OPINION OF MR ADVOCATE GENERAL CAPOTORTI DELIVERED ON 24 JANUARY 1978 [1]

Mr President,
Members of the Court,

This case affords a further demonstration of the number of complications and unexpected consequences which the system of monetary compensatory amounts may produce. Thanks to that system, and because they have taken advantage of the export licence for sugar in excess of the maximum quota (for which the Community had not intended to take any responsibility) certain producers of these goods have derived considerable benefit from the fluctuations in the currencies of certain Member States and burdened the Community intervention machinery with consequent financial charges.

Under Regulation (EEC) No 3330/74 of the Council of 19 December 1974 which re-cast the basic provisions on the common organization of the market in sugar, each sugar-producing undertaking is alloted a *basic quota*, called Quota A (Article 24), which consists of a quantity which the undertaking concerned can sell direct on the Community market with the advantage of the intervention price. Apart from this sugar producers can place freely on the market in the Community an additional portion of their output which lies between the basic quota and a maximum quota which is calculated by multiplying the basic quota by a coefficient and which is called Quota B (Article 25). However, before marketing sugar under Quota B producers must pay a levy (Article 27 (1)). Finally, sugar produced outside the maximum quota, called 'C sugar', may not be disposed of within the Common Market but must be exported to the world market by 31 December following the marketing year during which it was produced (Article 26), without any entitlement to refund or any other form of aid. Exportation is effected on the basis of the relevant licence which is issued to producers and is valid throughout the Community. Under Article 5 (3) of Commission Regulation (EEC) No 2990/76 of 9 December 1976 (on special detailed rules for the application of the system of import and export licences for sugar) the period of validity of this type of licence is limited.

From the entry into force of Regulation (EEC) No 2645/70 of the Commission of 28 December 1970 until the adoption by the Commission of Regulation (EEC) No 458/73 of the Commission of 2 February 1973 producers of Quota C sugar could obtain release from the obligation imposed upon them to dispose of such sugar outside the Common Market only by exporting sugar *produced by themselves*. Believing that this requirement that sugar for export and sugar produced should be the same had proved too burdensome for some sugar producers the Commission, in Regulation (EEC) No 458/73, referred to above, made it possible for sugar C manufacturers to release themselves from the said obligation by exporting sugar *produced by other undertakings*. In order to understand this provision it suffices to bear in mind that, for example, anyone who had produced sugar in excess of the maximum quota might wish to export instead of his own sugar that produced by an undertaking situated in an area nearer to the port of embarkation so as to avoid the complication, expense and loss of time involved in

1 — Translated from the Italian.

transporting his own sugar. Manufacturers who took advantage of this right had to make a standard payment to offset the benefit derived from the substitution; the sum to be paid was fixed at two u.a. per 100 kg of sugar.

Meanwhile, in 1971 (to be precise, in Regulation (EEC) No 974/71 of the Council of 12 May 1971), the Community had set up the system of monetary compensatory amounts which was designed to make possible, despite the fluctuations of the exchange rates between the currencies of the Member States, the artificial maintenance of the parity of these currencies with the Community unit of account so as to avoid the fluctuations' being automatically reflected in the price levels of agricultural products in trade between those States. Under that system, which was defined in Regulation (EEC) No 2746/72 of the Council of 19 December 1972, the countries whose money has been devalued or is depreciating grant compensatory amounts on imports and levy the same amounts on exports. On the other hand countries whose currency has been revalued or is appreciating levy compensatory amounts on imports and grant them on exports. This device has made it possible to freeze the prices of agricultural products expressed in national currencies in such a way that the producer in each country continues to charge the same figure, expressed in the national currency of his country, which he charged prior to devaluation or revaluation. The result of this has nevertheless been that while intervention prices have been maintained throughout the Community at one and the same level expressed in units of account, in terms of national currencies the actual price levels have been substantially different because they are tied to the exchange rates prevailing before revaluation or devaluation. Thus, for example, the intervention price for sugar on 20 January 1977, expressed in units of account, was 33.14 u.a. throughout the Community. On the other hand, thanks to the operation of the national parities, which the compensatory amounts helped to maintain, in Germany this amount became 49.63 dollars and, in France, 37.83 dollars.

Among the anomalous effects of the system of monetary compensatory amounts, which, because of its exceptional character, was originally conceived as a wholly provisional one, was one which benefited undertakings producing sugar in excess of the maximum quota in hard-currency countries (for example, the Federal Republic of Germany). Such undertakings could make good profits by availing themselves of the right granted by Regulation (EEC) No 458/73 of the Commission to release themselves from the obligation to dispose of C sugar outside the Community by transferring the relevant export licence to a manufacturer in a Member State with soft currency, (France, for example), who effected the exportation of an equivalent quantity of sugar produced by it within the maximum quota. After fulfilling in this way his obligation to export sugar produced in excess of the maximum quota, the producer belonging to the hard-currency country was able to sell the sugar as though it formed part of his quota. In the case of sale on the Community market, he obtained the benefit of the Community intervention prices which, in terms of real value, are higher in Germany than in France; in the case of export, he also gained thanks to the grant of the monetary compensatory amount. It must be emphasized that, as the Commission pointed out, the economic result of this transaction is the same as if it were a case of an importation into Germany free of any monetary compensatory amount of a quantity of French Quota A or B sugar equal to the original German quantity of C sugar.

The not insignificant advantage which those producing sugar in excess of the maximum quota in hard-currency States could obtain from this transaction of substitution with Quota A or B sugar from soft-currencies at first escaped the notice of the Commission but it was certainly not missed by the sugar-producing undertakings of the Federal Republic of Germany. Half-way through the 1976/1977 marketing year two-thirds of German sugar produced in excess of the maximum quota had already been the subject of substitution operations under the provisions of the regulation quoted.

2. Rather late in the day the Commission became aware of what was happening and decided to remedy the situation by adopting, on 19 January 1977, Regulation (EEC) No 101/77, in which it amended the previous regulation, No 572/76 of 15 March 1976, which fixed *inter alia* monetary compensatory amounts for sugar. In the second recital in the preamble to the new regulation, the Commission stated that the exportation of sugar produced in excess of the maximum quota of the undertaking might give rise to deflections of trade 'since it may be replaced in *intra-Community* trade by sugar which has been produced within the limits of the quota and is thus subject to the application of compensatory amounts' and that 'an operator who engages in such deflections benefits therefrom unfairly'. In order to prevent such practices, the Commission provided that compensatory amounts should be applied to such sugar where it was exported from a Member State other than that in which it was produced and that such application should be restricted to cases where a compensatory amount was levied on exportation.

In accordance with that regulation exports of French Quota A or B sugar effected from France on the basis of a C licence for sugar produced in another Member State were subject to a compensatory amount in the form of a levy which, at the material time, was six dollars per 100 kg, which was accordingly the same amount as the levy already imposed on all exports of French A or B Quota sugar of that quality. This figure did not completely cover the currency margin of the transactions concerned since it consisted not only of the six dollars saved by non-payment of the French compensatory amount but also of the compensatory amount received on account of the exportation from Germany, which amounted to about four dollars; on the other hand, this further benefit arising from the substitution transaction was largely absorbed by the imposition of the flat-rate amount of two units of account, equivalent to about three dollars. In any case the Commission stated at the hearing that it had abandoned any attempt to obtain full compensation for the profit margin since this would have meant a radical alteration of the system.

In order to counter any speculative manoeuvre whatever of the kind described it would have sufficed to cancel altogether the right granted under Regulation (EEC) No 458/73 to the producer of sugar above the maximum quota to release himself from the obligation to dispose of it outside the Community by exporting sugar produced by third parties. But the Commission preferred to leave this right open and was content to remedy abuses to which it gave rise by the introduction of the monetary compensatory amount to which I have referred.

3. I come now to the facts of the case. On 27 June 1977, pursuant to Regulation (EEC) No 101/77, the French authorities levied compensatory amounts on 800 tonnes of sugar produced by the French undertaking Bauche within the maximum quota

assigned to it and exported on the basis of a C sugar licence granted by the German company Töpfer to the English company Man by contract of 6 January 1977. The original text of that contract, which was drawn up in English, states that its object was an export licence for 800 tonnes of EEC white crystal sugar produced by Töpfer in excess of its maximum quota under Article 26 of Regulation (EEC) No 3330/74. Man accepted the obligation to export an equivalent quantity of sugar before 30 June 1977 in accordance with the Community regulations in force at the time of customs clearance so as to release Töpfer from the obligation to dispose of the C sugar produced by it outside the Community. As there would be no export refund on the sugar under a C licence, Töpfer undertook to pay to Man DM 42.50 per 100 kg of sugar exported. According to calculations made by Counsel for the undertakings concerned during the oral procedure in this case this figure was slightly lower than the amount of the export refund applicable at that time to exports of A or B sugar from France, after deduction of the compensatory amount. The net amount of the refund would in fact have been DM 42.75. Counsel for the undertakings concerned stated that Man had decided to obtain the C sugar export licence from Töpfer merely because it would have been inconvenient for it to wait the five or six days necessary to find some other means of exporting sugar from France.

From the documents put in it is not clear whether the Bauche company had been a party to this transaction from the beginning but it seems quite likely. Otherwise one may wonder how Man could have been in a position to guarantee performance of the obligation entered into with Töpfer to use the export licence for the 800 tonnes of sugar by the prescribed date.

In this connexion it is interesting to note that in the Bauche company's summons against the French customs authorities it is stated that the Bauche company had, in an agreement entered into with Töpfer, 'acquired' from the latter export licences valid for third countries in respect of 800 tonnes of Quota C white sugar, whereas, as is clear from the text of the contract letter of 6 January 1977, addressed by Töpfer to Man, Man was in fact the direct assignee of the licence.

There can be no doubt that the export licences for C sugar which had been the subject of the contract of 6 January between Man and Töpfer were issued to Töpfer by the German intervention agency on 14 February and were accordingly assigned by Man to the Bauche company, which had sold to Man 800 tonnes of sugar which Bauche had produced within the maximum quota.

Although, therefore, the contract for the assignment of the export licences was entered into before the date of entry into force of Regulation (EEC) No 101/77, that is to say, before 20 January 1977, the export licences were issued at a later date. Because of this, Man was unable to take advantage of the transitional provision in the second paragraph of Article 2 of the regulation, which provides that it shall not apply to exports effected on the basis of licences issued before the date of its entry into force.

4. Before the Tribunal d'Instance, Valenciennes, Bauche, the producing company, the Société Delquignies, the customs agent responsible for the export transaction, and Man, the English buyer, contested the legality of the imposition by the French customs of the compensatory amount on the aforesaid 800 tonnes, amounting to FF 241 920 and sought an order that the Administration Française des Douanes, in its capacity as agent of the Commission of the European Communities, should repay them the above sum with interest.

By judgment of 21 July 1977 the French court, at the request of the plaintiffs, referred to the Court of Justice under Article 177 of the EEC Treaty for a preliminary ruling on the following questions:

'1. Does not Regulation No 101/77 constitute a basic regulation amending the general Regulation No 3330/74 on the common organization of the market in sugar in so far as it introduces the payment of a monetary compensatory amount in respect of a product expressly excluded from intervention measures?

2. Was the Commission entitled to adopt that measure without the express authorization of the Council?

3. If the first two questions are answered in the negative, was the Commission empowered to adopt Regulation No 101/77 describing a transaction expressly authorized by Regulation No 458/73 as "a deflection of trade" from which the trader "benefits ... unfairly", without repealing the said Regulation No 458/73, which provides for a standard payment of two units of account per 100 kg of sugar to offset any benefit derived from the substitution authorized?

4. Was the Commission empowered to introduce monetary compensatory amounts on exports to non-Member countries of products expressly excluded from the intervention arrangements and from the common organization of the market in sugar?

5. Was the Commission entitled to introduce a monetary compensatory amount in respect of a product excluded from the intervention system, when the sole purpose of monetary compensatory amounts is to prevent the intervention system from becoming disorganized by maintaining a single price for sugar within the common organization of the market?

6. Does the adoption in the course of a sugar marketing year of new rules having immediate application to transactions in progress make such rules retroactive, contrary to the principle of legal certainty?

7. In these circumstances, is Regulation No 101/77 null and void?

8. If the Court does not find that Regulation No 101/77 is null and void, must that regulation be applied to traders who, before its entry into force, had concluded firm and definite contracts by which they bound themselves subject to firm and definite conditions to purchase C quota sugar or to become assignees of C quota licences?'

Questions 1, 2, 4 and 5 all raise the issue whether the Commission has power to introduce monetary compensatory amounts for products not subject to the intervention system. Question 3 is concerned with an alleged inconsistency between Regulation (EEC) No 458/73 and Regulation (EEC) No 101/77. The remaining questions involve the issue of respect for the general principles of legal certainty and protection of traders' legitimate expectations.

In short, two groups of questions fall for consideration:

— First, whether it is within the power of the Commission and compatible with previous legislation to introduce monetary compensatory amounts on exports of Quota C sugar;

— Secondly, whether there has been a breach of the principles of legal certainty and protection of legitimate expectation.

5. Solution of the issues in the first group requires Regulation (EEC) No 101/77 to be considered in relation to the Community provisions which

preceded it and especially in the light of the rules laid down by the regulations of the Council, to which the Commission's exercise of its power to make regulations is, of course, subject.

As has already been stated, the provisions which must be taken into account are both those which form the basis of the system of monetary compensatory amounts (Regulation (EEC) No 974/71 of the Council and Regulation (EEC) No 572/76 of the Commission) and those on the common organization of the market in sugar (Regulation (EEC) No 3330/74 of the Council and Regulation (EEC) No 458/73 of the Commission). The plaintiffs in the action pending before the French court contend (a) that Regulation (EEC) No 974/71 gave the Commission no authority to introduce monetary compensatory amounts for products, like sugar in excess of the maximum quota, which are not covered by a Community intervention system; (b) that the Commission could not make changes of substance in Regulation (EEC) No 3330/74 by introducing the said compensatory amounts; and (c) that the assignment of C sugar export licences, which was authorized by Regulation (EEC) No 458/73 and subject to the payment of a lump sum for the benefits derived therefrom, could not be made subject to a further charge by Regulation (EEC) No 101/77 unless Regulation (EEC) No 458/73 had been repealed. I shall deal with these three contentions in that order.

With regard to the argument appearing under (a), my first comment is that the compensatory amount provided for under Regulation (EEC) No 101/77 does not cover each and every quantity of sugar produced in excess of the maximum quota ('C sugar'). On the contrary, C sugar is subject to the system of compensatory amounts in so far as it is *exported from a Member State other than that in which it was manufactured;* furthermore, it is only in circumstances where the compensatory amounts must be paid at the time of exportation (that is to say, in the case only of exportation from *weak-currency countries)* that this system applies. The reason for these restrictions is to be found in the recognition, contained in the second recital in the preamble to Regulation (EEC) No 101/77, that the exportation of C sugar may give rise to deflections of trade 'since it may be replaced in intra-Community trade by sugar which has been produced within the limits of the quota and is thus subject to the application of compensatory amounts'. In short, therefore, sugar which, under Regulation (EEC) No 101/77, incurs the burden of the levy as a compensatory amount is really A or B sugar exported under the fictitious cover of an export licence for C sugar. In consequence, the amendment which Article 1 of the regulation in question makes to Footnote (1) to Part 7 of Annex I to Regulation (EEC) No 572/76 does not consist in cancelling the provision under which compensatory amounts do not apply to C sugar (in terms, to 'sugar exported to non-Member countries pursuant to Article 26 of Regulation (EEC) No 3330/74'). That provision continues to hold good and it is expressly reproduced in Regulation (EEC) No 101/77 but is limited on the lines indicated, that is to say, the compensatory amount shall be levied 'where the customs export formalities are completed in a Member State other than that in which the export licence was issued'.

These are important considerations in determining whether Regulation (EEC) No 101/77 is valid in the light of Article 1 (2) of Regulation (EEC) No 974/71 of the Council. Under subparagraph (a) of that provision, monetary compensatory amounts are applicable above all 'to products covered by intervention arrangements under the common organization of agricultural markets'. When

Regulation (EEC) No 101/77 was adopted, C sugar produced in excess of the maximum quota was excluded from Community intervention measures and, specifically in order to avoid its burdening the intervention arrangements, manufacturers were required under the common organization of the market in sugar to export it to non-Member countries. But the product referred to by Regulation (EEC) No 101/77 is, as has been said, A or B sugar, exported under licences for C sugar. What happened in the present case was that, in connexion with an exportation of this kind (that is to say the exportation of French sugar covered by the licence for German C sugar), it was possible for an equivalent quantity of German sugar produced in excess of quota to come within the category of sugar produced within the quota. In these circumstances only in the strictly technical sense can it be said that the monetary compensatory amount has been levied on a product not subject to intervention measures (C sugar); in reality, the levy prevented a product subject to the intervention measures from escaping the application of the machinery of compensatory amounts.

An interpretation of Article 1 (2) (a) of Regulation (EEC) No 974/71 other than one which is purely literal and formalistic leads to the conclusion, therefore, that this provision can constitute authority for the measures adopted in Regulation (EEC) No 101/77. On the other hand it is impossible to ignore the argument which can be read into Article 1 (2) (b) of the Council regulation under whose terms compensatory amounts shall apply also 'to products whose price depends on the price of the products referred to under (a) and which are governed by the common organization of the market'. There can be no doubt that all sugar, including that produced in excess of the maximum quota, comes under the common organization of the market; it is indeed by virtue of that organization that C sugar which must, as a general rule, be sold outside the Community, can be substituted for this purpose by another producer's A or B sugar. Both the existence of this obligation and the possibility of substitution to which I have referred go to show that Quota C sugar is subject to the common organization of the market.

But the provision to which I refer also requires that the price of the product (to which, in theory, intervention measures do not apply) shall depend on the price of products which are covered by intervention measures. However, precisely because C sugar must be sold on the world market without qualifying for any refund from the Community, it has a price of its own related exclusively to the level of prices on the world market. However, at this juncture, it must again be pointed out that the commodity which is the subject of the measures laid down in Regulation (EEC) No 101/77 is A or B sugar of a weak-currency Member State exported under a licence for C sugar. Even though this commodity is treated as though it were a product in excess of the maximum quota it cannot be regarded simply as the same product. Its real price, that is to say the actual price which is obtained by exporting it in place of the C sugar of a Member State whose currency has been revalued, is certainly higher than the price fetched on the world market. It is reasonable to assume that, as the Commission pointed out, the producer of A or B sugar agrees to be involved in the substitution operation only in so far as he profits from it. He will accordingly take a share of the profit made at the expense of the intervention machinery by the producer of C Quota sugar as a result of the substitution. Thus, the actual price of the exported commodity, calculated as the total proceeds of its

sale for export as C Quota sugar, is in the end also dependent on the price of the products for which intervention measures are laid down under the common organization of the market. A producer in a weak-currency State will in fact manage to obtain a price which is higher not only than the price of the product on the world market but also than the price guaranteed to him by the intervention machinery since it must be presumed that the combination of this machinery with the system of monetary compensatory amounts produces a higher return than that which would have been obtained by selling his Quota A or Quota B sugar as such.

When, therefore, due regard is paid to economic realities, it must be accepted that, in the case under review, the actual price of A or B sugar which replaces C sugar for exportation to non-Member countries does in fact depend on the price of products for which Community intervention measures are laid down. In view of this, Regulation (EEC) No 101/77 can be regarded as justified at least on the basis of subparagraph (b), even if not on the basis of subparagraph (a), of Article 1 (2) of Regulation (EEC) No 974/71 of the Council.

6. I come now to the second argument advanced by the undertakings concerned, which is that Regulation (EEC) No 101/77 unlawfully amended Regulation (EEC) No 3330/74 of the Council on the common organization of the market in sugar. From the observations which the plaintiff companies submitted in the course of these proceedings it would appear that the basis of this contention is to be found in Article 26 (1) of Regulation (EEC) No 3330/74, which lays down that sugar in excess of the maximum quota for any undertaking may not be sold on the internal market but must be exported. According to the companies, this means that Regulation 3330 had taken C sugar out of the field of application of any Community intervention machinery and in consequence of that of compensatory amounts; thus, it is claimed, by introducing the imposition of these amounts, Regulation (EEC) No 101/77 of the Commission amended that regulation of the Council without authority.

Obviously, this argument cuts across what I have said so far on the subject of Regulation No 101/77.

The exclusion of Quota C sugar from the application of monetary compensatory amounts remains the general rule; the Commission merely placed limits upon it inasmuch as the exportation of sugar under a licence for the product in excess of the maximum quota is effected by replacing C sugar by A or B sugar and under conditions which enable undertakings involved in this transaction to derive profit from the currency differences resulting from the machinery of compensatory amounts. I do not, therefore, regard this as tantamount to an amendment of Regulation (EEC) No 3330/74, especially since the essential purpose of that enactment was to lay down rules for the common organization of the market in sugar the cardinal features of which remain unaffected. What has undergone amendment or, rather, marginal adjustment is the system of monetary compensatory amounts, which is governed by Regulation (EEC) No 974/71 but I have already discussed that issue.

Incidentally, it is worth noting that under Article 6 of Regulation (EEC) No 974/71 the detailed rules for the application of the regulation 'may include other derogations from the regulations on the common agricultural policy'. If, as I have endeavoured to demonstrate, it is true that the measures adopted in Regulation (EEC) No 101/77 form part of the measures implementing Regulation (EEC) No 974/71, it may be deduced that the

Commission has the power, under Article 6, to derogate from the regulations on the common agricultural policy, which include Regulation (EEC) No 3330/74.

7. The contention still to be considered is that it was not possible to adopt Regulation (EEC) No 101/77 without first repealing Regulation (EEC) No 458/73. On the one hand, attention is drawn to the alleged incompatibility between the legislation introduced in 1973 and that adopted in 1977: the object of Regulation No 458 was to make it possible to export sugar in excess of the maximum quota which was not produced by the manufacturer who exported it, whereas Regulation No 101 was designed to prevent substitution transactions. On the other hand, Regulation No 458 had already imposed on undertakings involved in such transactions a standard payment to offset the benefits of the substitution while Regulation No 101, which denied that this offsetting was comprehensive, imposed an additional burden by levying the monetary compensatory amount.

It is easy to answer the first of these points by stating that the exploration of sugar produced by another manufacturer under cover of a licence for C sugar was neither prohibited nor made impossible by Regulation No 101; indeed, it was in order to continue allowing substitution transactions that, faced with the development of deflections of trade, to which I referred earlier, the Commission considered it better to introduce monetary compensatory amounts since it was, moreover, prepared to accept that the undertakings concerned might, in addition, enjoy a small profit derived from currency imbalances (a subject which I dealt with earlier). Nor must it be forgotten that, while substitution transactions can be carried out by exporting sugar produced by another manufacturer from any Member State, the charges imposed under Regulation No 101 affect only transactions which result in the exportation from weak-currency Member States. Moreover, the objectives pursued by the two regulations appear to be not only compatible but complementary: Regulation No 458 was intended to encourage the normal pattern of trade by permitting a type of transaction which in itself has the advantage of accelerating and simplifying trade; Regulation No 101 was designed to prevent the development of deflections of trade caused not by the machinery of substitution of a quantity of sugar produced by third parties for the quantity produced by the manufacturer who obtains the export licence but by the speculative transactions which the substitution, under the system of compensatory amounts or, rather, the deterioration of that system, makes possible.

As regards the second of the points referred to above it is clear that the advantages of the substitution transactions, to offset which the Commission provided in Regulation (EEC) No 458/73 for a standard payment of two units of account per 100 kg of sugar, certainly did not consist of speculative financial gain. The second recital in the preamble to the regulations refers to 'any benefit derived from such substitution' but, logically, this must be taken to be a reference to the advantages directly connected with the substitution or with any substitution transaction, regardless of the relative currency position of the country where the undertaking which obtains the export licence is situated or where the manufacturer of the sugar actually exported is established. Furthermore, at the time when Regulation (EEC) No 458/73 was adopted, there did not yet exist among the currencies of the Member States, whose producers might be interested in the substitution

described, such currency differences as to enable a profit to be made from the variation, expressed in terms of actual currency, in the levels of payments made in the various Member States by the Community intervention agencies. In providing for a standard payment to offset any benefit derived from substitution transactions, the Commission could not therefore have been referring to a benefit which at that time was non-existent. Some speculative profits were made later when there was a widening of the difference between the exchange rates used by the Community to express 'single' agricultural prices, fixed in units of account, in national currencies and the actual exchange rates of these currencies determined by their fluctuations, in some cases as a result of devaluation and, in others, of revaluation. Accordingly, there is no inconsistency between the introduction of a monetary compensatory amount designed to offset the purely financial advantages which were not covered by the objectives of Regulation (EEC) No 458/73 and the maintenance of the standard payment of two units of account per 100 kg of sugar provided for under that regulation.

8. In its sixth question, the French court asks whether the adoption in the course of a sugar marketing year of new rules having immediate application to transactions in progress made such rules retroactive, which would have involved a breach of the principle of legal certainty.

To my mind, this calls for a reference to what the Court laid down in its judgment of 4 July 1973 in Case 1/73, *Westzucker* v *Einfuhr- und Vorratsstelle Zucker* [1973] ECR, at p. 729: 'According to a generally accepted principle, the laws amending a legislative provision apply, unless otherwise provided, to the future consequences of situations which arose under the former law'.

In accordance with this principle the Court, in a subsequent case, refused to consider retroactive a regulation which abolished monetary compensatory amounts granted on exports and which also applied to transactions effected in fulfilment of obligations assumed prior to its adoption; as no advance fixing of compensatory amounts was possible, 'the actual right to receive a compensatory amount on exports is only created by the performance of the export transaction and only from the moment when this takes place' (judgment of 14 May 1975 in Case 74/74, *CNTA* v *Commission* [1975] ECR at p. 548, paragraphs 29 to 32 of the decision). In my view, the same reasoning must also apply in the event of the institution of new monetary compensatory amounts.

In other cases, which were concerned with determining the position with regard to transactions pending when agricultural rules were amended, the Court proceeded on the basis that there could be no question of treating a new rule as inapplicable to given existing situations unless an undertaking had obtained a guarantee from the Community concerning the position in law of a given transaction, whether it concerned the amount of refunds and compensatory amounts associated with an export or bonuses or various forms of aid intrinsic to the Community intervention system for denaturing or similar processes (see, for example, the judgment of 25 June 1975 in Case 5/75 *Deuka* v *Einfuhr- und Vorratsstelle Getreide* [1975] ECR 759).

When the guarantee is such as to create a full right, as in the case of the advance fixing of the amount relating to a transaction the completion of which is guaranteed by the undertaking through payment of a deposit which may be forfeited in case of non-fulfilment, a new provision which altered with retroactive effect the amount thus fixed would undoubtedly conflict with the fundamental need for legal certainty.

A Community guarantee may be recognized as existing also in the case of a legitimate expectation and, specifically, where no advance fixing of an amount is possible, and a particular transaction has been authorized before the adoption of the new legal arrangements. This would apply (and I shall explain this in a moment) to exports of C sugar to be effected under a licence issued before the entry into force of Regulation (EEC) No 101/77. This is the most that can be said in terms of safeguarding legal certainty.

Furthermore it is in my view clearly impossible to recognize the existence of a right or a legitimate expectation, on the part of parties who have concluded an export contract relating to Category A or B sugar intended to be sold as such, that they should continue to benefit in every case from the intervention system which existed at the time when the contract was concluded. As is clear from the judgments cited earlier, the only means of self-protection against any changes in that system, and in particular in the level of the monetary compensatory amounts, is to obtain an export licence. Similarly, the plaintiff companies, having concluded before the entry into force of Regulation (EEC) No 101/77 a contract for the exportation of C sugar, to which until then compensatory amounts were wholly inapplicable, cannot claim that this gives them the right to avail themselves of a system of exemption from compensatory amounts on the ground of legal certainty and of the non-retroactivity of the regulation.

There can, therefore, be no possibility that, because Regulation (EEC) No 101/77 of the Commission applies to current transactions, although not infringing any acquired right, it has a retroactive effect which is incompatible with the principle that existing rights must be protected.

9. The final question referred to the Court by the Tribunal d'Instance of Valenciennes raises an issue concerning the protection of legitimate expectation. The French court asks whether Regulation No 101/77 is applicable to anyone who has, before its entry into force, assumed a contractual obligation to purchase C Quota sugar or to become an assignee of C Quota licences.

This Court has already had occasion to point out that the objective of the system of compensatory amounts is to ward off difficulties which monetary instability might create for the proper functioning of the common organisations of the markets, rather than to protect the individual interests of traders (judgment, already cited, in Case 74/74, *CNTA* v *Commission* [1975] ECR at p. 549, paragraph 38 of the decision). On that occasion the Court declared: 'The conditions governing the application and abolition of the system of compensatory amounts in a specific sector do not take into account the individual situations of traders and do not guarantee to them a continuous application of the system'. In my opinion, that statement also holds good in the event of the introduction of a monetary compensatory amount in respect of a transaction to which no compensatory amount was previously applicable.

It is clear that the whole question of the protection of legitimate expectation is, in the eyes of the parties who have invoked that principle in this case, closely bound up with the issue which I have just considered concerning the protection of legal rights. On this point I must repeat that the freedom of the Community legislature to terminate legal relationships coming within the field of application in point of time of a new set of rules is limited only by the

duty to take account of the contracts in connexion with which the trader has, subject to a deposit, obtained export licences fixing the amount of the refund in advance. In the case of such contracts, no unforeseeable alteration must, in principle, occur which could have the effect of causing him inevitable loss by exposing him to exchange risks (paragraphs 41 and 42 of the decision in *CNTA*).

Since, in the present case, there was no system of compensatory amounts applicable to C sugar exports prior to the entry into force of Regulation (EEC) No 101/77 (and it was therefore impossible to fix those amounts in advance), the only precaution which the exporter could take was that of obtaining an export licence. Because of this, and in accordance with the considerations recognized by the decisions of this Court, respect for the general principle of the protection of legitimate expectation required that the new charges imposed by Regulation (EEC) No 101/77 should not apply to transactions effected on the basis of export licences for C sugar issued before the date of entry into force of the regulation. This is precisely what is laid down in the second paragraph of Article 2 of Regulation (EEC) No 101/77.

The undertakings involved contend that the protection of legitimate expectation must be extended to cover all cases in which a trader has irrevocably undertaken by contract to effect exports even if the appropriate licence has not yet been obtained or even applied for. More specifically, the undertakings rely on the fact that, in the case of C sugar, it was not possible to obtain an export licence valid for longer than three months. As the exportation provided for by the contract concluded between them in January was due to take place in June, they had not yet been able to apply for the relevant licence precisely because of its limited period of validity.

In my view, however, the limited period of validity of the licence in question means that the Community legislature was ready to provide a guarantee of the kind described above only for a short period of time. The speculative practices which the Commission tried to prevent by the adoption of Regulation (EEC) No 101/77 are proof that the legislature had been wise to restrict validity of the export licences to a period of not more than three months. Its validity was extended to five months by Regulation (EEC) No 278/77 of 9 February 1977. However, at the date of the contract (6 January 1977), those concerned had no right to obtain an export licence valid for more than three months. They ought to have drawn the logical conclusion from this that a contract concluded more than three months before the date fixed for the exportation involved risks in terms of the Community system which would be applicable at the time of exportation. Those concerned cannot now claim that the Community should relieve them of the consequences of a risk which they knew they were incurring.

The undertakings concerned go on to claim that there was no overwhelming public interest to justify the speed with which the regulation at issue was adopted and put into force. It seems to me unnecessary to consider whether or not such an interest existed though I believe it to have been proved by the statement of the reasons on which Regulation (EEC) No 101/77 was based. It will suffice to point out that the demands of an overwhelming public interest justifying the urgency of the need to apply a measure under which a charge is imposed on those affected by it has been recognized by the Court only where the measure is not accompanied by any transitional arrangement designed to safeguard

transactions in respect of which a legitimate expectation has already arisen (for example as a result of the issue of an export licence). When, however, transactions of this kind are excluded from the application of the regulation, as in this case, the demand that the urgency should be justified on the lines suggested by the plaintiffs is without foundation.

10. For all the foregoing considerations I conclude by recommending the Court to reply to the questions submitted by the Tribunal d'Instance, Valenciennes, for a preliminary ruling by declaring that Regulation (EEC) No 101/77 of the Commission did not amend Regulation (EEC) No 3330/74 of the Council; that the Commission was lawfully in a position to adopt that measure on the basis of Regulation (EEC) No 974/71 of the Council whilst maintaining in force all the provisions of Regulation (EEC) No 458/73 of the Commission; further that the adoption and application of Regulation (EEC) No 101/77 during the marketing year did not make it retroactive; and, finally, that that latter measure does not conflict with the principle of the protection of legitimate expectation owing to its being applicable also to export effected on the basis of contracts concluded prior to its entry into force for which the appropriate licence had not yet been obtained.