OPINION OF MR ADVOCATE GENERAL CAPOTORTI DELIVERED ON 26 OCTOBER 1978 [1]

Mr President,
Members of the Court,

1. The present case concerns the validity of a regulation of the Commission enacting one of the implementing provisions concerning the levy on sugar and fixing in that connexion a particular method for determining the sucrose content of certain products.

It should first of all be pointed out that, according to the provisions of Article 14 (5) of Regulation No 1009/67/EEC of the Council of 18 December 1967 on the common organization of the market in sugar (which is repeated almost word for word in Article 15 (5) of Regulation (EEC) No 3330/74 of the Council of 19 September 1974) the levy on products falling within subheadings 17.02 C to F and 17.05 C of the Common Customs Tariff shall be calculated, "where appropriate", at a standard rate on the basis of the sucrose content (including other sugars expressed as sucrose) of the product concerned and the levy on white sugar. Accordingly the Commission, by Regulation (EEC) No 837/68 of 28 June 1968, laid down in Article 7 (1) that the levy on 100 kilograms of one of the products listed above is to be obtained by multiplying the sucrose content, including other sugars expressed as sucrose, by the basic amount of the levy. Pursuant to the first subparagraph of paragraph (2) the sucrose content is to be determined according to the Lane and Eynon method of analysis; the actual sugar content determined according to that method is to be converted into sucrose by multiplying by the coefficient 0.95.

That provision is, however, subject to a derogation applicable to products containing less than 85% sucrose and invert sugar expressed as sucrose. The second subparagraph of the said paragraph, as appears from an amendment made by Regulation (EEC) No 878/69 of the Commission of 12 May 1969, provides that, with regard to such products, the sucrose content, including other sugars expressed as sucrose, is to be determined by ascertaining the dry matter content, which is to be determined according to the specific gravity of the solution diluted in a proportion of 1 to 1 by weight and, for solid products, by drying. The sucrose content is to be calculated by multiplying the dry matter content by the coefficient 1.

The difference between the coefficients prescribed in the first and second subparagraphs of Article 7 (2) seems justified by the fact that, if the criteria established in the first subparagraph are applied, a total sugar content is obtained which exceeds the sucrose content by some 5%. The coefficient 0.95 accordingly determines the actual sugar content of the product which is analysed. On the other hand, there is no need for a reduction coefficient for the products referred to in the second subparagraph.

2. The fact nevertheless remains that the method prescribed in that last provision entails the disadvantage of involving in the calculation of the levy certain components of the product in question, in particular dextrin and maltose, which are not *per se* subject to the levy on sugar.

That is why the undertaking Welding & Co. of Hamburg instituted proceedings

1 — Translated from the Italian.

before the Finanzgericht (Finance Court) Hamburg to contest a decision of the German customs authorities in which the criteria contained in the said *second* subparagraph of Article 7 (2) of Regulation No 837/68 were applied. In fact the Hamburg customs office, in granting customs clearance for two products made from malto-dextrin, named "maltrin 10" and "maltrin 20", imposed a levy and a monetary compensatory amount exceeding those which would have been charged if account had been taken of the actual sucrose content, including other sugars expressed as sucrose, for the purposes of the *first* subparagraph of Article 7 (2) of that regulation.

By an order of 15 March 1978 the court seised of the matter made a reference under Article 177 of the EEC Treaty to the Court of Justice, submitting the following preliminary questions:

"1. Is the second subparagraph of Article 7 (2) of Regulation (EEC) No 837/68 of the Commission of 28 June 1968 as amended by Regulation (EEC) No 878/69 of the Commission of 12 May 1969 invalid because, by way of derogation from the first subparagraph of Article 7 (2) of Regulation (EEC) No 837/68, the sucrose content, including other sugars expressed as sucrose, of products containing less than 85% sucrose and invert sugar expressed as sucrose is to be determined without regard to the actual sucrose content including other sugars expressed as sucrose by ascertaining the dry matter content?

2. If Question 1 is answered in the affirmative: In calculating the levy and monetary compensation in cases under the second subparagraph of Article 7 (2) of Regulation (EEC) No 837/68 are the national authorities entitled to adopt as a basis the actual sucrose content, including other sugars expressed as sucrose, determined by methods of analysis other than those laid down by the first subparagraph of Article 7 (2) or is it for the Community legislature to specify the method of analysis for the cases covered by the second subparagraph of Article 7 (2)?"

In the order making the reference the national court raised the point as to whether the method of determining the sucrose content prescribed in the second subparagraph of Article 7 (2) of the said Regulation No 837/68 is lawful having regard to the rule contained in the said Article 14 (5) of Regulation No 1009/67 of the Council (re-enacted in Article 15 (5) of Regulation No 3330/74). As I have stated, that rule adopts as the basis for calculating the levy the sucrose content, including other sugars expressed as sucrose, of the products in question. The German court doubts whether the Commission can depart from this clearly-defined basis without exceeding the limits of the powers delegated to it by the Council.

That court also considers that another ground for considering the rule introduced by the Commission as invalid may be perceived in a possible violation of the principle of equality of treatment and accordingly in the existence of discrimination within the meaning of the second subparagraph of Article 40 (3) of the EEC Treaty. It arrives at this view on the basis of the fact that in the final analysis the levy on sugar in the cases covered by the second subparagraph of Article 7 (2) of Regulation No 837/68 also falls upon constituents of the product which are not in themselves subject to that particular levy. It refers in this connexion to the view put forward by the plaintiff undertaking that if a trader were to make separate imports of the constituents of the product in question, that is dextrin and maltose (or dextrose), lower charges would be imposed than those payable by importers of the two constituents ready-mixed.

Finally, the German court has raised the problem of the validity of the said provision on the further ground that no reasons have been stated for the derogation which it entails from the first subparagraph, thereby constituting an infringement of Article 190 of the EEC Treaty.

3. In the light of these considerations the first preliminary question, concerning the validity of the second subparagraph of Article 7 (2) of the said Regulation No 837/68 of the Commission, appears to give rise to three distinct problems. However, the problem of alleged *ultra vires* acts on the part of the Commission is to a certain degree connected with the question of discrimination and accordingly in the following discussion it is inappropriate to give wholly separate consideration to those two aspects.

I shall consider first whether in the said provision the Commission has in fact exceeded the powers delegated to it by the Council. At the beginning of my opinion I recalled the provision laid down in Article 14 (5) of Regulation No 1009/67 of the Council on the common organization of the market in sugar. It will suffice at this point to emphasize that it is expressly stated in that provision that in calculating the levy on the product in question standard criteria may be applied. The sanctioning of such criteria, plainly provided for cases where there are valid reasons for not applying more accurate criteria, makes it possible to rule out the possibility that the words "on the basis of the sucrose content" require an exact correspondence in all cases between the *actual* sucrose content of individual products and the amount of levy payable on such products.

Whilst it is true that the rule contained in the said Article 14 (5) of Regulation No 1009/67 requires the calculation of the levy to be based on the sucrose content of the product this does not prevent the adoption of standard criteria, since the application of such criteria is expressly envisaged. On the most liberal interpretation the words "if appropriate" only express the condition that valid technical or practical reasons must preclude the exact determination of the actual content of the product.

On the other hand, resort to the standard method of calculation must not produce discriminatory or anomalous results. Accordingly the second subparagraph of Article 7 (2) of Regulation No 837/68 of the Commission must be examined to see whether this is the case; this entails broaching the second problem raised by the first question. In my view this requires that the purview of the examination be expanded and that we pass from a formal consideration of the legislative provisions to an examination of the practical effects of the provision in question.

4. According to the analysis made by Welding of maltrin 10 and maltrin 20 those imported products have a dextrose (or maltose) content of 11.6 and 18.2% respectively. The rest of those products, that is, more than 80%, is dextrin, that is, a substance falling under heading 35.05 of the Common Customs Tariff which is subject to the levy applicable to cereals, which is lower than that prescribed for sugar. Accordingly, Welding maintains that only the said percentages of dextrose should be taken into consideration for the purposes of calculating the levy payable on sugar. If this were not so importers of the product in question would receive discriminatory treatment in comparison with undertakings which import separately the two constituents of the product in question (the German court appears to concur on this point).

Whilst the Commission in its observations does not dispute that the facts adduced by Welding are correct, it maintains that it is technically impossible with regard to the products imported by Welding to apply the criteria prescribed in the first subparagraph of Article 7 (2)

of the said Regulation No 837/68 and accordingly to employ the so-called Lane and Eynon method of analysis. It was in fact on the basis of expert opinion maintaining that the Lane and Eynon method is impracticable for products such as those in question (that is, products containing less than 85% sucrose and invert sugar expressed as sucrose), that the Commission prescribed the other method, based on the dry matter content.

I must point out first of all that the rules laid down for the product in question, within the context of the system of the levy, are in accordance, on an objective view, with the criteria for classification adopted in the Common Customs Tariff. Note 2 to Chapter 35 of the Common Customs Tariff in fact provides that "For the purposes of heading 35.05, the term 'dextrins' is to be taken to apply to starch degradation products with a reducing sugar content, expressed as dextrose on the dry substance, not exceeding 10%. Such products with a reducing sugar content exceeding 10% fall in heading 17.02". Since the level of the dextrose content of the product in question exceeds the said limit of 10 % those products must be classified under tariff subheading 17.02 D covering sugars and sugar-based products; this means that the dextrin content of those products must also be classified as sugar. In view of this outcome under the rules of the Common Customs Tariff it appears logical, as the Commission points out, that the same substance (dextrin) should also be treated as sugar for the purposes of determining the total sugar content referred to in Article 7 (2) of Regulation No 837/68. Since in addition the dry matter content of the two products in question exceeds 10% of dextrin — and must therefore for the above-mentioned reasons be considered as a whole as sugar in accordance with the said Note 2 to Chapter 35 of the Common Customs Tariff — the taking of the entire dry matter content as the basis for calculating the levy on sugar is also in accordance with the classification criterion of the Common Customs Tariff.

The favourable position which traders importing dextrin and dextrose separately enjoy in comparison with those who import those substances ready-mixed is thus a difficulty stemming from the Common Customs Tariff and not from the second subparagraph of Article 7 (2) of the said Regulation No 837/68. Whilst with regard to the levy the classification of products on the basis of the rules of the Common Customs Tariff is not binding it nevertheless constitutes evidence which is not to be disregarded in view of the links existing between levies and customs duties in that both are charges applicable to imports from third countries (cf. the judgment of the Court of Justice of 26 April 1972 in Case 92/71 *Interfood GmbH* [1972] ECR 231). Even for the purposes of calculating the levy, therefore, it would be improper to depart from the criteria of classification of the Common Customs Tariff unless it were necessary to do so to avoid serious distortions in the operation of the system.

With regard to the methods prescribed in Article 7 (2) for determining the sucrose content, Welding conceded at the hearing that those methods are accurate in most cases; Welding explained that it wishes in substance to obtain, rather than a ruling that the contested provision is invalid, a decision that its scope should be restricted with regard to products containing less than 85% sucrose ascertained on the basis of the dry matter content. Nevertheless, the question is raised here in the general terms in which it was duly worded by the German court.

In my view the Commission argues persuasively in pointing out that it is technically impossible to determine exactly the chemical composition of all products containing less than 85% sucrose and invert sugar expressed as

sucrose; that explains the necessity of adopting the method based on the dry matter content of the product — that method was, furthermore, chosen in accordance with the opinion of an independent expert, whose competence was not impugned by Welding.

Welding has objected that in the decade following the adoption of the contested Regulation No 837/68 technical advances have made available new and better methods of analysis. In this situation the Commission should not only have amended the second subparagraph of Article 7 (2) but should also have reworded the first subparagraph, in which the Lane and Eynon method is prescribed. It is clear that we are not concerned here to assess whether it is appropriate to revise a provision to bring it into line with technical advances. The only point in question is whether the second subparagraph of Article 7 (2) is valid, and in particular whether the stated ground of invalidity, namely an infringement of the second subparagraph of Article 40 (3), is discernible. In my view it has by no means been established that the above-mentioned provision creates "discrimination between producers or consumers within the Community"; this is borne out by the fact that the alleged unfavourable treatment of importers of malto-dextrin as compared with those importing maltose and dextrin separately in no case amounts to discrimination against specified persons or against a group or category. It is clear that any trader can opt to import the two products separately if he considers it more profitable.

It must finally be recognized that there is little reason to accept Welding's view that the relevant provision leads to anomalous results, since the system in question, which has been applied since 1968, has not caused any objection until now, apart, perhaps, from an isolated case to which Welding referred at the hearing without, however, providing any details.

I therefore consider that the adoption of the method in question for calculating the levy applicable to the relevant products does not involve a breach by the Commission either of the limits of the powers delegated to it by the Council or of the prohibition on discrimination laid down in the second subparagraph of Article 40 (3) of the Treaty.

5. To conclude my examination of the problems raised by the first question it remains to consider the doubt expressed by the German court regarding the provision of a sufficient statement of reasons for the derogation from the rule contained in the first subparagraph introduced by the said second subparagraph of Article 7 (2).

I should like to observe first of all that, if Article 190 of the EEC Treaty were to require that every single provision of a regulation should be accompanied by a statement of reasons, both the first and the second paragraphs of Article 7 would have to be considered invalid *in toto*. The preamble to the regulation in fact states *inter alia* that "the sucrose content used to calculate the levy can be fixed at a level which would correspond in general to the natural content of such products in the Community" (sentence forming part of the fifth recital) and that "to avoid distortions of competition, it is necessary to specify in respect of these products the method by which the sucrose content, including other sugars expressed as sucrose, is to be determined" (seventh recital). Nevertheless these statements do not in fact explain why the specific methods prescribed in the first and second subparagraphs of the said provision were adopted.

At all events it is clear from the settled case-law of the Court of Justice that a detailed statement of reasons cannot be demanded for measures of a general nature such as regulations. Where a measure of such a nature is concerned the statement of reasons "may be

confined to indicating the general situation which led to its adoption ... and the general objectives which it is intended to achieve ... Consequently, it is not possible to require that it should set out the various facts, which are often very numerous and complex, on the basis of which a regulation was adopted, or *a fortiori* that it should provide a more or less complete evaluation of those facts" (judgment of the Court of 13 March 1968 in Case 5/67 *Beus* [1968] ECR 83, at p. 95). The Court has subsequently confirmed that decision, stating that "The requirements of Article 190 of the Treaty are satisfied when the said statement of reasons explains in essence the measures taken in regulations by the institutions. A specific statement of reasons in support of all the details which might be contained in such a measure cannot be required, provided that such details fall within the general scheme of the measure as a whole ..." (judgment of the Court of 20 June 1973 in Case 80/72 *Koninklijke Lassiefabrieken* [1973] ECR 635, especially paragraphs 24 to 26; cf. also the judgment of the Court of 18 March 1975 in Case 78/74 *Deuka* [1975] ECR 421).

Accordingly it is unnecessary that the statement of reasons for a regulation should make individual reference to all its provisions. Where, therefore, provisions of an essentially technical nature, such as those in question, are concerned it is *a fortiori* evident that to supply the reasons for each of such provisions would burden the statement of reasons for the measure with excessively full and complicated scientific explanations, where that is necessary neither for an understanding of the logical reasoning behind the adoption of the measure nor for the protection of individual interests. It is sufficient that the provisions enacted should be appropriate, when viewed objectively, to the attainment of the objectives of the regulation as they are set out broadly in its statement of reasons.

I accordingly consider that, with regard also to the matter of conformity with Article 190 of the EEC Treaty, the provision in question is not invalidated in any way.

6. Since in my view all the problems raised by the first question call for a negative answer it is unnecessary to consider the second question.

In conclusion, therefore, I suggest that the Court of Justice should reply to the preliminary questions referred to it by the Finanzgericht Hamburg in its order of 15 March 1978 by ruling that consideration of those questions has disclosed no factor of such a kind as to affect the validity of the second subparagraph of Article 7 (2) of Regulation (EEC) No 837/78 of the Commission of 28 June 1968.