JUDGMENT OF THE COURT (First Chamber)

26 October 2006 *

In Case C-68/05 P,

APPEAL under Article 56 of the Statute of the Court of Justice, brought on 11 February 2005,

Koninklijke Coöperatie Cosun UA, established in Breda (Netherlands), represented by M.M. Slotboom and N.J. Helder, advocaten,

appellant,

the other party to the proceedings being:

Commission of the European Communities, represented by X. Lewis, acting as Agent, and by F. Tuytschaever, advocaat, with an address for service in Luxembourg,

defendant at first instance,

* Language of the case: Dutch.

THE COURT (First Chamber),

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

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

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

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

gives the following

Judgment

1 By its appeal, Koninklijke Coöperatie Cosun UA ('Cosun') asks the Court to set aside the judgment of the Court of First Instance of the European Communities of 7 December 2004 in Case T-240/02 *Koninklijke Coöperatie Cosun* v *Commission* [2004] ECR II-4237 ('the judgment under appeal'), by which that court dismissed Cosun's action seeking annulment of Decision REM 19/01 — also referred to under the number C(2002) 1580 final — of the Commission of the European Communities of 2 May 2002 ('the contested decision').

Legal context

The common organisation of the markets in the sugar sector

2 Council Regulation (EEC) No 1785/81 on the common organisation of the markets in the sugar sector (OJ 1981 L 177, p. 4), as amended by Council Regulation (EEC) No 305/91 of 4 February 1991 (OJ 1991 L 37, p. 1), ('the basic regulation') seeks, in the context of the common organisation of the markets in the sugar sector ('the COM in sugar'), to maintain the necessary guarantees in respect of employment and standards of living for producers of the basic products and sugar manufacturers in the European Community and to ensure the continuous supply of sugar to all consumers at reasonable prices, by stabilising the sugar market.

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

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

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

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

...

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

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

6 Adopted on the basis of Article 26(3) of the basic regulation, Commission Regulation (EEC) No 2670/81 of 14 September 1981 laying down detailed implementing rules in respect of sugar production in excess of the quota (OJ 1981 L 262, p. 14), as amended by Commission Regulation (EEC) No 3559/91 of 6 December 1991 (OJ 1991 L 336, p. 26), ('Regulation No 2670/81') specifies the circumstances in which exports of C sugar are to be considered to have taken place.

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

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

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

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

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

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

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

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

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

9 Article 3 of Regulation No 2670/81 provides:

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

(a) for C sugar, per 100 kilograms:

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

— 1 [euro];

...

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

The customs legislation

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

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

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

11 Article 14 of Regulation No 1430/79 states that the provisions of Article 13 are to apply mutatis mutandis to the repayment or remission of export duties.

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

13 Article 1(2)(b) of that regulation states that 'export duties' means 'customs duties and charges having equivalent effect, as well as agricultural levies and other import charges laid down within the framework of the common agricultural policy or in that of specific arrangements applicable, pursuant to Article 235 of the Treaty, to certain goods resulting from the processing of agricultural products'.

14 Article 4 of Commission Regulation (EEC) No 3799/86 of 12 December 1986 laying down provisions for the implementation of Articles 4a, 6a, 11a and 13 of Regulation No 1430/79 (OJ 1986 L 352, p. 19) lists a number of special situations resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned, within the meaning of Article 13(1) of Regulation No 1430/79. Other facts may also be regarded as constituting such special situations following consideration case by case as part of a procedure which requires the intervention of the Commission.

Background to the dispute

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

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

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

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

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

20 As regards, first, the appeal before the College van Beroep voor het bedrijfsleven, that court, by decision of 9 June 2004, made a reference for a preliminary ruling concerning, inter alia, the validity of the basic regulation and of Regulation No 2670/81. By judgment of today's date in Case C-248/04 *Koninklijke Coöperatie Cosun* [2006] ECR I-10211, the Court has ruled that examination of the question referred has disclosed nothing capable of affecting the validity of those regulations.

21 As regards, second, the application for remission of the charge imposed, this was forwarded by the Netherlands authorities to the Commission, which was competent to examine it, together with a positive opinion. Since, by the contested decision, the Commission declared that application inadmissible, Cosun brought an action for annulment before the Court of First Instance.

The judgment under appeal

22 By the judgment under appeal the Court of First Instance dismissed the appellant's action.

23 By its first plea in law, the appellant claimed that the charge imposed on it pursuant to Article 3 of Regulation No 2670/81 constitutes an import or export duty within the meaning of Article 1(2)(a) and (b) and Article 13 of Regulation No 1430/79. Accordingly, its application for remission based on that latter article should have been found to be admissible.

24 In paragraphs 36 to 38 of the judgment under appeal, the Court of First Instance found that the charge imposed does not, 'formally speaking', come within any of the three categories of import or export duty listed in Article 1(2)(a) and (b) of Regulation No 1430/79, since it does not constitute a customs duty or a charge having equivalent effect to a customs duty, and is not 'strictly' an agricultural charge on imports or exports.

25 In paragraphs 40 to 46 of the judgment under appeal, the Court of First Instance rejected the appellant's arguments that such a charge must be regarded as an import or export duty since it pursues the same objectives as a customs duty, is calculated on the basis of import levies applicable to sugar from third countries and serves to place non-quota sugar that is not exported on a similar footing to sugar imported from non-member countries.

26 It found, essentially, that a charge due under Article 3 of Regulation No 2670/81 does not pursue strictly the same objectives as the import levies or export refunds provided for in the context of the COM in sugar and that the taking into consideration of import levies on sugar from third countries when calculating such a charge provides merely a basis of calculation, and in no way seeks to place sugar imported from third countries and C sugar disposed of on the internal market on an equal footing.

27 The Court of First Instance held, in paragraph 47 of the judgment under appeal, that the charge imposed on the appellant does not constitute an import or export duty for the purposes of Article 13 of Regulation No 1430/79 and that the Commission did not therefore contravene that provision by declaring the application for remission inadmissible.

28 By its second plea, the appellant claimed, primarily, that, even if the charge imposed on it does not constitute an import or export duty within the meaning of Regulation No 1430/79, the Commission should nevertheless have considered the application

for remission having regard to Article 13 of that regulation, which constitutes a general equity clause, and that, by simply rejecting the application as inadmissible, the Commission contravened the principles of equity and equality. In the alternative, the appellant claimed that, if Article 13 of Regulation No 1430/79 is not applicable, the Commission should have considered the application for remission outside the framework of the regulation, and that, by simply declaring the application inadmissible, it had contravened the principles of equity, equality and legal certainty.

29 In paragraphs 57 and 58 of the judgment under appeal, the Court of First Instance rejected the argument based on equity. After stating that equity cannot be regarded as allowing any derogation from the application of provisions of Community law, save as provided for by the legislation or where the legislation is itself declared invalid, and pointing out that a charge due under Article 3 of Regulation No 2670/81 does not come within the scope of Article 13 of Regulation No 1430/79, it pointed out that the legislation relating to the COM in sugar provides that such a charge is not to be imposed in circumstances recognised by the national authorities as constituting a case of force majeure, and concluded that equity cannot justify extending the scope for derogation from the requirement to impose the charge in question in cases where force majeure is not involved.

30 In paragraphs 59 and 61 of that judgment, the Court of First Instance rejected the argument alleging infringement of the principle of equality. It considered, essentially, that a producer of C sugar and an economic operator which is subject to import or export duties are not, in any event, in similar situations.

31 Finally, in paragraphs 62 and 63 of that judgment, the Court of First Instance rejected the argument alleging infringement of the principle of legal certainty, considering, essentially, that that principle is complied with in the present case in that the obligations of the economic operator required to pay the charge provided for in Article 3 of Regulation No 2670/81 arise from a clearly defined legal situation, which allows that economic operator to be aware of the obligations applying to its activities.

The appeal

32 In its appeal, the appellant advances four pleas in law and asks the Court of Justice to:

— set aside the judgment under appeal;

— primarily, annul the contested decision or, in the alternative, refer the case back to the Court of First Instance, and

— order the Commission to pay the costs incurred both at first instance and on appeal.

33 The Commission contends that the Court should:

— primarily, declare the second and fourth pleas in law inadmissible and, as for the remainder, dismiss the appeal as unfounded;

— in the alternative, dismiss the appeal as unfounded in its entirety;

— order the appellant to pay the costs.

The first plea in law

Arguments of the parties

34 By its first plea in law, the appellant submits that the Court of First Instance erred in law in considering, in paragraphs 36 to 38 of the judgment under appeal, that a charge due under Article 3 of Regulation No 2670/81 is not, 'formally speaking', an agricultural charge on imports or exports for the purposes of Article 1(2)(a) and (b) of Regulation No 1430/79.

35 The appellant takes the statement, in paragraph 38 of the judgment under appeal, that the charge imposed on it 'is not strictly an agricultural charge "on imports or exports"' as proof that the Court adopted a strict interpretation of 'agricultural charge'. In its view, a less strict interpretation was possible and would have been desirable given that that charge was imposed on it because consignments of C sugar were not exported.

36 The appellant adds that the Court of First Instance failed to comply with its duty to give reasons by not stating why a less strict interpretation was not appropriate.

37 The Commission contends that the Court of First Instance rightly found, and stated its reasons for so finding, that a charge due under Article 3 of Regulation No 2670/81 cannot, formally speaking, be regarded as an agricultural charge on imports or exports for the purposes of Article 1(2)(a) and (b) of Regulation No 1430/79. It disputes that the Court of First Instance adopted a strict interpretation of the term 'agricultural charge on imports or exports'.

Findings of the Court

38 First, the appellant does not dispute the Court of First Instance's analysis that a charge due under Article 3 of Regulation No 2670/81 does not constitute a customs duty on imports or exports or a charge having equivalent effect.

39 Second, the Court of First Instance rightly pointed out, in paragraph 38 of the judgment under appeal, that agricultural levies on imports or exports and other import or export charges referred to in Article 1(2)(a) and (b) of Regulation No 1430/79 are levied when agricultural products or certain goods resulting from the processing of agricultural products cross the external frontiers of the Community.

40 The Court was not thereby adopting a strict interpretation of the term 'agricultural charges on imports or exports', but rather correctly identifying the chargeable event.

41 A charge due under Article 3 of Regulation No 2670/81 is not levied by reason of the crossing of the external frontiers of the Community of a quantity of C sugar, but, on the contrary, because that quantity has not been exported outside the Community or because the conditions and time-limits laid down by Regulation No 2670/81 were not complied with when it was exported. As the Court of First Instance rightly found in paragraph 37 of the judgment under appeal, such a charge falls to be levied where there is an absence of proof, on the date determined for that purpose, of the export of a quantity of C sugar within the prescribed period.

42 It also appears that, notwithstanding the use of the words 'formally speaking' in paragraph 36 of the judgment under appeal, the Court of First Instance did not confine itself to a formal assessment, but analysed, first, the nature of agricultural charges and, second, the nature of the charge due under Article 3 of Regulation No 2670/81.

43 Therefore, the Court of First Instance did not err in law or fail to comply with its duty to give reasons by finding, in that paragraph of the judgment under appeal, that the charge imposed on the appellant does not come within any of the three categories listed in Article 1(2)(a) and (b) of Regulation No 1430/79.

44 The first plea in law must be rejected as unfounded.

The second plea in law

Arguments of the parties

45 By its second plea in law, the appellant submits that, even supposing that a charge due under Article 3 of Regulation No 2670/81 does not, 'formally speaking', fall within the definition of 'import or export duties' for the purposes of Article 1(2)(a) and (b) of Regulation No 1430/79, the Court of First Instance erred in law in rejecting, in paragraphs 40 to 46 of the judgment under appeal, its arguments, summarised in paragraph 25 of this judgment, according to which such a charge must nevertheless be treated as an import duty within the meaning of Article 13 of that regulation.

46 It claims, first, that the Court of First Instance wrongly failed to find that a charge due under Article 3 of Regulation No 2670/81 aimed, in accordance with the 10th recital in the preamble to the basic regulation, at restoring balance to the market which has been disturbed by the non-exportation of C sugar, pursues the same objectives as customs duties of protecting the internal market, stabilising markets and guaranteeing supplies, and that, consequently, they must be treated in the same way.

47 Second, in its view it follows from the third recital in the preamble to Commission Regulation (EEC) No 2645/70 of 28 December 1970 on the provisions applicable to sugar produced in excess of the maximum quota (OJ, English Special Edition 1970 (III), p. 957), and from the third recital in the preamble to Regulation No 2670/81, which replaced it, that the Community legislature regarded it as 'essential' to place C sugar which has not been exported 'on a similar footing' to sugar imported from third countries, and for this purpose to fix the charge due for C sugar disposed of on the internal market at the highest rate of the import levy for sugar during a period comprising the marketing year for sugar during which the sugar in question was produced and the six months following that marketing year, increased by a flat-rate amount fixed on the basis of the cost of disposing of sugar imported from non-member countries

48 The appellant concludes from the above that, contrary to the finding of the Court of First Instance in paragraphs 45 and 46 of the judgment under appeal, the taking into account of the import levy for sugar from non-member countries not only serves to fix the charge due under Article 3 of Regulation No 2670/81, but also reflects the intention of the Community legislature to place producers of C sugar on a similar footing to that of importers of sugar from non-member countries. In order for them to be placed on a similar footing, the Community customs legislation, in particular Article 13 of Regulation No 1430/79, should apply to the fixing of that charge.

49 The Commission contends, primarily, that the second plea in law is inadmissible on the basis that it merely repeats the arguments already raised before the Court of First Instance and which that court rejected.

50 In the alternative, the Commission requests the Court of Justice to dismiss that plea as unfounded.

51 First, it notes that the Court of First Instance pointed, in paragraphs 44 and 45 of the judgment under appeal, to the specific purpose of a charge due under Article 3 of Regulation No 2670/81. Such a charge is primarily 'deterrent in nature and is intended to ensure that the prohibition on disposing of C sugar on the internal market is complied with'. The Court of First Instance thus rightly found that that purpose is different from the objectives pursued by import levies and export refunds in the context of the COM in sugar, which the Court of First Instance defined in paragraphs 42 and 43 of that judgment.

52 Second, the Court of First Instance properly found, in paragraphs 44 to 46 of the judgment under appeal, that the method of calculation of the charge due under Article 3 of Regulation No 2670/81 does not make it a customs duty.

53 In support of its contrary view, the Commission contends, the appellant relies merely on a recital in the preamble devoid of binding force, the wording of which, moreover, it misconstrues. The reference to the import levy on sugar from non-member countries constitutes only the basis of calculation of that charge.

Findings of the Court

54 Under Article 225 EC, the first paragraph of Article 58 of the Statute of the Court of Justice and Article 112(1), first subparagraph, (c) of the Rules of Procedure of the Court of Justice, an appeal must indicate precisely the contested elements of the judgment which the appellant seeks to have set aside and also the legal arguments

specifically advanced in support of the appeal. That requirement is not satisfied by an appeal which, without even including an argument specifically identifying the error of law allegedly vitiating the judgment under appeal, merely repeats or reproduces verbatim the pleas in law and arguments previously submitted to the Court of First Instance (see, inter alia, Case C-352/98 P *Bergaderm and Goupil* v *Commission* [2000] ECR I-5291, paragraphs 34 and 35, and Case C-208/03 P *Le Pen* v *Parliament* [2005] ECR I-6051, paragraph 39).

55 However, provided that the appellant challenges the interpretation or application of Community law by the Court of First Instance, the points of law examined at first instance may be discussed again in the course of an appeal. Indeed, if an appellant could not thus base his appeal on pleas in law and arguments already relied on before the Court of First Instance, an appeal would be deprived of part of its purpose (see, inter alia, Case C-41/00 P *Interporc* v *Commission* [2003] ECR I-2125, paragraph 17, and *Le Pen* v *Parliament*, paragraph 40).

56 The second plea in law in the appeal seeks precisely to call into question the interpretation of Regulation No 1430/79 adopted by the Court of First Instance in dismissing the first plea in law at first instance. This plea must therefore be held admissible.

57 The appellant submits, essentially, that, since the Community legislature wished to place producers of C sugar on an equal footing with importers of sugar from third countries, that means that the former should benefit from the same arrangements as the latter, including the possibility of remission or repayment on grounds of equity pursuant to Article 13 of Regulation No 1430/79.

58 In that regard, it must, first, be pointed out that the COM in sugar is based essentially on a price system (providing, in particular, for the fixing of the target and

intervention price), a trading system with third countries (including, in particular, the charging of a levy on imports from those countries), and a quota system (consisting of the allocation of production quotas and the setting of detailed rules for the disposal of sugar produced in excess of the quota).

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

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

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

62 As the Court rightly pointed out in paragraphs 43 and 44 of the judgment under appeal, according to the 15th recital in the preamble to the basic regulation, production quotas constitute a means of guaranteeing producers Community prices and an outlet for their production. In addition, regarding, more specifically, the charge due under Article 3 of Regulation No 2670/81, that provision is primarily deterrent in nature and is intended to ensure that the prohibition on the disposing of C sugar — produced in excess of the quotas — on the internal market is complied with.

63 Therefore, the Court of First Instance rightly held, in paragraphs 41 to 44 of the judgment under appeal, that the levies on imports of sugar from third countries and the charge due under Article 3 of Regulation No 2670/81 for C sugar disposed of on the internal market do not pursue the same objectives.

64 Second, it does not follow from either the third recital in the preamble to Regulation No 2645/70 or the third recital in the preamble to Regulation No 2670/81 — which are essentially in the same terms — that the Community legislature intended that importers of sugar from third countries and producers of C sugar disposed of on the internal market be placed on an equal footing.

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

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

67 Therefore, it does not follow from either the objective pursued by the charge due under Article 3 of Regulation No 2670/81 or from the method of calculation and the detailed rules for levying that charge, as laid down in the third recital in the preamble to Regulation No 2645/70 and Regulation No 2670/81 and Article 3 of the latter regulation, that the Community legislature intended to treat producers of C sugar disposed of on the internal market in the same way as importers of sugar.

68 In those circumstances, the Court of First Instance did not err in law in holding that the appellant was not entitled, on the basis of Article 13 of Regulation No 1430/79, to a remission of the charge imposed on it. The second plea in law must therefore be rejected.

The third plea in law

Arguments of the parties

69 By the first part of the third plea in law, the appellant alleges that, in its examination of the second plea at first instance, the Court of First Instance went beyond the bounds of the dispute as defined by the appellant.

70 It explains that, by that plea at first instance, it was solely claiming that the Commission was in breach of the principles of equality and equity in declaring, in the contested decision, that the application for remission was inadmissible under Regulation No 1430/79. It did not, however, request the Court of First Instance to examine the validity of Regulation No 2670/81.

71 In paragraphs 58 to 62 of the judgment under appeal, the Court by implication reviewed the validity of that regulation in the light of the general principles of law. In so doing it went beyond the bounds of the dispute as defined by the appellant's pleadings, and was thus in breach of the fundamental procedural principle that it is the application which limits the scope of the dispute.

72 By the second part of the third plea in law, the appellant alleges that the Court of First Instance refused to examine the third plea in law at first instance in which it maintained that, were Article 13 of Regulation No 1430/79 not applicable, the Commission would then be required to examine the application for remission outside the framework of that regulation in accordance with the principles of equity, equality and legal certainty.

73 As regards the first part of the third plea in law, the Commission submits that it is not apparent at all from paragraphs 58 to 62 of the judgment under appeal that the Court of First Instance examined the validity of Regulation No 2670/81.

74 In relation to the second part of that plea in law, the Commission points out that the complaints referred to by the appellant as its 'second' and 'third' pleas at first instance were examined together by the Court of First Instance in paragraphs 57 to 62 of the judgment under appeal in the context of the second plea at first instance.

Findings of the Court

75 The third plea in law is based on an incorrect reading of the judgment under appeal.

76 As regards the second part of that plea in law, it need merely be pointed out that the complaints which the appellant referred to as its second and third pleas at first instance were regarded by the Court as two parts of the same plea — which it described as the second plea at first instance — the first being the main plea, and the second an alternative plea. The Court examined both those parts together in paragraphs 56 to 63 of the judgment under appeal.

77 Therefore, the Court of First Instance did respond to the complaints which the appellant describes as its third plea at first instance.

78 As regards the first part of the third plea in law in the appeal, it should be pointed out that, by the second, alternative, part of the second plea at first instance, summarised in paragraph 53 of the judgment under appeal, the appellant submitted that, should Article 13 of Regulation No 1430/79 be inapplicable, the Commission would be required, in accordance with the principles of equity, equality and legal certainty, to examine the application for remission outside the framework of that regulation. In that part of its plea, the appellant submitted, in particular, that Article 3 of Regulation No 2670/81 had to be interpreted and applied in compliance with the general principles of law.

79 In order to respond to that argument, the Court of First Instance, having found that, except in the case of force majeure, Regulation No 2670/81 does not provide for the possibility of remission or repayment of a charge laid down in Article 3 thereof, rightly considered whether the absence of such a possibility contravenes the principles of equality and legal certainty and a supposed principle of equity, as submitted by the appellant.

80 In so doing it responded precisely to the appellant's arguments without going beyond the bounds of the dispute brought before it.

81 The third plea in law must accordingly be rejected as unfounded.

The fourth plea in law

Arguments of the parties

82 By its fourth plea in law, the appellant submits, in the even further alternative, should the other pleas in law be dismissed, that the Court of First Instance erred in law by rejecting its plea at first instance based on the principles of equity, equality and legal certainty.

83 First, the Court of First Instance's statement, in paragraph 60 of the judgment under appeal, that a producer of C sugar and an economic operator subject to import or export duties are not in similar situations is incorrect.

84 It follows from the third recital in the preamble to Regulation No 2670/81, Article 26 of the basic regulation and Article 3 of Regulation No 2670/81, that C sugar in respect of which proof of export has not been furnished within the time-limits obtains the status of a product imported from a third country, on the one hand. On the other, both the import duties on goods from those countries and the charge due under Article 3 of Regulation No 2670/81 constitute own resources of the Community arising from imports from those countries.

85 Second, the appellant's situation is largely comparable to that of De Haan Beheer BV in the case that gave rise to the judgment in Case C-61/98 *De Haan* [1999] ECR I-5003, in which the Court held that an undertaking in the situation of De Haan Beheer BV could rely on Article 13 of Regulation No 1430/79 in order to obtain a remission of customs duties.

86 If the Court of First Instance had examined, as it should have, whether the difference in the treatment afforded to an undertaking such as De Haan Beheer BV on the one hand, and to the appellant on the other is inequitable, discriminatory and contrary to the principle of legal certainty, it would have found that that is indeed the case.

87 Third, the Court of First Instance wrongly ignored the difference in treatment between the appellant and other producers of C sugar. The latter may, pursuant to Articles 26 and 27 of the basic regulation, choose either to export C sugar or to carry the whole or part of it forward to the following marketing year. However, owing to the silence of the Netherlands authorities, the appellant was no longer in a position to make such a choice when it was informed of the fraud perpetrated.

88 In relation to that latter argument, the appellant submits that it had already alleged contravention of the principle of equality before the Court of First Instance. That argument does not therefore constitute a new plea which is inadmissible, but is a new argument validly relied upon in the context of a plea which has already been raised.

89 As its principal argument, the Commission contends that the fourth plea in law is inadmissible.

90 As regards the argument alleging that there was a difference in treatment between the appellant and the other producers of C sugar, this is a new complaint which the Court of First Instance was not able to examine and is therefore inadmissible pursuant to Article 118 in conjunction with Article 42(2) of the Rules of Procedure of the Court of Justice.

91 For the rest, the fourth plea in law merely reproduces the same arguments as those put forward at first instance and does not therefore satisfy the requirement to give reasons which arises from the first paragraph of Article 58 of the Statute of the Court of Justice and Article 112(1), first subparagraph, (c) of the Rules of Procedure of the Court.

92 In the alternative, the Commission contends that that plea in law should be rejected as unfounded.

93 The Court of First Instance rightly found, in paragraphs 44 to 46 and paragraphs 60 and 61 of the judgment under appeal respectively, that, first, non-exported C sugar and sugar imported from third countries, and, second, a producer of C sugar and an economic operator subject to import or export duties are not comparable from the point of view of their treatment under Community law. That is why it did not consider the appellant's argument based on *De Haan* any further.

94 The arguments raised by the appellant do not show that the Court of First Instance infringed Community law in finding that the principles of equality and legal certainty and a supposed principle of equity do not preclude the Commission from declaring the application for remission of duty inadmissible.

Findings of the Court

— Admissibility

95 In so far as it alleges that the Court of First Instance contravened the principle of equality by ignoring the difference in treatment between the appellant and other producers of C sugar, the fourth plea in law must be declared inadmissible.

96 According to settled case-law, to allow a party to put forward for the first time before the Court of Justice a plea in law which it has not raised before the Court of First Instance would be to allow it to bring before the Court, whose jurisdiction in appeals is limited, a case of wider ambit than that which came before the Court of First Instance. In an appeal the Court's jurisdiction is confined to review of the findings of law on the pleas argued before the Court of First Instance (see, inter alia, Joined Cases C-186/02 P and C-188/02 P *Romondín and Others* v *Commission* [2004] ECR I-10653, paragraph 60).

97 Although the appellant submitted at first instance that the contested decision infringes the principle of equality, it was challenging only the difference in treatment which it suffered in relation to importers of sugar from third countries, which it claimed were placed in the same situation as itself.

98 Therefore, it was not necessary for the Court of First Instance to examine whether the impossibility of granting a remission or repayment of the charge imposed on the appellant constituted discrimination in relation to other producers of C sugar.

99 For the rest, the fourth plea in law, which essentially seeks to call into question the interpretation of the principle of equality adopted by the Court of First Instance in dismissing the second plea at first instance, must be declared admissible for the reasons given in paragraphs 54 and 55 of this judgment.

— The merits

100 First, the Court of First Instance did not err in law in finding, in paragraph 60 of the judgment under appeal, that a producer of C sugar and an economic operator subject to import or export duties are not in similar situations.

101 The appellant's argument based on the third recital in the preamble to Regulation No 2670/81 and Article 3 thereof has already been rejected in the context of the examination of the second plea in law. As regards Article 26 of the basic regulation, it is not possible to discern from its wording any intention on the part of the Community legislature to grant C sugar disposed of on the internal market the status of a product imported from a third country and to treat a producer of C sugar in the same way as an importer of sugar, since that article merely states that C sugar may not be disposed of on the internal market.

102 As regards the argument alleging that both import duties and the charge due under Article 3 of Regulation No 2670/81 form part of the Community's own resources, that argument does not go to show that importers of sugar from third countries and producers of C sugar are in similar situations. The Community's own resources are made up of receipts of a very diverse nature which come under systems which are equally diverse (see, for example, value added tax receipts).

103 Second, since the Court of First Instance found, in any event, that a producer of C sugar — such as the appellant — and an economic operator subject to import or export duties — such as De Haan Beheer BV in *De Haan* — are not in similar situations, its rejection of the appellant's argument based on that judgment met the requisite legal standard.

104 The fourth plea in law must therefore be rejected as being partially inadmissible and partially unfounded.

105 Since all the appellant's pleas in law have failed, the appeal must be dismissed.

Costs

106 Under Article 69(2) of the Rules of Procedure, applicable in appeal proceedings by virtue of Article 118 thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs and the appellant has been unsuccessful, the latter must be ordered to pay the costs.

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

1. **Dismisses the appeal;**

2. **Orders Koninklijke Coöperatie Cosun UA to pay the costs.**

[Signatures]