ORDER OF THE COURT (First Chamber)
11 October 2001 *

In Case C-30/00,

REFERENCE to the Court under Article 234 EC by the Supremo Tribunal Administrativo (Portugal) for a preliminary ruling in the proceedings pending before that court between

William Hinton & Sons L^da^

and

Fazenda Pública,

intervener:

Ministério Público,

on the interpretation of Articles 1, 2 and 5 of Council Regulation (EEC) No 1697/79 of 24 July 1979 on the post-clearance recovery of import duties or export duties which have not been required of the person liable for payment on goods entered for a customs procedure involving the obligation to pay such duties (OJ 1979 L 197, p. 1), Article 254 of the 1985 Act concerning the conditions of accession of the Kingdom of Spain and the Portuguese Republic and the

* Language of the case: Portuguese.

adjustments to the Treaties (OJ 1985 L 302, p. 23), Article 8 of Council Regulation (EEC) No 3771/85 of 20 December 1985 on stocks of agricultural products in Portugal (OJ 1985 L 362, p. 21) and Articles 4 and 8 of Commission Regulation (EEC) No 579/86 of 28 February 1986 laying down detailed rules relating to stocks of products in the sugar sector in Spain and Portugal on 1 March 1986 (OJ 1986 L 57, p. 21),

THE COURT (First Chamber),

composed of: P. Jann (Rapporteur), President of the Chamber, L. Sevón and M. Wathelet, Judges,

Advocate General: A. Tizzano,
Registrar: R. Grass,

the national court having been informed that the Court proposes to give its decision by reasoned order pursuant to Article 104(3) of its Rules of Procedure,

the persons referred to in Article 20 of the EC Statute of the Court of Justice having been invited to submit any observations they may have on that proposal,

after hearing the Advocate General,

makes the following

Order

1 By order of 12 January 2000, received at the Court on 4 February 2000, the Supremo Tribunal Administrativo referred to the Court for a preliminary ruling under Article 234 EC eight questions on the interpretation of Articles 1, 2 and 5 of Council Regulation (EEC) No 1697/79 of 24 July 1979 on the post-clearance recovery of import duties or export duties which have not been required of the person liable for payment on goods entered for a customs procedure involving the obligation to pay such duties (OJ 1979 L 197, p. 1), Article 254 of the 1985 Act concerning the conditions of accession of the Kingdom of Spain and the Portuguese Republic and the adjustments to the Treaties (OJ 1985 L 302, p. 23, 'the Act of Accession'), Article 8 of Council Regulation (EEC) No 3771/85 of 20 December 1985 on stocks of agricultural products in Portugal (OJ 1985 L 362, p. 21) and Articles 4 and 8 of Commission Regulation (EEC) No 579/86 of 28 February 1986 laying down detailed rules relating to stocks of products in the sugar sector in Spain and Portugal on 1 March 1986 (OJ 1986 L 57, p. 21).

2 Those questions arose in the context of a dispute between William Hinton & Sons L^{da} ('William Hinton') and Fazenda Pública with regard to the post-clearance recovery of charges levied on surplus stocks of sugar held by William Hinton.

Legislative framework

3 Article 1 of Regulation No 1697/79 provides:

'1. This regulation shall determine the conditions under which the competent authorities shall undertake post-clearance recovery of import duties or export duties on goods entered for a customs procedure involving the obligation to pay such duties for which, for whatever reason, payment has not been required of the person liable for payment.

2. for the purposes of this regulation:

...

(c) "entry in the accounts" means the official act by which the amount of the import duties or export duties to be collected by the competent authorities is duly determined.

...'

4 Article 2 of Regulation No 1697/79 reads as follows:

'1. Where the competent authorities find that all or part of the amount of import duties or export duties legally due on goods entered for a customs procedure involving the obligation to pay such duties has not been required of the person liable for payment, they shall take action to recover the duties not collected.

However, such action may not be taken after the expiry of a period of three years from the date of entry in the accounts of the amount originally required of the person liable for payment or, where there is no entry in the accounts, from the date on which the customs debt relating to the said goods was incurred.

2. Within the meaning of paragraph 1 action for recovery shall be taken by notifying the person concerned of the amount of import duties or export duties for which he is liable.'

5 According to Article 5 of Regulation No 1697/79:

'The competent authorities may refrain from taking action for the post-clearance recovery of import duties or export duties which were not collected as a result of an error made by the competent authorities themselves which could not reasonably have been detected by the person liable, the latter having for his part acted in good faith and observed all the provisions laid down by the rules in force as far as his customs declaration is concerned.

The cases in which the first subparagraph can be applied shall be determined in accordance with the implementing provisions laid down in accordance with the procedure provided for in Article 10.'

6 Article 1(2) of Council Regulation (EEC) No 1854/89 of 14 June 1989 on the entry in the accounts and terms of payment of the amounts of the import duties or export duties resulting from a customs debt (OJ 1989 L 186, p. 1) contains a new definition of 'entry in the account', worded as follows:

'For the purposes of this regulation:

...

(c) "entry in the accounts" means the entry by the customs authority in the accounts books, or any other medium used in their stead, of the amount of import duties or export duties corresponding to a customs debt'.

7 According to Article 26, Regulation No 1854/89 applies to amounts of duty entered in the accounts on and after 1 July 1990.

8 Article 254 of the Act of Accession provides:

'Any stock of products in free circulation in Portuguese territory on 1 March 1986 which in quantity exceeds what may be considered representative of a normal carry-over stock must be eliminated by and at the expense of the Portuguese Republic under Community procedures to be specified, and within the time-limits to be determined, under the conditions provided for in Article 258. The concept of normal carry-over stock shall be defined for each product on the basis of the criteria and objectives particular to each common organisation of the markets'.

9 Article 5(1) of Regulation No 3771/85 provides in particular:

'Except where special provisions regarding certain products are adopted, the operating stocks necessary for the requirements of the Portuguese market for a period to be determined shall be considered as normal carry-over stocks.

The period shall be determined in such a way as to ensure smooth transition to the 1986/87 marketing year for each product concerned; where no marketing year exists, this period may not extend beyond 31 December 1986, or, in the case of the products referred to in the second sentence of Article 4, beyond 31 December of the year in which the second stage commences.'

10 Article 6(1) of Regulation No 3771/85 is worded as follows:

'While it shall be the subject of specific declarations to the Commission as part of the documents forwarded in accordance with Article 5 of Regulation (EEC) No 729/70, expenditure on refunds and, where appropriate, on intervention arising from the disposal of quantities of products of which stocks as referred to in the first sentence of Article 254 of the Act of Accession are determined shall not be taken into account by the European Agricultural Guidance and Guarantee Fund, Guarantee Section.'

11 Article 8 of Regulation No 3771/85 states:

'1. Detailed rules for the application of this Regulation shall be adopted in accordance with the procedure laid down in Article 38 of Council Regulation (EEC) No 136/66/EEC of 22 September 1966 on the establishment of a common organisation of the market in oils and fats... or, as the case may be, in corresponding Articles in other regulations on the common organisation of the agricultural markets.

2. The detailed rules referred to in paragraph 1 shall relate in particular to:

(a) the determination of stocks as referred to in Article 254 of the Act of Accession in the case of products the quantities of which exceed normal carry-over stocks;

(b) the determination referred to in Article 6(3);

(c) the notifications to be forwarded to the Commission by the Portuguese Republic;

(d) the procedures for disposing of surplus products.

3. The detailed rules referred to in paragraph 1 may make provision for:

(a) a list of products in respect of which the Portuguese Republic carries out a survey of stocks;

(b) the collection of a charge on export from the Member State of storage to another Member State or to a third country, in cases where the products are exported at an abnormally low price level bearing in mind the price level applying in the exporting Member State;

(c) the collection of a charge in cases where a party concerned does not comply with the procedures for disposing of surplus products.'

12 Article 3(1) and (2) of Regulation No 579/86 provide:

'1. The new Member States shall each undertake a survey of sugar and isoglucose stocks in free circulation in their respective territories at 00.00 hours on 1 March 1986.

2. For the application of paragraph 1, any person holding, in whatever capacity, a quantity of sugar or isoglucose of at least 3 000 kilograms, expressed, as the case may be, as white sugar or dry matter, in free circulation at 00.00 hours on 1 March 1986 must declare it to the competent authorities before 13 March 1986.'

13 Article 4(1) of Regulation No 579/86 provides:

'1. Where the quantity of the sugar or isoglucose stocks recorded by the survey provided for in Article 3 exceeds, for a new Member State, the quantity laid down for the latter in Article 2(1), that Member State shall ensure that a quantity equal to the difference between the quantity recorded and the quantity laid down is exported from the Community before 1 January 1987, either in the form of the products referred to in Article 1 of this Regulation or in the form of processed products within the meaning of Article 1 of Regulation (EEC) No 3035/80. For the determination of the quantity to be exported, quantities of sugar and isoglucose may not be added together and the substitution of one for the other for export shall not be permitted.

As regards Portugal, the recording of stocks and the determination of quantities of sugar to be exported in compliance with the first subparagraph shall be carried out separately for the autonomous regions of the Azores and Madeira on the one hand and for the other regions of Portugal on the other hand.'

14 Article 5(1) and (2) of Regulation No 579/86 is worded as follows:

'1. The evidence of export as referred to in Article 4(1) must be provided, except in cases of *force majeure*, before 1 March 1987 by the presentation of:

(a) export licences and certificates issued in accordance with Article 6 by the competent body in the new Member State concerned;

(b) the relevant documents laid down in Articles 30 and 31 of Regulation (EEC) No 3183/80 for the release of the security.

2. If the evidence referred to in paragraph 1 is not provided before 1 March 1987, the quantity in question shall be considered as being disposed of on the Community internal market.'

15 According to Article 7(1) of Regulation No 579/86:

'For the quantities which are considered as being disposed of on the internal market in accordance with Article 5(2), an amount shall be levied which is equal:

(a) in the case of sugar, per 100 kilograms, to the import levy in force on 31 December 1986 for which sugar, increased or reduced, as the case may be, by the accession compensatory amount in force on that date for white sugar for the new Member State in question;

(b) in the case of isoglucose, per 100 kilograms of dry matter, to one hundred times the basic amount of the import levy in force on 31 December 1986 for sucrose syrups.'

16 Article 8(1) of Regulation No 579/86 provides:

'The new Member States shall take all measures necessary for the application of this Regulation and shall lay down, in particular, all the control which prove necessary to conduct the survey provided for in Article 4(1).'

17 In view of the special situation of the sugar market in Portugal, Commission Regulation (EEC) No 3332/86 of 31 October 1986 amending Regulation (EEC) No 579/86 (OJ 1986 L 306, p. 37) extended the time-limit for exportation from the Community, laid down in Article 4(1) of Regulation No 579/86, to 30 June 1987. The date on which evidence of export, as referred to in Article 4(1) of that regulation, was to be provided was put back to 1 September 1987.

The main proceedings

18 William Hinton, whose registered office is in Funchal (Portugal), is engaged in the business of, *inter alia*, storing and marketing sugar. Before the accession of the Portuguese Republic to the European Communities, the Instituto do Vinho da Madeira (Madeira Wine Institute — hereinafter 'the IVM') had the exclusive right to import sugar into the Autonomous Region of Madeira. The IVM entrusted to William Hinton the storage and marketing of sugar which it

imported, the latter sending it a daily report of incoming and outgoing sugar and of stock in hand.

19 At the end of 1985, William Hinton obtained permission from the competent authorities to import, on behalf of the company Interbiz-International Trading L^{da}, a quantity of white sugar that the latter was to import from the European Economic Community. Since that sugar was intended for public supply of the Autonomous Region of Madeira, it was exempt from levies and other customs duties and taxes, in accordance with the legislation in force. The imported sugar, amounting to 5 000 tonnes, reached the port of Funchal at the end of January 1986, having come from Denmark. After the goods were unloaded customs and inspection formalities were completed by the customs authorities at Funchal, the sugar was stored in William Hinton's stores, where the IVM's sugar was also to be found.

20 On 12 March 1986, the IVM informed the competent authorities that on 1 March 1986 William Hinton held 4 500 tonnes of refined white sugar for public supply of the Autonomous Region of Madeira.

21 Taking that figure into account, the Council of Ministers adopted Resolution No 5/87 (*Diário da República* I, Series A, No 24, of 29 January 1987), whereby it distributed the normal stock of white sugar fixed by the first indent of Article 2(1)(b) of Regulation No 579/86 by according 5 833 tonnes to the Autonomous Region of the Azores and 1 250 tonnes to the Autonomous Region of Madeira. Moreover, that resolution provided that any loss arising in respect of the Autonomous Region of Madeira as a result of Community obligations would be shared between it and those storing the sugar.

22 On 1 September 1987, the Organismo de Intervenção do Açucar (Sugar Intervention Agency, hereinafter 'the OIA') reported that, at 00.00 hours on

1 March 1986, William Hinton held 1 653 186 kg of surplus sugar. The Directorate of Services Relating to the Movement of Goods and Agricultural Policy of the Directorate-General of Customs forwarded that information to the customs authority in Funchal.

23 On 16 October 1987 the Funchal customs authority sent William Hinton a letter referring to the surplus stocks of sugar which had been noted and ordering William Hinton to pay PTE 104 754 290 by way of levy in respect of that stock.

24 On 30 October 1987, William Hinton paid the abovementioned sum. The payment was entered in the accounts by the Funchal customs authority on the same date.

25 When it noted that the levy relating to the rate of charge applied for regularisation of the stock attributed to William Hinton was lower than it should have been, Funchal customs authority made arrangements for post-clearance recovery and, on 26 June 1990, it sought payment from William Hinton of an additional PTE 4 695 213.50 which William Hinton duly paid.

26 On 26 September 1990 the Funchal customs authority sent William Hinton a further letter, ordering payment of an additional PTE 6 368 850 on account of the fact that the levies in question were to be included in the taxable amount for VAT purposes.

27 Next, the Customs Inspectorate informed the Funchal customs authority that the quantities of sugar mentioned by the OIA did not correspond to William Hinton's stocks and that, according to the calculations of the General Finance Inspecto-

rate, it was not holding 1 653 186 kg but 4 030 554 kg, so that the levies payable totalled PTE 266 843 634.

28 By letter of 25 October 1990, served on William Hinton on 29 October 1990, the Funchal customs authority ordered it to pay that amount.

29 By letter of that same date, the Funchal customs authority added the sum of PTE 16 010 618 to the amount to be recovered on account of the fact that the levies in question were to be included in the taxable amount for VAT purposes.

30 By letter of 26 November 1990, served on William Hinton on 3 December 1990, the Funchal customs authority stated that the sum payable was not the sum notified by the letter of 25 October 1990 but rather the sum of PTE 157 394 108, on account of the amounts which had already been demanded.

31 William Hinton challenged the decision to undertake post-clearance recovery before the Tribunal Fiscal Aduaneiro (Customs Court), Lisbon, which declared itself not to have jurisdiction concerning the substance of the case. The case then went on appeal before the Tribunal Tributário de Segunda Instância (Tax Court of Second Instance) (Portugal), which set aside the judgment appealed against and held the application to be unfounded.

32 In its appeal before the Supremo Tribunal Administrativo, William Hinton claims, in essence, that the period of three years provided for in the second subparagraph of Article 2(1) of Regulation No 1697/79 as regards post-clearance recovery had already expired for several reasons. First and foremost, the entry in the accounts of the amount originally required of the person liable for payment, which sets time running for the period of three years within which action may be

taken for recovery, took place on 16 October 1987 rather than on 30 October of that year, as the administrative authorities claim. Secondly, there was no actual entry in the accounts within the meaning of Community law and the starting point for the abovementioned period of three years should be fixed as the date on which the customs debt was incurred, that is to say 1 July 1987. Finally, it is claimed that that period had in any event expired when the assessment notice, dated 26 November 1990, was notified to William Hinton, namely on 3 December 1990.

33 William Hinton further claims that the post-clearance recovery at issue in the main proceedings was contrary to Article 254 of the Act of Accession and to Regulations No 3771/85 and No 579/86.

34 In those circumstances, the Supremo Tribunal Administrativo has decided to stay proceedings and refer to the Court of Justice the following questions for a preliminary ruling:

'(1) Should it be inferred from Article 1(2)(c) of Council Regulation (EEC) No 1697/79 of 24 July 1979 that, when the legal act known as *entry in the accounts* has been carried out, that act must necessarily precede the notification regarding recovery and actual recovery?

(2) Should there be deemed to be a lack of any entry in the accounts, for the purposes of the second subparagraph of Article 2(1) of Council Regulation (EEC) No 1697/79 of 24 July 1979, when the purpose of the first measure by which the Customs Authority enters the amount of levies in accounting records or the equivalent thereof is to record the recovery of those levies?

(3) For the purposes of applying Article 1(1) conjunction with Article 2(c) and the second subparagraph of Article 2(1) of Council Regulation (EEC)

No 1697/79 of 24 July 1979, may a first act determining the amount of levies payable be regarded as the end of the limitation period for post-clearance recovery proceedings or, on the contrary, is the end of that period marked by the issue of a second act revoking and replacing the first, giving a new amount for the levies due?

(4) What meaning must be attributed to Article 254 of the Treaty of Accession where it imposes on the Portuguese Republic the obligation to eliminate surplus stocks of products and, in particular, to do so "at the expense of the Portuguese Republic"?

(5) Is the requirement imposed by the Portuguese Customs Authorities on holders of surplus sugar that they pay the levies provided for in Article 7(1) of Regulation (EEC) No 579/86 in circumstances where the Portuguese Republic had failed to take the measures necessary for the export thereof outside the Community compatible with the obligation laid down by Article 254 of the Treaty of Accession, of which further details are given in the implementing regulations — Article 8 of Council Regulation (EEC) No 3771/85 of 20 December 1985 and Articles 4 and 8 of Commission Regulation (EEC) No 579/86 of 28 February 1986?

(6) For the purposes of Article 5(2) of Council Regulation (EEC) No 1697/79 of 24 June 1979, must an incorrect estimate of sugar requirements for public supply of the Autonomous Region of Madeira, which was based on an import licence in which exemption from customs duties was granted in full awareness of Article 254 of the Treaty of Accession and Council Regulation (EEC) No 3771/85, be regarded as a significant error?

(7) For the purposes of Article 5(2) of Regulation (EEC) No 1697/79, must the successive errors of fact and of law committed by the competent Customs Authority in determining the amount payable be regarded as significant?

(8) If the previous two questions are answered in the affirmative, could the debtor reasonably detect such errors on the part of the competent customs authorities?'

Preliminary considerations

35 First of all, the Commission draws the Court's attention to its doubts regarding the relevance of Regulation No 1697/79 to the settlement of the dispute in the main proceedings. It is clear from Article 1(1) of that regulation, the tenor of which is supported by the first recital in the preamble thereto, that the provisions of that regulation apply only where goods which are subject to import or export duty have been declared for that purpose. Such an obligation to declare to the competent authorities goods subject to the payment of levies is in the present case provided for in Article 3(2) of Regulation No 579/86.

36 However, it would appear from the order for reference that the applicant did not comply with that obligation or, at the very least, did not do so in respect of the whole of the goods in its possession on 1 March 1986. Even the lesser quantity of sugar taken into account for the assessment of the levies payable which the Funchal customs authority carried out in 1987 does not, according to the Commission, appear to have been declared by William Hinton but by OIA.

37 In that connection it is sufficient to observe that, according to settled case-law, in the context of the cooperation between the Court of Justice and the national courts provided for by Article 234 EC, it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court (see, *inter alia*, Case C-415/93 *Bosman* [1995] ECR I-4921, paragraph 59, and Case C-340/99 *TNT Traco* [2001] ECR I-4109, paragraph 30).

38 In the present case, it is accordingly for the national court to examine the question whether the goods subject to the payment of levies were declared in accordance with Article 3(2) of Regulation No 579/86. If that is not the case, that court is to apply national provisions concerning actions for recovery, rather than those of Regulation No 1697/79.

39 Those considerations do not however mean that the Court cannot provide, in the light of the factors contained in the order for reference, answers to the questions concerning the interpretation of Regulation No 1697/79.

The questions referred for a preliminary ruling

40 Considering that the answer to some of the questions admits of no reasonable doubt and that the reply to the remaining questions may be clearly deduced from the case-law, the Court informed the national court pursuant to Article 104(3) of its Rules of Procedure that it proposed to give its decision by reasoned order and invited the Member States together with the other persons referred to in Article 20 of the EC Statute of the Court of Justice to submit any observations they might have on that proposal.

Questions 1 and 2

41 William Hinton and the Commission claim that it follows from the definition of 'entry in the accounts' set forth in Article 1(2)(c) of Regulation No 1697/79, that it is an official act which necessarily precedes notification regarding recovery and actual recovery. William Hinton argues, moreover, that Article 1(2)(c) of Regulation No 1854/89 clarified that definition inasmuch as, according to that provision, entry in the accounts must be entry by the customs authority in the

accounts books, or any other medium used in their stead, of the amount of import duties or export duties corresponding to a customs debt.

42 The Portuguese Government takes the view, on the other hand, that entry in the accounts does not necessarily have to precede notification regarding recovery, but that it must precede actual recovery.

43 In that respect, it must be stated, first of all, that it is clear from the order for reference that the national court needs to know what must be understood by 'entry in the accounts of the amount originally required of the person liable for payment' in order to determine whether the action for recovery was undertaken within the period of three years laid down in the second subparagraph of Article 2(1) of Regulation No 1697/79. It is obvious that entry in the accounts of the amount in question must necessarily precede notification of the sum to be recovered to the person liable.

44 Secondly, it must be pointed out, as the Commission rightly does, that the provisions of Regulation No 1854/89 are not relevant to the case in the main proceedings, since that regulation applies, according to Article 26, only to amounts of duty entered in the accounts on and after 1 July 1990.

45 Since the definition of 'entry in the accounts' set forth in Article 1(2)(c) of Regulation No 1697/79 refers only to the official act fixing the amount of the import or export duties to be collected by the competent authorities, it follows that entry in the accounts within the meaning of that provision does not necessarily have to consist in entry of those amounts by the customs authority in the accounts books, or any other medium used in their stead. The official act fixing for the first time the amounts of duty to be collected must be considered as having been adopted at the latest on the date on which that amount is notified to the person liable for payment.

46 The answer to the first and second questions should therefore be that Article 1(2)(c) and the second subparagraph of Article 2(1) of Regulation No 1697/79 must be interpreted as meaning that entry in the accounts of the amount originally required of the person liable for payment is an official act which precedes notification regarding recovery and actual recovery and which does not necessarily consist in entry by the customs authority in the accounts books, or any other medium used in their stead, of the amount in question.

Question 3

47 As to determining which act must be considered to set in motion the action for post-clearance recovery of levies not collected, William Hinton claims that, where an initial act determining their amount has been replaced by a second act fixing a new amount for such levies, such an act can only be that annulling and replacing a preceding act. Such an interpretation may be inferred from the general principle of administrative law regarding the retrospective repeal of an annulled act by an act annulling it.

48 In that regard, it must be stated, as the Portuguese Government and the Commission submit, that, where the second act adopted by the administrative authority merely corrects the former by fixing the levies payable in an amount lower than that which had been originally decided, it is the original act which must be considered to set in motion the action for recovery within the meaning of Article 2(2) of Regulation No 1697/79.

49 The consequence of any other interpretation would be that an administrative authority which undertakes action for recovery within the period of three years laid down in the second subparagraph of Article 2(1) of Regulation No 1697/79 loses its right to take action just because it adopts — after that period expires — a decision which is more favourable to the person liable. The administrative

authority would then be faced with a dilemma which could make it reluctant to change its initial decision, which would run counter to the interests of the person liable whom Regulation No 1697/79 is intended to protect.

50 The answer to the third question must therefore be that Article 2(2) of Regulation No 1697/79 must be interpreted as meaning that, where an initial act determining the amount of levies payable is annulled and replaced by a second act which, without altering the basis for recovery, fixes such levies in an amount lower than that which was initially decided, the action for recovery must be considered to have been set in motion by the initial act.

Questions 4 and 5

51 William Hinton claims that Article 254 of the Act of Accession and Regulations No 3771/85 and No 579/86 adopted in order to ensure its application impose on the Portuguese Republic two very clear obligations consisting in, first, eliminating surplus products and, secondly, bearing the expenditure arising from such disposal. The only measure adopted by that Member State to that end, Resolution No 5/87, is, first, inadequate, in that it does not set up the legislative framework necessary for the implementation of the export requirement and, secondly, illegal in that it sets up a system for the sharing of expenditure between the Autonomous Region of Madeira and the holders of the sugar when elimination of surplus stock should be at the expense of the Portuguese Republic.

52 According to William Hinton, the obligation to declare the quantities of sugar, which is incumbent on holders under Article 3(2) of Regulation No 579/86, is no more than ancillary to the obligation on the Member State concerned to undertake a survey of stocks. It does not alter the fact that the expenditure arising from the failure to export outside Community territory should be borne by the Portuguese Republic.

53 The Portuguese Government and the Commission contend, on the other hand, that, by providing that elimination of surplus stock by the Portuguese Republic should be at the expense of the latter, Article 254 of the Act of Accession seeks only to make clear that the financial costs arising from discharging that obligation are not to be borne by the Community budget. There is therefore nothing to prevent, according to the Portuguese Government and the Commission, holders of surplus stocks of sugar bearing the expenditure arising from the levies laid down in Article 7(1) of Regulation No 579/86.

54 The purpose of Article 254 of the Act of Accession is to ensure the transition, so far as concerns the Portuguese Republic, from the pre-existing system to the common agricultural policy. To that end, it determines the limits within which the sale of certain products in free circulation in Portuguese territory on 1 March 1986 may not be the subject of financial support from the Community at that date. On the other hand, that provision is not intended to prevent the Portuguese Republic from sharing the expenditure arising from the elimination of surplus stock between the State and the holders of such stock.

55 That interpretation is supported by Article 6(1) of Regulation No 3771/85, according to which expenditure arising from the disposal of surplus quantities of products is not taken into account by the European Agricultural Guidance and Guarantee Fund, Guarantee Section.

56 In order to eliminate surplus stocks of sugar found to exist in Portugal, Regulation No 579/86 provides, principally, for the exportation of such stocks within a certain time-limit and, failing exportation within that period, for payment of a levy.

57 That regulation does not require either that the Portuguese Republic bear any costs which may be associated with exportation or that it should take on the levy required of the holders of surplus stocks of sugar.

58 In that regard, Regulation No 579/86 is in conformity with Article 8(3)(c) of Regulation No 3771/85, according to which the procedures for implementing the latter regulation may provide for the collection of a charge in cases where an interested party does not comply with the procedures for disposing of surplus products.

59 However, collection of such a charge must also observe the principle of proportionality which the Court has consistently held to be one of the general principles of Community law. By virtue of that principle, measures imposing financial charges on traders are lawful provided that the measures are appropriate and necessary for meeting the objectives legitimately pursued by the legislation in question, it being understood that, when there is a choice between several appropriate measures, the least onerous measure must be used and the charges imposed must not be disproportionate to the aims pursued (Case 265/87 *Schräder* v *Hauptzollamt Gronau* [1989] ECR 2237, paragraph 21, and Case C-295/94 *Hüpeden* [1996] ECR I-3375, paragraph 14).

60 In so far as the exportation of surplus stocks is less onerous than payment of the levy, the principle of proportionality requires that a trader should have a genuine opportunity to export his stock before the expiry of the period prescribed for it.

61 To that end, the trader must know in time the quantity of product which he must export.

62 In the present case, it is for the national court to ascertain whether, in the light of the particular facts of the case in the main proceedings, William Hinton was in a position, after the publication of Resolution No 5/87, to know the quantity of sugar which he was required to export.

63 In any event, the length of time which transpired between publication of that resolution and the time-limit for exportation of the surplus stocks of sugar, that is to say 1 July 1987, must be regarded as constituting a reasonable period to allow its exportation.

64 Moreover, it is not contrary either to Article 254 of the Act of Accession or to Regulations No 3771/85 and No 579/86 or even the principle of proportionality that the Portuguese Republic should require payment of the levy provided for by Article 7(1) of Regulation No 579/86 by the holders of surplus stocks of sugar which have not complied with the declaration obligation under Article 3(2) of the lastmentioned Regulation.

65 The answer to the fourth and fifth questions must therefore be that neither Article 254 of the Act of Accession nor Regulations No 3771/85 and No 579/86 preclude the Portuguese Republic from requiring of traders holding surplus stocks of sugar which they should have been able to export within the period prescribed for that purpose to pay the levy provided for by Article 7(1) of Regulation No 579/86.

Questions 6, 7 and 8

66 William Hinton alleges that the competent authorities have, since the beginning of the procedure, made several errors: first, they authorised the importation of 5 000 tonnes of sugar duty-free, assuming that the imported sugar was for public supply of the Autonomous Region of Madeira. Secondly, those authorities issued a number of assessments in respect of levies payable containing a number of clerical errors and misinterpretations of the applicable rules, which are

attributable to the competent customs authority. All those errors cannot, in William Hinton's view, be regarded as reasonably detectable by the person liable.

67 The Portuguese Government and the Commission contend, on the contrary, that the levy which was not collected cannot be regarded as not having been collected on account of an error by the customs authorities which was not detectable by the person liable. According to the Portuguese Government, the reason why the amount which William Hinton was ordered to pay by letter of 26 November 1990 was not collected before was that the debtor had not declared the quantity of sugar which he held on 1 March 1986. The Commission takes the view, first, that the authorisation to import sugar intended for public supply of the Autonomous Region of Madeira was indeed based on information provided by William Hinton. Any error is not therefore attributable to any acts of the competent authorities. Secondly, so far as concerns the errors committed by the customs authority during the collection procedure, the Commission contends that they could reasonably have been detected by William Hinton, bering in mind the nature of the error, the professional experience of the latter and the diligence which he ought to show.

68 It should be pointed out in that regard that Article 5(2) of Regulation No 1697/79 makes waiver of post-clearance recovery by the national authorities subject to three cumulative conditions. Provided that all those conditions are fulfilled, the person liable is entitled to waiver of post-clearance recovery (see, in particular, Case C-15/99 *Sommer* [2000] ECR I-8989, paragraph 35).

69 First, non-collection of the duties must have been as a result of an error made by the competent authorities themselves (see, in particular, the judgment in *Sommer*, paragraph 36). In that regard, the national court refers expressly in its sixth

question to an inaccurate assessment of the requirement for sugar for public supply of the Autonomous Region of Madeira and, in its seventh question, to the successive errors of fact and of law committed by the customs authorities in the course of clearing the accounts.

70 The levy which was not collected in the case in the main proceedings was that relating, under Article 7(1) of Regulation No 579/86, to the holding of surplus quantities of sugar on 1 March 1986. It is for the national court to consider whether its findings relate to errors of interpretation or application of the provisions on the levy in question in so far as they are the consequence of acts of the competent authorities, which excludes errors caused by incorrect declarations by the person liable (see, to that effect, Case C-348/89 *Mecanarte* [1991] ECR I-3277, paragraph 26).

71 Next, the error made by the competent authorities must be such that it could not reasonably be detected by the person liable acting in good faith, despite his professional experience and the diligence shown by him. In this regard, it should be observed that the obligation to export surplus stocks of sugar outside the Community as well as the levy provided for in default of exportation was published in the *Official Journal of the European Communities*. From the date of that publication no person is deemed to be unaware of that levy (see, to that effect, Case C-370/96 *Covita* v *Greek State* [1998] ECR I-7711, paragraph 26).

72 Finally, the person liable must have complied with all the provisions laid down by the rules in force as far as his customs declaration is concerned (see, in particular, the judgment in *Sommer*, paragraph 39). In the present case, since the recovery of a levy was connected with surplus stocks of sugar held on 1 March 1986, that condition must be considered to relate to the declaration of the quantity held.

73 It is for the national court to establish whether, having regard to the facts of the case, the three conditions laid down in Article 5(2) of Regulation No 1697/79 are fulfilled (see *Covita*, paragraph 28).

74 The answer to the sixth, seventh and eighth questions should therefore be that the customs authorities of a Member State must refrain from carrying out post-clearance recovery of duties pursuant to Article 5(2) of Regulation No 1697/79 where:

— the duties have not been collected on account of an error of interpretation or application of the provisions on the levy in question in so far as it is the consequence of acts of the competent authorities, which excludes errors caused by incorrect declarations by the person liable,

— the person liable acting in good faith could not reasonably have detected that error, despite his professional experience and the diligence shown by him, and

— the person liable has complied with all the provisions laid down by the rules in force as far as concerns the declaration of the event to which the collection of the levy in question relates.

Costs

75 The costs incurred by the Portuguese Government and the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (First Chamber),

in answer to the question referred to it by the Supremo Tribunal Administrativo by order of 12 January 2000, hereby rules:

1. Article 1(2)(c) and the second subparagraph of Article 2(1) of Council Regulation (EEC) No 1697/79 of 24 July 1979 on the post-clearance recovery of import duties or export duties which have not been required of

the person liable for payment on goods entered for a customs procedure involving the obligation to pay such duties must be interpreted as meaning that entry in the accounts of the amount originally required of the person liable for payment is an official act which precedes notification regarding recovery and actual recovery and which does not necessarily consist in entry by the customs authority in the accounts books, or any other medium used in their stead, of the amount in question.

2. Article 2(2) of Regulation No 1697/79 must be interpreted as meaning that, where an initial act determining the amount of levies payable is annulled and replaced by a second act which, without altering the basis for recovery, fixes such levies in an amount lower than that which was initially decided, the action for recovery must be considered to have been set in motion by the initial act.

3. Neither Article 254 of the Act concerning the conditions of accession of the Kingdom of Spain and the Portuguese Republic and the adjustments to the Treaties nor the provisions of Commission Regulation (EEC) No 3771/85 of 20 December 1985 on stocks of agricultural products in Portugal nor of Commission Regulation (EEC) No 579/86 of 28 February 1986 laying down detailed rules relating to stocks of products in the sugar sector in Spain and Portugal on 1 March 1986 preclude the Portuguese Republic from requiring of traders holding surplus stocks of sugar which they should have been able to export within the period prescribed for that purpose to pay the levy provided for by Article 7(1) of Regulation No 579/86.

4. The customs authorities of a Member State must refrain from carrying out post-clearance recovery of duties pursuant to Article 5(2) of Regulation No 1697/79 where:

— the duties have not been collected on account of an error of interpretation or application of the provisions on the levy in question in so far as it is the consequence of acts of the competent authorities, which excludes errors caused by incorrect declarations by the person liable,

— the person liable acting in good faith could not reasonably have detected that error, despite his professional experience and the diligence shown by him, and

— the person liable has complied with all the provisions laid down by the rules in force as far as concerns the declaration of the event to which the collection of the levy in question relates.

Luxembourg, 11 October 2001.

R. Grass

Registrar

P. Jann

President of the First Chamber