JUDGMENT OF THE COURT (Fourth Chamber)
25 May 1993 *

In Case C-308/91,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Finanzgericht Hamburg for a preliminary ruling in the proceedings pending before that court between

Süddeutsche Zucker-Aktiengesellschaft

and

Hauptzollamt Hamburg-Jonas,

on the interpretation of Article 13 of Commission Regulation (EEC) No 394/70 of 2 March 1970 on detailed rules for granting export refunds on sugar (OJ, English Special Edition 1970 (I), p. 132),

THE COURT (Fourth Chamber),

composed of: C. N. Kakouris, President of the Chamber, M. Diez de Velasco and P. J. G. Kapteyn, Judges,

Advocate General: F. G. Jacobs,
Registrar: H. A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

— Firma Süddeutsche Zucker-Aktiengesellschaft, by D. Ehle, Rechtsanwalt, Cologne,

* Language of the case: German.

— the Commission of the European Communities, by U. Wölker, of its Legal Service, assisted by H.-J. Rabe, Rechtsanwalt, Hamburg, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Firma Süddeutsche Zucker-Aktiengesellschaft, represented by D. Ehle, assisted by H. Schiweck, expert chemist, and the Commission of the European Communities, at the hearing on 26 November 1992,

after hearing the Opinion of the Advocate General at the sitting on 14 January 1993,

gives the following

Judgment

1 By order of 1 November 1991, received at the Court on 29 November 1991, the Finanzgericht Hamburg (Finance Court, Hamburg) referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty three questions on the interpretation of Article 13 of Commission Regulation No 394/70 of 2 March 1970 on detailed rules for granting export refunds on sugar (OJ, English Special Edition 1970 (I), p. 132).

2 Those questions were raised in proceedings between Firma Süddeutsche Zucker-Aktiengesellschaft (hereinafter 'Süddeutsche Zucker') and the Hauptzollamt Hamburg-Jonas (hereinafter 'the Hauptzollamt').

3 According to Annex I to Commission Regulation (EEC) No 1800/83 of 28 June 1983 altering the monetary compensatory amounts (OJ 1983 L 176, p. 65), the level of monetary compensatory amounts depends on the sucrose content of the product. Note 4 to Annex I to that regulation provides that, in the case of exports, the sucrose content, including other sugars expressed as sucrose is to be

determined in accordance with the provisions of Article 13 of the aforesaid Regulation No 394/70.

4 Article 13 of Regulation No 394/70 provides that:

'1. For the purposes of applying the provisions of paragraph 1 of Article 8 of Regulation (EEC) No 766/68, and without prejudice to the provisions of paragraphs 2 and 3, the sucrose content including where appropriate other sugars expressed as sucrose, shall be the total sugar content resulting from the application of the Lane and Eynon method (copper reduction method) to the solution inverted according to Clerget-Herzfeld. The total sugar content determined in this manner shall be expressed as sucrose by multiplying by 0.95.

2. In the case of syrups which are 85% or more but less than 94.5% pure, the sucrose content including where appropriate other sugars expressed as sucrose shall be fixed at a flat rate of 73% by weight in the dry state. The percentage purity of the syrups shall be calculated by dividing total sugar content by dry matter content and multiplying the result by one hundred. Total sugar content shall be determined in accordance with the method referred to in paragraph 1 and the dry matter content according to the areometric method.'

5 Süddeutsche Zucker seeks to obtain payment of the monetary compensatory amounts for the export from Germany to Belgium of certain quantities of fruit-sugar syrup falling under tariff heading 17.02 D II of the Common Customs Tariff.

6 The parties to the main proceedings disagree on the method of calculation of the degree of purity of the syrups, which, according to Article 13 of Regulation No 394/70, affects the grant and the size of the applicable monetary compensatory amounts.

7 The Hauptzollamt calculated the degree of purity of the sucrose syrups by means of the following formula:

$$\text{Purity (\%)} = \frac{\text{Total sugar content x 0.95 (expressed as sucrose)}}{\text{Dry matter content}} \times 100$$

8 Süddeutsche Zucker disputes that method of calculation. Through using the method of calculation adopted by the defendant, the purity of fruit-sugar syrups is limited to a maximum of 95%. The purity of fruit-sugar syrups should therefore be calculated by taking into account their fructose content. Furthermore, it is essential to establish purity accurately: this could be achieved by means of high-pressure liquid chromatography (HPLC).

9 The Hauptzollamt contends that, in determining the degree of purity of syrups, Article 13 of Regulation No 394/70 is concerned solely with the determination of the sucrose content.

10 Süddeutsche Zucker appealed to the Finanzgericht Hamburg against the decisions adopted by the Hauptzollamt on 12 December 1983, 16 January 1984 and 6 July 1987 on the basis of the calculation method described above. The Finanzgericht referred the following three questions to the Court for a preliminary ruling:

'1. Must Article 13(2) of Regulation (EEC) No 394/70 be interpreted as meaning that the percentage purity of syrups is to be calculated by dividing total sugar content, after multiplying by 0.95, by dry matter content and multiplying the result by one hundred?

2. Must Article 13(2) of Regulation (EEC) No 394/70 be interpreted as meaning that the purity of fruit-sugar syrups may be determined by measuring the fructose content and relating it to the dry matter content?

3. Must Article 13(2) of Regulation (EEC) No 394/70 be interpreted as meaning that the purity of fruit-sugar syrups may be determined by establishing the dry matter content in the inverted solution by appropriate methods and relating it to the sugar content of the inverted solution?'

11 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the relevant provisions, the procedure and the written observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

12 As a preliminary point, it should be noted that, as fully explained by the Advocate General in his Opinion (points 5 and 6), sucrose is a sugar of the kind known as 'disaccharide', with a molecular weight of approximately twice that of 'monosaccharides' or 'reducing sugars' such as fructose and glucose. The presence of monosaccharides in a syrup can be directly detected by means of the copper reduction method (Lane and Eynon method). Before the sugar content of a syrup containing sucrose can be accurately measured, a sample of the syrup must be converted into a solution consisting of a mixture of fructose and glucose (known as inverted sugars) by a procedure known as 'inversion or hydrolysis'. This inversion results in increase in weight of approximately 5% known as 'inversion gain'. In order to determine the sucrose content present before the inversion, it is necessary to multiply by 0.95 the inverted sugar content determined by means of the copper reduction method (Lane and Eynon method).

Question 1

13 By its first question the Finanzgericht seeks essentially, to obtain clarification of the method enabling the percentage purity of the syrups referred to in Article 13(2) of Regulation No 394/70 to be determined, in particular if, in the context of that provision, determination of the total sugar content 'in accordance with the method referred to in paragraph 1' includes multiplying by a factor of 0.95.

14 In determining the purity of a syrup three distinct cases can be distinguished, (1) syrups containing only disaccharides such as sucrose, (2) those containing only monosaccharides such as fructose or glucose, and (3) those containing a mixture of monosaccharides and disaccharides. For the purpose of determining the purity of a syrup, Article 13(2) of Regulation No 394/70 makes no distinction between these three cases. However, as explained by the parties in their written observations and as pointed out by the Advocate General in his Opinion (points 10 and 11), these three cases ought not to be treated in same way. In cases (1) and (3) determination of the sucrose content leads to a gain in weight because of the inversion which has to be made. In determining the monosaccharides content inversion is not necessary before applying the copper reduction method (Lane and Eynon method), and thus there is no resulting gain in weight.

15 According to Article 13(2) of Regulation No 394/70, the percentage purity of syrups is calculated by dividing total sugar content by dry matter content and multiplying the result by one hundred.

16 For the purpose of determining total sugar content, the last sentence of Article 13(2) of Regulation 394/70 refers to 'the method referred to in paragraph 1'. Having regard to the wording and scope of Article 13(2), the reference to 'the method referred to in paragraph 1' relates to the copper reduction method (Lane and Eynon method) applied to the solution inverted according to Clerget-Hertzfeld,

and not to the entire procedure for determining sucrose content as laid down by Article 13(1).

17 For the calculation of the percentage purity of syrups, Article 13(2) refers only to the determination of 'total sugar content', that is to say the total content of the different sugars present in the syrup. In contrast, Article 13(1) is concerned with the determination of the sucrose content, including the content of other sugars expressed as sucrose, for the purpose of fixing the level of the applicable monetary compensatory amounts or export refunds.

18 According to Article 13(2) of Regulation No 394/70 the dry matter content must be determined according to the areometric method. However, it should be noted that determination of the dry matter of the original syrup by means of this method, where the total sucrose content of the syrup is measured after inversion of the solution, takes no account of a possible gain in weight resulting from the inversion. It is therefore necessary to make a proportional adjustment of the dry matter content which takes into account the inversion gain.

19 The reply to the first preliminary question must therefore be that Article 13(2) of Regulation No 394/70 is to be interpreted as meaning that the percentage purity of the syrups is to be determined in accordance with the following procedure:

(a) the total sugar content of the syrup is measured by applying the copper reduction method to the inverted solution;

(b) the dry matter content of the inverted solution is determined by measuring the dry matter content of the original syrup by means of the areometric method and by adjusting the result so obtained in order to take into account any gain in the dry matter content resulting from the inversion of the syrup;

(c) the total sugar content of the inverted solution is divided by the dry matter content of the inverted solution and the result multiplied by one hundred.

However, where no inversion of the syrup is necessary in order to apply the copper reduction method, the percentage purity of the syrup is calculated by dividing the total sugar content of the syrup by its dry matter content and multiplying the result by one hundred.

Questions 2 and 3

20 By its second and third questions, the Finanzgericht wishes to know ascertain whether methods other than those specified in Article 13 may be used to measure the total sugar content or the dry matter content of a syrup.

21 It appears from the observations submitted to the Court that current technology enables more advanced methods to be used which make it possible for the sugar content and also the density, and thus the dry matter, to be measured directly. However, the aim of Article 13 of the regulation is to define a uniform method for determining the purity of the syrup and then the sucrose content of the syrup in order to ensure the equal treatment of all parties concerned. The wording of Article 13 does not, therefore, allow the use of methods other than those specified in that provision. A technical adaptation of the regulation is possible only by means of an amendment in accordance with the procedure laid down in the Treaty.

22 The reply to the last two questions referred by the national court must therefore be that Article 13 of Regulation No 394/70 is to be interpreted as meaning that no method other than the copper reduction method (Lane and Eynon method) or the areometric method may be applied for determining the sugar content or the dry matter content of a syrup or its inverted solution.

Costs

23 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Fourth Chamber),

in answer to the questions referred to it by the Finanzgericht Hamburg, by order of 1 November 1991, hereby rules:

1. Article 13(2) of Commission Regulation (EEC) No 394/70 of 2 March 1970 on the detailed rules for granting export refunds on sugar must be interpreted as meaning that the percentage purity of a syrup is to be determined in accordance with the following procedure:

(a) the total sugar content of the syrup is measured by applying the copper reduction method to the inverted solution;

(b) the dry matter content of the inverted solution is determined by measuring the dry matter content of the original syrup by means of the areometric method and by adjusting the result so obtained in order to take into account any gain in the dry matter content resulting from the inversion of the syrup;

(c) the total sugar content of the inverted solution is divided by the dry matter content of the inverted solution and the result multiplied by one hundred.

However, where no inversion of the syrup is necessary in order to apply the copper reduction method, the percentage purity of the syrup is calculated by

dividing the total sugar content of the syrup by its dry matter content and multiplying the result by one hundred.

2. **Article 13 of Regulation No 394/70 must be interpreted as meaning that no method other than the copper reduction method (Lane and Eynon method) or the areometric method may be applied for determining the sugar content or the dry matter content of a syrup or its inverted solution.**

Kakouris Diez de Velasco Kapteyn

Delivered in open court in Luxembourg on 25 May 1993.

J.-G. Giraud C. N. Kakouris

Registrar President of the Fourth Chamber