sufficient that the measures in question are likely to constitute an obstacle, directly or indirectly, actually or potentially, to imports between Member States.

3. Although a maximum price applicable without distinction to domestic and imported products does not in itself constitute a measure having an effect equivalent to quantitative restrictions, it may have such an effect, however, when it is fixed at a level such that the sale of imported products becomes, if not impossible, more difficult than that of domestic products. A maximum price, in any event in so far as it applies to imported products, constitutes therefore a measure having an effect equivalent to a quantitative restriction, especially when it is fixed at such a low level that, having regard to the general situation of imported products compared to that of domestic products, dealers wishing to import the product in question into the Member State concerned can do so only at a loss.
4. In so far as a maximum price fixed unilaterally by a Member State is incompatible with Article 30 of the Treaty or the provisions of the agricultural law of the Community a Member State concerned cannot base its justification for this fixing either on Article 103 of the Treaty or on the need to protect the economy from speculative operations or on a change occurring in the economic situation in the sugar sector.

Judgment in Joined Cases 88 to 90/75,

Reference to the Court under Article 177 of the EEC Treaty by the Tribunale Amministrativo Regionale del Lazio, for a preliminary ruling in the action before it between

SOCIETÀ SADAM, SOCIETÀ CAVARZERE PRODUZIONI INDUSTRIALI, SOCIETÀ GENERALE DI ZUCCHERIFICI, SOCIETÀ ITALIANA PER L'INDUSTRIA DEGLI ZUCCHERI and ERIDANIA ZUCCHERIFICI NAZIONALI (Case 88/75)

SOCIETÀ FONDIARIA INDUSTRIALE ROMAGNOLA (Case 89/75)

SOCIETÀ ROMANO ZUCCHERO, SOCIETÀ AGRICOLA INDUSTRIALE EMILIANA AIE, SOCIETÀ ZUCCHERIFICIO E RAFFINERIA DI MIZZANA and SOCIETÀ FONDIARIA INDUSTRIALE ROMAGNOLA (Case 90/75)

and

COMITATO INTERMINISTERIALE DEI PREZZI (Inter-departmental Committee on Prices) and the MINISTER FOR INDUSTRY, TRADE AND CRAFT TRADES (Cases 88 and 90/75)

PRESIDENT OF THE COUNCIL OF MINISTERS and the MINISTER FOR INDUSTRY, TRADE AND CRAFT TRADES (Case 89/75)

on the interpretation of the EEC Treaty, in particular Articles 3, 5, 30, 34, 35 to 40 and 103 thereof and of Regulation No 1009/67/EEC of the Council of

18 December 1967 on the common organization of the market in sugar (OJ English Special Edition, 1967, p. 304),

THE COURT

composed of: R. Lecourt, President, H. Kutscher, President of Chamber, A. M. Donner, J. Mertens de Wilmars, M. Sørensen, Lord Mackenzie Stuart and A. O'Keeffe, Judges,

Advocate-General: G. Reischl
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts

The order making the reference, the procedure and the written observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and procedure

1. On 20 February 1974, the Comitato interministeriale dei prezzi (Inter-departmental Committee on Prices, an Italian organization hereinafter called the 'CIP') issued a 'provvedimento' (Order) No 9/1974 (Gazzetta Ufficiale No 52 of 23 February 1974, p. 1375). The first paragraph of this order provided *inter alia*, that Lit. 17·50 per kg should be the amount of the 'maximum charge for' packing the sugar in half-kilo, kilo and 2 kg cartons or packets'. ('compenso massimo per il confezionamento dello zucchero in astucci o pacchi...'). The second paragraph fixed, with effect from publication of the order and throughout the national territory, the maximum consumer prices for certain categories of domestic and foreign sugar for the whole of the national territory:

— at Lit. 255 per kg for refined caster sugar in paper bags of 50 kg;
— at Lit. 275 per kg for refined sugar in cartons or in packets of 0·5 kg, 1 kg or 2 kg.

On 28 June 1974, the CIP, made Order No 28/1974 (Gazzetta Ufficiale No 171 of 2 July 1974, p. 4463), the first paragraph of which 'having regard to the increases laid down by the Community provisions and to the situation on the market', raised the abovementioned maximum prices respectively to Lit. 355 and Lit. 375 per kg, with effect from 1 July, 1974. Paragraph (2) confirmed the abovementioned sum of Lit. 17·50 per kg laid down by Order No 9/1974. Paragraph (3) fixed 'the maximum total charges for wholesale or retail

distribution of sugar ('compensi massimi complessivi per la distribuzione dello zucchero all'ingrosso e al dettaglio') at, respectively, Lit. 25·70 per kg for the sale of loose sugar and Lit. 26·70 per kg for the sale in cartons or in packets', stating that these charges are included in the abovementioned prices.

Order No 39/1974 of the CIP, of 13 August 1974 (Gazzetta Ufficiale No 214 of 16 August 1974, p. 5460), set out the components, including certain duties and taxes, making up the maximum prices laid down by Order No 28/91. It gave the following figures:

— Lit. 323·30 per kg as the maximum ex-factory price;
— Lit. 329·30 per kg as the maximum price free-at-wholesaler's warehouse anywhere in the national territory;
— Lit. 25·70 per kg as the maximum charge for wholesale or retail distribution.

The abovementioned orders have in the meantime been replaced by new orders.

2. A — The plaintiffs in the main action brought proceedings before the Tribunale Amministrativo Regionale del Lazio for the annulment:

— in Cases 88 and 90/75, of Orders No 28/74 and 39/74 and of the 'measures [of the CIP], if any, confirming' [those orders] (adopted as emergency measures by the Board [Giunta];
— in Case 89/75, of Order No 9/74.

In support of these applications, the companies contended, *inter alia,* that the orders in question are incompatible with the EEC Treaty and the Community regulations on the common organization of the market in sugar.

B — By orders of 16 June 1975, in identical terms, the national court decided to refer to the Court of Justice for a 'ruling ... in the light of the combined provisions, of Articles 3 (d), the second paragraph of Article 5, Articles 34, 35, 38 (2), 39 (c) to (e) and Article 40 (3) of the Treaty, in regard to:

(a) the competence, exclusive or otherwise, of the European Economic Community to exercise legislative power to control the prices of sugar, and the use made of such power in Regulation No 1009/67/EEC and subsequent additions thereto;
(b) the legality, in relation to a conjunctural policy and to Article 103 of the Treaty, of unilateral interventions by a Member State in the sector concerned, and of the type in question, which in substance determined the maximum price on sale to the consumer within the national territory alone;
(c) the compatibility with the principle referred to in Article 30 of the Treaty concerning the free movement of goods within the common market, and with the prohibition against isolation of the national markets, of the system of selling the product and of the maximum price imposed, within the confines of the national territory, the said system constituting a hindrance to the establishment of the said common market and having been justified as an exception by the need to protect the economy from speculative operations and to guarantee the necessary consumer supplies against the upsetting of the conditions on which the Community rules are based both by the deficit in Community production and by the doubling of the world price of this product.'

3. The orders for reference were entered at the Court Registry on 8 August 1975.

Written observations were submitted pursuant to Article 20 of the Protocol on the Statute of the Court of Justice by the Eridania and Generale di Zuccherifici companies (plaintiffs in the main action in Case 88/73), the Fondiaria Industriale Romagnola company (plaintiff in the main action in Cases 89/75 and 90/75), the Romana Zucchero company (plaintiff in the main action in Case 90/75), the Italian Government and the

Commission. The Government of the United Kingdom referred to the observations which it submitted in Case 65/75 *(Tasca)*.

By order of 12 November 1975, the Court joined the cases for the purposes of the oral procedure.

After 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. At the same time it decided to communicate to the aforementioned plaintiffs in the main actions the text of the questions which, in Case 65/75 (Tasca), it put to the Italian Government and to the Commission, and the text of their replies.

II — Observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC

1. General considerations

The *United Kingdom Government* considers that the questions raised by the national court must be approached in the light of the fact that the orders in question of the CIP relate to the fight against rising prices, a fight which is especially urgent in relation to necessities, such as a large number of food products.

Although all the Member States agree on the necessity of combating inflation, they have not as yet managed to achieve a sufficiently close coordination of their economies to enable the anti-inflation measures to be adopted to be more or less the same. The Council in a series of resolutions has declared that it is the task of the Member States to ensure that their efforts are concerted and mutually reinforcing. Whilst recognizing that measures adopted in one country of the Community can have profound effects in other countries, the Council had recognized 'the specific and changing nature of the inflation problem throughout the Community'.

If no possibilities existed for Member States to intervene in price formation Member States would be prevented from fulfilling their obligations under Article 104 of the Treaty, that is, 'to ensure the equilibrium of [their] overall balance of payments and to maintain confidence in [their] currency, while taking care to ensure a high level of employment and the stable level of prices'. There would be the consequent danger to the financial stability of the Member States which Article 6 (2) enjoins the institutions of the Community not to prejudice.

The *Commission* first of all describes the situation existing in the Member States as regards the fixing of maximum consumer prices for different agricultural products, pointing out that each Member State with the exception of the Federal Republic of Germany has engaged in such fixing in respect of one or more products.

The Commission proposed to the Council in 1968 the adoption of regulation in the milk sector the object of which was to limit the power of Member States to fix maximum consumer prices in respect of milk. This proposal was not adopted because the national delegations unanimously maintained that in this matter the power to lay down rules belonged to the Member States alone.

2. First and second questions

The *plaintiffs in the main action* state that these questions are, in essence, the same as those which the Court was called upon to answer in its judgment of 23 January 1975 (Case 31/74, *Galli* [1975] ECR 47). Moreover, the system of prices established for sugar by Regulation No 1009/67 is in every respect the same as the system of prices put into effect for

cereals by Regulation No 120/67 of the Council of 13 June 1967 (OJ English Special Edition, 1967, p. 304), which is the subject of Case 31/74. In these circumstances, the propositions developed in the Galli judgment are equally applicable in the present case.

In particular, Regulation No 1009/67:
- is intended to create a common organization of the markets and especially 'a single market for sugar' (fourth recital);
- considers that this objective 'involves the removal at the internal frontiers of the Community of all obstacles to the free movement of the goods in question' (eighth recital);
- puts into effect a prices system which, while allowing prices to vary, guarantees that they shall not fall below the intervention price;
- provides, under Articles 21 and 39, machinery which enables the Community and Member States to deal with any disturbance.

The Italian system of prices is obviously incompatible with a legal system conceived on that basis. The spirit of Regulation No 1009/67 requires particularly that, owing to the freeplay of supply and demand, the market should allow the formation of prices higher than the intervention price. The fixing of maximum prices, to be observed on pain of heavy penalties, puts a stop to such a development and, consequently, the working of the machinery provided for in the said regulation. The situation is rendered even more serious by the fact that Italian sugar production falls far short of the quota assigned to it, with the result that the whole of it is subject to the intervention price guarantee.

The national measures under consideration here are even more restrictive than those involved in *Galli* which, even though subject to prior authorization, at least made it possible for the list prices laid down by the undertakings themselves, and notified to the administration, to vary. In the present case, the CIP fixed on its own initiative prices which are in practice inalterable because it is economically impossible for Italian producers to sell below these prices. These were fixed at a level substantially lower than that of the market prices prevalent at the time both in the Community and on the world market, and this constituted a serious hindrance to imports.

In fixing trade margins ('maximum charges for packing' and 'maximum charges for distribution') as well as maximum prices to the consumer, the contested order affected production prices, by freezing them, which the judgment in *Galli* held to be not permissible. But even apart from these factors, the fixing of prices to the consumer inevitably influences production prices and, in consequence, is incompatible with the Community rules.

Nor can any justification for the orders in question be based on Article 103 of the Treaty, as is apparent from grounds 23 and 24 of the judgment in *Galli.* As soon as a common organization of the market has been put into effect, the only way, compatible with Community law, in which any subsequent difficulties arising within the sector concerned can be solved, is by recourse to the machinery provided for under the said organization.

The *Italian Government* considers that this question must be answered in the negative.

It cannot be inferred from the judgment in *Galli,* and it is not correct, that the Member States have lost their power unilaterally to fix maximum consumer prices. The objective of the national rules in question in the case of *Galli* was a freezing of prices at the production and wholesale marketing stages, whereas the present case is concerned with rules relating to prices to be applied at the retail and consumer stages, in respect of which the judgment in *Galli* confirmed

the principle of maintaining the power of Member States 'to take the appropriate measures relating to price formation'.

The common organization of the market in sugar is in substance no different from that of the market in cereals which was the subject of the judgment in *Galli*. In particular the price system which it established also concerns only the production and wholesale stages; its main objective is likewise ' to ensure that the necessary guarantees in respect of employment and standards of living are maintained for Community growers' (2nd recital to Regulation No 1009/67).

National rules on prices applicable to the retail and consumer stages is therefore incompatible with Regulation No 1009/67 only if it indirectly affects the prices fixed by the latter, for example by laying down a maximum consumer price lower than the intervention price or, in a more general manner, by fixing a maximum price in such a way as to affect the Community prices. This is not so in the present case since the maximum price fixed by Order No 28/1974 of the CIP, assumes a price ex-factory appreciably higher than the Community threshold price and therefore than the target and intervention prices.

The *United Kingdom Government* gives a detailed analysis of the judgments of the Court concerned with the compatibility or incompatibility with the Community system of national interventions in the price formation of products subject to a common organization of the market. One lesson which can be drawn from all these judgments is that:

— In the first place the scope and purpose of the Community regulation in question must be looked at, having regard to the provisions of the Treaty and in particular Articles 38 to 40.

— It seems that, according to the Court, both the effects and the objectives of the national rules relevant to a particular case must be compatible with the Community objectives.

A national measure comprising the fixing of maximum selling prices could well be in accordance with the objectives of Regulation No 1009/67, namely to achieve a stable market and to guarantee to growers security of employment and a fair standard of living whilst avoiding over-production. This regulation merely prevents such prices from being fixed at a level the object or effect of which would be to prevent these objectives from being attained.

According to the *Commission* the principle confirmed by the judgment in *Galli* that Member States can no longer take action unilaterally affecting the machinery of price formation as established under the common organization of the market in cereals and the market in fats likewise applies to sugar. This arises from the nature and function of the price system of Regulation No 1009/67 which aims at the complete liberalization of intra-Community trade and at the consequential regulation of trade with countries outside the Community.

On the other hand the judgment in *Galli* recognized that national measures relating to prices at the retail and consumption stages are compatible with the Community rules 'on condition that they do not jeopardize the aims or functioning of the common organization of the market in question'. In order to consider whether this is so in the present case it is necessary to deduct from the maximum consumer prices fixed by the CIP all the factors contributing to the cost of the goods from the time when they left the factory to when they are sold to the consumer (marketing costs, duties and taxes, transport costs etc); the price ex-factory is then obtained. The Commission proceeds to do this in tables annexed to its written observations. The outcome of the calculation is as follows:

— The ex-factory price calculated on the basis of the prices fixed by Order No

9/74 was higher than the target price, the same as the derived intervention price, and lower than the threshold price. As, accordingly, the said order fixed consumer prices on the basis of an ex-factory price aligned on the derived intervention price, it was incompatible with the aims and the functioning of the common organization of the market in sugar. Under the Community rules, sugar prices on the internal market could have moved up to the level of the threshold price (beyond that point, both the sugar imports from third countries and the Community measures adopted to deal with a situation of shortage would have intervened and had a controlling influence on prices).

On the other hand, the ex-factory price calculated on the basis of the maximum prices fixed by Order No 28/74 were higher than the threshold price fixed by the Community and *a fortiori* therefore, than the intervention price and the target price. Order No 28/74 did not, therefore, jeopardize either the aims or the functioning of the common organization.

Apart from these considerations it may nevertheless be asked whether the judgment in *Galli* does not lead to the denial of any power vested in the Member States with regard to the fixing of agricultural prices. Such a conclusion would, however, be hasty since the Community has never claimed an exclusive power in this field, a power the exercise of which would have serious implications in the political and economic spheres.

3. Third question

The argument, set out at (2) above, of the *plaintiffs in the main action* is, wholly or in part, intended to deal with the third question too. In particular, they point out that the argument leads to the conclusion that the contested measures cannot be justified by 'the need to protect the economy against speculators and to ensure that supply meets demand'.

The *Italian Government* states that the question can be divided into two parts, namely (a) whether a national system such as that involved in this case is *ipso facto* incompatible with the Community provisions governing the free movement of goods and (b) whether, if this is the case, such a system can, exceptionally, be justified by 'the need to protect the economy against speculation and to provide the necessary guarantee to the consumer in view of the disturbance of the conditions on which the Community rules depend'.

The answer to the first part of the question is in the negative. Such incompatibility could only result from special circumstances in a given case; this occurs, for example, when the maximum price is fixed at a level lower than that of the threshold price. This does not apply in the present case.

In order to reply to the second part of the contested rules are compatible with the Treaty, there is no need whatever to have regard to considerations such as those taken into account by the national court nor, moreover to Article 103 of the Treaty (see the second question).

If, as would appear to be indicated by the wording of the third question, the national court were to take the view that the said rules were adopted in order to make good alleged defects in the Community system, it would be working from a false premise. On the contrary, the maximum prices fixed by the Italian authorities allow for the fact that there are Community prices relating only to the production and wholesale stages and, so to speak, complement them in respect of the retail and consumer stages, which are not covered by Community regulations.

The *United Kingdom Government* infers from the case-law of the Court that national rules affecting prices are in no way caught *ipso facto* by the prohibition on measures having an effect equivalent to quantitative restrictions whether or not they relate to agricultural products. It is necessary in each case to consider the scope, the effect an the objective of the rules in question.

The provisions contained in Article 30 of the Treaty are subject to a certain number of exceptions apart from those mentioned in Article 36. Thus interference in the process of price formation may frequently be an element in the conjunctural policy referred to in Article 103. While Article 103 may not apply to create an exception to the specific provisions contained in the rules of the common organizations of the market, it plainly does apply in the general field governed by the principle contained in Article 30.

Certain agreements concluded between the Community and third countries involved a prohibition similar to that in Article 30 of the Treaty. The Community has never accepted, however, the argument that pricing systems laid down under a common organization of the market have effects equivalent to quantitative restrictions on imports.

The *Commission* gives a similar opinion without however expressing itself specifically on whether the rules in question are compatible with the Community rules.

A national measure such as that in the present case would be equivalent to a quantitative restriction only if, while appearing formally to apply without distinction to national products and imported products, it were drawn up in such a way as to constitute a hindrance to imports which could be effected without it, whereas the sale of national products do not suffer the same degree of disadvantage. This is the case when, for example, the price fixed is lower than that for which the imported product could be sold by reason of the fact that the national authority has not taken into account, in respect of imported products, possibly different marketing margins or costs inherent in imports. It is possible, moreover, that a national measure, which at the beginning was not capable of affecting adversely the free movement of goods, may become so subsequently. This could occur for example when the said measure makes it impossible to increase the price of the imported product to cover the increase in the production costs arising, for example, in the producer Member State. The provisions of Directive No 70/50/EEC referred to by Mr Tasca (see above) would then apply. It would then be for the national court to compare the prices laid down by the orders of the CIP at the time when the facts with which Mr Tasca is charged occurred with the prices then obtaining on the markets of the other Member States.

In Case 65/75 (Tasca), the Court asked the Italian Government to reply in writing, before the hearing, to four questions, the fourth of which was at the same time addressed to the Commission. The replies, which have also been communicated to the plaintiffs in the main action in the present cases, may be summarized as follows:

1. First and second questions put by the Court

The questions were worded as follows:

What is meant by 'sale to the consumer' in Order No 28/1974 of the CIP? In particular: Do prices laid down by this order apply only to sales effected by the retailer to the ultimate consumer or also to other transactions (and if so, to which)?

Can the sale of a large quantity of sugar (for example 25 000 kg of caster sugar) also constitute a sale to the consumer within the meaning of the order?

The *Italian Government* states that the prices fixed by Order No 28/1974 apply only to sales in which the immediate buyer is the ultimate consumer. The expression 'sale to the consumer' is the same as 'retail sale'. Sales made to other traders, wholesalers, retailers, industrial users or other bulk users must be regarded as wholesale sales.

The quantity of products involved in a particular transaction is irrelevant for the purposes of the distinction between 'sales to the consumer' and 'wholesale sales'. Even a transaction, such as the one in the present case, involving 25 000 kg of caster sugar, may constitute a 'sale to the consumer'. However the Italian Government does not know whether the sale in question was or was not made to an ultimate consumer.

2. Third question put by the Court

This question called upon the Italian Government:

to give more detailed reasons ... for its statements that Orders Nos 28/1974 and 39/1974 of the CIP are not concerned with the production and wholesale stages whereas Order No 39/1974 states that components of the maximum consumer prices include the maximum ex-factory price, the maximum price free-at-warehouse and the maximum charge for wholesale and retail distribution, and fixes the amount of these components.

The *Italian Government* replies that Order No 39/1974, according to its first recital, was adopted 'having regard to the need to show how the price of sugar referred to in Order ... No 28/1974 was made up'. It does not therefore involve either fixing maximum consumer prices or *a fortiori* fixing ex-factory prices or free-at-wholesaler's warehouse prices but is limited to stating these factors, and the maximum charges intended to cover distribution costs, as components of the said maximum prices.

In using the expressions 'ex-factory maximum prices', 'maximum prices free-at-wholesaler's warehouse', and 'maximum charges for wholesale and retail distribution' Order No 39/1974 was not expressed precisely. It was in fact concerned with cost factors which had to be taken into account in fixing the maximum consumer prices but which were not made mandatory.

The Italian Government annexes to its reply a table containing an analysis of the consumer prices fixed by Order No 28/1974. This table confirms what has been said and shows that the CIP took into account an ex-factory price well above the Community threshold price then in force.

3. Fourth question put by the Court

This question requested the Italian Government and the Commission: to state in more detail ... in what circumstances in their opinion national price rules of the kind presently in question may:

(1) alter the formation of prices as provided for under the common organization of the market in sugar:
(2) in a more general way jeopardize the aims and functioning of this common organization.

Whereas the *Italian Government* has not given an opinion on this matter the *Commission* has submitted the following observations, stating that it is not dealing with the question of the compatibility of the measures in question with Article 30 of the Treaty.

The common organization of the market in sugar is orientated around three basic prices, the target price, the threshold price and the intervention price. The target price is the 'policy' that is the desired price, but is not imposed. In order to help this price to be obtained on the common market the Community has had recourse to a series of indirect methods: publication of the fixed target

price, import levies, intervention on the internal market and export refunds.

Before the judgment in *Galli* the Commission's position with regard to measures taken unilaterally by certain Member States in the sphere of agricultural prices was as follows:

— As regards production and wholesale prices Member States could fix maximum sale prices only in so far as this was not likely adversely to affect the functioning of the machinery of the common organization of the market or at least to impede it or make it more difficult. Thus to fix a maximum selling price at a lower level than the intervention price would have amounted to an infringement for it would have directly prevented the price level guaranteed by Community law from being attained. It would have been the same if the prices had been fixed at a level lower than the target price since in such a case the national measure would have prevented the target price from being attained. Finally if the maximum selling prices had been fixed at a level higher than the target price it would have been necessary to examine each case to see whether or not the national measure prevented this price from being attained.

— As regards consumer prices, Member States retained the power to fix them in so far as this was not incompatible with Community provisions taken within the framework of the relevant common organization.
Nevertheless, the common organizations of the market are capable of extending their scope also to the consumer stage as appears from Article 39 (1) (e) of the Treaty according to which an objective of the common agricultural policy is *inter alia* 'to ensure that supplies reach consumers at reasonable prices'.
To judge whether a maximum consumer price laid down by a Member State is compatible with the Community prices it is necessary to inquire what, having regard to the average profit margins of the middle men is the price level free-factory assumed by the said maximum price.

The judgment in *Galli* leads the Commission, as regards more particularly the present case, to the following considerations:

— The case submitted to the Court is of a special nature in that of all agricultural products sugar is the one which shows most clearly the relationship between the selling prices at the production and wholesale stages on the one hand and on the other the selling prices at the retail and consumer stages. The orders in question of the CIP show that in Italy, and as regards sugar, it is possible 'to control prices without distinction by regulation one or the other stage'.

— Although in its written observations the Commission stated that because the consumer price laid down by Order No 28/1974 assumed an ex-factory price above the Community threshold price it did not jeopardize the objectives and functioning of the common organization of the markets in sugar, it is aware that this opinion is open to criticism. First the distinction between production and the wholesale trade on the one hand and the retail trade on the other hand is not clear-cut. Then the method chosen by the Commission to establish that the prices in question are compatible with the Community rules, a method which consists in going back to the ex-factory price, could lead to the objection that it is incompatible with the judgment in *Galli*.

During the oral procedure, which took place on 16 December 1975, the plaintiffs in the main action, represented by Mauro de Andrè, Antonio Sorrentino et Severo Giannini, of the Rome bar, the

British Government, represented by Gordon Slynn of the Treasury Solicitor's Department, the Italian Government, represented by Ivo Maria Braguglia, Vice-avvocato dello Stato, the Commission represented by its Legal Adviser, Cesare Maestripieri, and the Council, represented by its Legal Adviser, M. C. Giorgi, amplified the arguments set out in the written procedure.

The new factors put forward on that occasion may be summarized as follows:

The *plaintiffs in the main action* contend that, contrary to the statements of the Italian Government, the contested orders do not only fix the prices to the consumer but also maximum production prices. It cannot be accepted that the CIP, which is responsible for fixing prices, described the factors making up the price to the consumer, including the maximum ex-factory price, merely for information

Moreover, the Italian Government's explanation runs contrary to the interpretation placed on the said orders by Italian case-law.

The *Italian Government* states that, although the objective of Regulation No 1009/67 is to guarantee the employment and standards of living of sugar producers, it attains this objective by means of fixing the intervention price, the only binding Community price, and ensuring that producers are never forced to produce at a loss. In other words, the regulation guarantees producers a minimum return but not the maximum profit which producers could obtain if they were free to determine the consumer prices. In reply, more particularly, to the fourth question put by the Court in Case 65/75 *(Tasca)* after the written procedure was closed, the Italian Government states that the fixing of maximum consumer prices does not jeopardize the aims and the functioning of the common organization unless it is done in such a way as to make it impossible, or more difficult, to achieve the said minimum return.

Contrary to the statements of the Commission, the price to the consumer fixed by Order No 9/1974 was based on an ex-factory price higher than the threshold price, as the Italian Government explains in detail.

The Advocate-General delivered his opinion on 21 January 1976.

Law

1 By orders dated 16 June 1975 received at the Court Registry on 8 August 1975 the Tribunale Amministrativo Regionale del Lazio referred, under Article 177 of the EEC Treaty, three questions on the interpretation of Article 30 of the EEC Treaty and the provisions of Regulation No 1009/67/EEC of the Council of 18 December 1967 on the common organization of the market in sugar (OJ English Special Edition 1967, p. 304). These questions have arisen in the context of actions for the annulment of certain orders adopted in 1974 by the *Comitato Interministeriale dei prezzi* (Inter-departmental Committee on Prices), which the plaintiffs consider incompatible with Community law. They are Orders Nos 9/1974, 28/1974

and 39/1974 (Gazzetta Ufficiale No 52 of 23 February 1974, No 171 of 2 July 1974 and No 214 of 16 August 1975), the first two of which had successively fixed maximum consumer prices for sugar both of domestic and foreign origin whilst the third had set out the factors making up the maximum prices laid down by Order No 28/1974, which factors include *inter alia* the 'maximum ex-factory price', the 'maximum price free-at-wholesaler's warehouse' and the 'maximum charge for wholesale and retail distribution'.

2 In view of the common ground between them it is proper to join the present cases for the purposes of the judgment.

3 In the procedure before the Court disagreement was revealed on whether as a whole these orders fixed obligatory maximum prices only for the sales in which the immediate buyer is the ultimate consumer or whether they did so for sales made at previous marketing stages and in particular in respect of sales made by sugar growers. It is not for the Court to settle this dispute, and having regard to the fact that the questions raised by the national court make no distinction between the different marketing stages, it is proper to construe these questions as referring in a general manner to the fixing of maximum prices for the sale of sugar whether it be a question of sales made by growers, importers, wholesalers or retailers.

On the first and second questions

4 The first and second questions ask the Court to rule on the one hand on 'the competence, exclusive or otherwise, of the European Economic Community to exercise legislative power to control the prices of sugar, and the use made of such power in Regulation No 1009/67/EEC and subsequent additions thereto' and on the other hand on 'the legality, in relation to a conjunctural policy and to Article 103 of the Treaty, of unilateral interventions by a Member State in the sector concerned, and of the type in question'.

5 Regulation No 1009/67, adopted within the framework of the common agricultural policy, is intended to establish a common organization of the market within the meaning of Article 40 of the EEC Treaty. This common organization of the market is intended, as is emphasized repeatedly in the preamble to the regulation, to create for the Community a single market in sugar subject to common administration and based on a system of common prices.

6 As the Court has already indicated (Case 31/74, *Galli* [1975] ECR 47) in respect of national rules freezing the prices of other products at the production and wholesale stages 'in sectors covered by a common organization of the market — even more so when this organization is based on a common price system — Member States can no langer interfere through national provisions taken unilaterally in the machinery of price formation as established under the common organization' so that 'a national system which by freezing prices ... has the effect of modifying the formation of prices as provided for in the context of the common organization of the market, is incompatible' with the Community rules. The same judgment stated that the provisions of a Community agricultural regulation involving a system of prices applying to the production and wholesale stages 'leave Member States free — without prejudice to other provisions of the Treaty — to take the appropriate measures relating to price formation at the retail and consumption stages, on condition that they do not jeopardize the aims or functioning of the common organization of the market in question'. These considerations which were put forward at the time in respect of Regulations Nos 120/67 and 136/66 on the common organization of the market in cereals and of that of oils and fats respectively are equally valid for the purposes of the interpretation of Regulation No 1009/67 on the common organization of the market in sugar in view of the similarity of the respective price systems established by Regulations Nos 120/67 and 1009/67.

7 From the point of view of compatibility with the Community rules on the fixing of prices by national authorities a strict distinction between maximum consumer prices and maximum prices applicable at previous marketing stages is difficult due to the fact that on the one hand price rules at the stage of the sale to the ultimate consumer may well have repercussions on price formation at the previous stages and that on the other hand the prices prescribed by the Community system in the sugar sector are not prices applicable to particular sales made to dealers, industrial users or consumers. It must be admitted that in fact in the matter of agricultural prices national rules for the same marketing stages as the system of Community prices will normally run a greater risk of conflicting with the said system than rules applying exclusively to other stages. It must therefore be concluded that the unilateral fixing by a Member State of maximum prices for the sale of sugar, whatever the marketing stage in question, is incompatible with Regulation No 1009/67 once it jeopardizes the objectives and the functioning of this organization and in particular its system of prices.

8 In order to indicate to the national court how such incompatibility could arise it is well to consider this system in more detail.

9 According to Article 2 (1) of Regulation No 1009/67 'a target price for white sugar shall be fixed each year for the Community area having the largest surplus' — that is, certain departments in northern France. According to Article 3 (1) and (2) 'an intervention price for white sugar shall be fixed each year' for the said area whereas 'derived intervention prices shall be fixed for other areas, account being taken of the regional variations ...' According to Article 9 (1) of Regulation No 1009/67 'intervention agencies designated by sugar-producing Member States shall be required ... to buy in ... sugar ... offered to them ... at the intervention price valid for the area in which the sugar is located at the time of purchase' while Article 10 provides that as a rule they 'may only sell sugar on the domestic market at a price which is higher than the intervention price'. According to the combined provisions of Article 4 (1) and (2) and Article 5 (1) of the regulation 'Each year, for each beet sugar producing area ... a minimum price for beet shall be fixed ... when the minimum price for beet is being established, the intervention price for white sugar in the area in question ... shall be taken into account ... sugar manufacturers buying beet for processing into sugar shall be required to pay at least the minimum price for sugar beet'.

10 During the period in question the derived intervention price for Italy was fixed at a higher level than that of the target price so that it suffices to consider the question raised by the national court with regard to this situation.

11 The Community rules aim at ensuring as far as possible that sugar manufacturers may obtain, in their sales in the area for which a derived intervention price has been fixed, an ex-factory price at least equal to this price. Otherwise manufacturers could find it impossible to pay beet growers the minimum price which the Community rules guarantee to them. Thus a Member State in respect of which the intervention price has been fixed at a level higher than the target price jeopardizes the objectives and the functioning of the sugar markets if it regulates the prices in such a way as directly or indirectly to make it difficult for the sugar manufacturers to obtain an ex-factory price at least equal to the said intervention price. Such an indirect obstruction exists when the Member State in question, without regulating the prices at the production stage, fixes maximum selling prices for the wholesale and retail stages at such a low level that the grower finds it practically impossible to sell at the intervention price since if he were to do so it would force the wholesalers or retailers, bound by the said maximum prices, to sell at a loss.

12 In every case it is for the national court to decide, having regard to the considerations which have just been set out, whether the maximum prices which it is called upon to consider produce such effects as to make them incompatible with the Community provisions on sugar.

13 In so far as a maximum price unilaterally fixed by a Member State is incompatible with the provisions of the agricultural law of the Community, the State concerned cannot rely on the provisions of Article 103 of the Treaty on conjunctural policy in order to justify fixing the price, especially as Regulation No 1009/67 comprises a framework of organization designed in such a way as to enable the Community and Member States to meet all manner of disturbances. In this connexion, it must first be stressed that it is one of the objectives of Article 39 (1) of the Treaty that supplies reach consumers at reasonable prices. Article 21 (1) of Regulation No 1009/67 enables the Council to take all appropriate measures if the Community market is disturbed or threatened with disturbances by reason of imports or exports. The second paragraph of the same article indicates precisely the procedures for common action by the Council, the Commission and the Member States in the abovementioned event. In addition to the powers which the regulation reserves to the Council and the Commission, the Treaty itself entrusts the Commission with the general task of supervision and initiation of measures. It is also necessary to draw attention in this connexion to the role played by permanent consultation, in the management of the sector at issue, by means of the 'Management Committee' established by Article 39 of the regulation. Besides the tasks with which it is specifically entrusted, the Management Committee may, in fact, in the words of Article 41 of the regulation, consider any other question referred to it by its Chairman either on his own initiative or at the request of the representative of a Member State. It is therefore apparent that the framework of organization of Regulation No 1009/67 reserves to every Member State the power, in conjunction with the Community institutions, to take the necessary action, in the shortest possible time, where the normal operation of the price machinery established by the regulation is ineffective in the face of undesirable tendencies ascertained in the movement of prices in its territory.

On the third question

14 The third question in substance asks whether national measures such as those in question are compatible with the prohibition in Article 30 of the Treaty on measures having an effect equivalent to quantitative restrictions when the said measures are justified 'by the need to protect the economy from speculative

operations and to guarantee the necessary consumer supplies against the upsetting of the conditions on which the Community rules are based both by the deficit in Community production and by the doubling of the world price of this product'.

15 Article 30 of the Treaty prohibits in trade between Member States all measures having an effect equivalent to quantitative restrictions and this prohibition is repeated in Article 35 of Regulation No 1009/67 as regards the market in sugar. For the purposes of this prohibition it is sufficient that the measures in question are likely to constitute an obstacle, directly or indirectly, actually or potentially, to imports between Member States. Although a maximum price applicable without distinction to domestic an imported products does not in itself constitute a measure having an effect equivalent to a quantitative restriction, it may have such an effect when it is fixed at a level such that the sale of imported products becomes, if not impossible, more difficult than that of domestic products. A maximum price, in any event in so far as it applies to imported products, constitutes therefore a measure having an effect equivalent to a quantitative restriction, especially when it is fixed at such a low level that, having regard to the general situation of imported products compared to that of domestic products, dealers wishing to import the product in question into the Member State concerned can do so only at a loss.

16 It is for the national court to decide whether this is so in the present case.

17 For the reasons given in reply to the first and second questions the Member State concerned cannot base its justification of a maximum consumer price producing the abovementioned effect either on Article 103 of the Treaty or on the need to protect the economy from speculative operations or on a change occurring in the economic situation in the sugar sector.

Costs

18 The costs incurred by the Commission of the European Communities and the United Kingdom and Italian Governments, which have submitted observations to the Court, are not recoverable, and as these proceedings are a step in the actions pending before the national court the decision on costs is a matter for that court.

On those grounds,

THE COURT

in answer to the questions referred to it by the Tribunale Amministrativo Regionale del Lazio by orders of 16 June 1975, hereby rules:

1. **The unilateral fixing by a Member State of maximum prices for the sale of sugar, whatever the marketing stage in question, is incompatible with Regulation No 1009/67 once it jeopardizes the objectives and the functioning of this organization and in particular its system of prices.**

2. **A maximum price, in any event in so far as it applies to imported products, constitutes therefore a measure having an effect equivalent to a quantitative restriction, especially when it is fixed at such a low level that, having regard to the general situation of imported products compared to that of domestic products, dealers wishing to import the product in question into the Member State concerned can do so only at a loss.**

3. **In so far as a maximum price fixed unilaterally by a Member State is incompatible with Article 30 of the Treaty or the provisions of the agricultural law of the Community the Member State concerned cannot base its justification for this fixing either on Article 103 of the Treaty or on the need to protect the economy from speculative operations or on a change occurring in the economic situation in the sugar sector.**

Lecourt Kutscher O'Keeffe

Donner Mertens de Wilmars Sørensen Mackenzie Stuart

Delivered in open court in Luxembourg on 26 February 1976.

A. Van Houtte
Registrar

R. Lecourt
President