify for reimbursement of storage costs.

Galmot Everling Kakouris

Delivered in open court in Luxembourg on 15 May 1984.

For the Registrar
H. A. Rühl
Principal Administrator

Y. Galmot
President of the Third Chamber

OPINION OF MR ADVOCATE GENERAL MANCINI DELIVERED ON 29 MARCH 1984 [1]

Mr President,
Members of the Court,

1. This reference for a preliminary ruling concerns the system for offsetting storage costs for sugar. The Court will have to decide whether the manufacturers of certain substances which appear temporarily during the sugar manufacturing process are required to pay the levy in respect of storage costs.

Zuckerfabrik Franken GmbH, whose registered office is in Ochsenfurt (Federal Republic of Germany), is a manufacturer of invert sugar. That product, which is generally used for non-alcoholic beverages to be sold in bottles, is produced from crystalline sugar, which is also known as "basic-category crystalline mass" and is obtained by separating the mother syrup from the crystalline magma. The basic-category crystalline mass is continuously dissolved, by the addition of water, into syrup and the (clarified) syrup is processed into invert sugar either immediately or after a certain period. In the latter case, it is stored in an appropriate container.

On 16 December 1979 the Hauptzollamt Würzburg claimed payment of approximately DM 1 200 000 from Zuckerfabrik Franken GmbH by way of levy for the storage of clarified syrup for the period from September to December 1978. The levy was calculated on the basis of production which in those four months

1 — Translated from the Italian.