(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.

Under Article 13 aforesaid, 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.

REPORT FOR THE HEARING
in Case C-308/91 *

I — Facts and Procedure

1. *The legislation*

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 provides that the sucrose content, including other sugars expressed as sucrose, is to be determined in accordance with the provisions of Article 13 of Regulation (EEC) No 394/70 in the case of exports.

Article 13 of Regulation No 394/70 provides: '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

* Language of the case: German.

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 aerometric method.'

According to Article 8 of Council Regulation No 766/68 of 18 June 1968 laying down general rules for granting export refunds on sugar (OJ, English Special Edition 1968 (I), p. 155):

'1. The export refund on 100 kilogrammmes of the products listed in Article 1 (1) (d) of Regulation (EEC) No 1009/67 shall be equal to the basic amount for the month in which the product in question is exported, multiplied by the sucrose content determined for the product in question including, where appropriate, other sugars expressed as sucrose.'

2. *The main proceedings*

Süddeutsche Zucker AG seeks 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.

The parties disagree on the calculation of the degree of purity of the syrups which, according to Article 13 of the aforesaid Regulation No 394/70, affects the grant and in particular the size of the monetary compensatory amounts.

The Hauptzollamt Hamburg-Jonas calculated the degree of purity of the sucrose syrups by means of the following formula:

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

Süddeutsche Zucker AG objects to that method of calculation. The purity of its fruit-sugar syrups should be determined by taking the fructose content into account. The sucrose content is relevant only to the subsequent calculation of the monetary compensatory amounts. Under method of calculation adopted by the defendant, the purity of fruit-sugar syrups is limited to a maximum of 95%. An accurate determination of the

purity of fruit-sugar syrups proves to be essential: this can be achieved by means of high-pressure liquid chromatography (HPLC).

The Hauptzollamt Hamburg-Jonas contends, for its part, that, in determining the degree of purity of syrups, Article 13 of Regulation (EEC) No 394/70 is concerned solely with the determination of the sucrose content.

Süddeutsche Zucker AG appealed to the Finanzgericht Hamburg against the decisions of the Hauptzollamt Hamburg-Jonas of 12 December 1983, 16 January 1984 and 6 July 1987.

3. *Questions submitted for a preliminary ruling*

The Finanzgericht, being of the opinion that the dispute raised problems of interpretation and application of Community law, decided to ask the Court the following questions:

'1. Must Article 13(2) of Regulation (EEC) No 394/70 be interpreted as meaning that the percentage purity of the syrup 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?'

4. *Procedure*

The judgment of the Finanzgericht Hamburg was received at the Court's registry on 29 November 1991.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC written observations were lodged on 13 March 1992 by the plaintiff, represented by Dietrich Ehle, Rechtsanwalt, Cologne, on 25 March by the Commission of the European Communities, represented by Ulrich Wölker, of its Legal Service, assisted by Hans-Jürgen Rabe, Rechtsanwalt, Hamburg, acting as Agents.

Upon hearing the report of the Judge Rapporteur and the views of the Advocate General the Court decided to open the oral procedure without any preparatory inquiry. By decision of 21 October 1992 the case was assigned to the Fourth Chamber.

II — Summary of the written observations submitted to the Court

First question

The *plaintiff in the main proceedings* considers that, according to the clear wording of Article 13(2) of Regulation (EEC) No 394/70, the purity of its fruit-sugar syrups must be exclusively determined on the basis of their fructose content, without it having been (already) converted into sucrose during the course of that operation. Nor does Article 8(1) of Regulation (EEC) No 766/68 contain an obligation to take account of the sucrose content when determining the purity and in so doing to apply a factor of 0.95. The plaintiff observes that, from a scientific point of view, there is no common point between purity (of syrups) and the factor of 0.95.

The interpretation put forward by the defendant places fruit-sugar syrups at a disadvantage in relation to sucrose syrups because the former can from the outset only achieve a maximum purity of 95%. Such discriminatory treatment was not intended by Regulation (EEC) No 394/70.

The plaintiff in the main proceedings suggests the following answer to the first question:

'Article 13(2) of Regulation (EEC) No 394/70 must be interpreted as meaning that the percentage purity of syrups is to be calculated by dividing total sugar/fructose content by dry matter content and multiplying the result by 100, without having to calculate total sugar content according to the Lane and Eynon method (copper reduction method) applied to the solution inverted according to Clerget-Herzfeld and expressing this sucrose content by multiplying by a factor of 0.95.'

According to the *Commission*, the decisive element for the purpose of determining purity, pursuant to the provisions of Article 13(2) of Regulation No 394/70, is the total content of the different sugars present in the syrup (e. g. sucrose, fructose and/or glucose), but not the content expressed as sucrose which would result from multiplying the total sugar content of the syrup by a factor of 0.95.

The purity of the syrup is obtained by the following formula:

$$\text{Purity (\%)} = \frac{\text{Total sugar content}}{\text{Dry matter content}} \times 100$$

The Commission suggests the following reply:

'Article 13(2) of Regulation (EEC) No 394/70 must be interpreted as meaning that the percentage purity of syrups is to be calculated by dividing total sugar content of the syrup by dry matter content of the syrup and multiplying the result by 100. Total sugar content of the syrup is obtained by adding the proportions of invert sugars determined in the syrup according to the

Lane and Eynon method to the proportion of sucrose in the syrup, which itself is determined by measuring the inverted sugars according to the Lane and Eynon method and multiplying the result thus obtained by 0.95.'

Second question

The *plaintiff* observes that, owing to scientific and technical progress, it has long been possible to ascertain the sucrose and invert sugars content by means of high-pressure liquid chromatography (HPLC) without prior chemical analysis. It involves a very specific method which, *inter alia*, makes it possible to determinate the fructose within a margin of error of less than +1%. Whereas adaptation to technical progress has been made in other areas, Regulation (EEC) No 394/70 provides for no other method of analysis which could be used to determine total sugar content.

It suggests the following reply to the second question:

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

The *Commission* considers that the method of analysis to be used is the method prescribed by Article 13(1). No other methods are permitted by that article. Therefore, it suggests the following reply:

'Article 13(2) of Regulation (EEC) No 394/70 must be interpreted as meaning that the purity of a fruit-sugar syrup which contains only fructose to the exclusion of any other sugar, is calculated by determining the fructose content of the syrup according to the Lane and Eynon method and relating it to dry matter content.'

The third question:

According to the *plaintiff*, the aerometric method (based on the observed density of the sugar solution) is not without problems from a scientific point of view. As compared with that method, the refractometric method (determining the inverted factor) presents considerable advantages. It is slightly easier to carry out as well as more accurate and also easier to reproduce. Therefore, the plaintiff suggests the following reply to the third question:

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

The *Commission* observes that for the purpose of determining the dry matter content of the syrup itself (not that of the inverted solution) Article 13(2) of Regulation (EEC) No 394/70 only prescribes the aerometric method. It suggests the following reply:

'Article 13(2) of Regulation (EEC) No 394/70 must be interpreted as meaning that the purity of fruit-sugar syrups is to be determined by measuring the dry matter content of the syrup according to the aerometric method and relating it to the total sugar content of the syrup.'

P. J. G. Kapteyn
Judge-Rapporteur