OPINION OF ADVOCATE GENERAL RUIZ-JARABO COLOMER
delivered on 5 December 1996 *

1. The Tribunal d'Instance, Lille, has referred to the Court of Justice for a preliminary ruling three questions on the validity of Article 9 of Regulation No 3677/86 of 24 November 1986 laying down provisions for the implementation of Regulation (EEC) No 1999/85 on inward processing relief arrangements. [1]

2. Those questions were raised in proceedings between the French customs administration and Eridania Beghin-Say SA (hereinafter 'Eridania'). After obtaining the requisite authorization from the Direction des Douanes, Eridania imported 11 923 910 kg of raw cane sugar from Cuba, placing it under inward processing arrangements, as indicated in IM5 Declarations Nos 257 121 and 257 122 of 22 April 1991.

3. Eridania subsequently discharged the inward processing arrangements using the system of equivalent compensation, which allows the export of Community goods equivalent to those imported from non-member countries. Specifically, Eridania exported from the port of Dunkerque by way of compensation 11 268 097 kg of white sugar, obtained from raw beet sugar or sugarbeet. Those operations were recorded in export declarations Nos EX3 250 097 of 25 April 1991, EX3 250 100 of 30 April 1991, and EX3 250 153 of 12 July 1991.

4. After carrying out a number of checks, the Direction des Douanes found, in a report of 11 December 1991, that Eridania had committed an offence in discharging the inward processing arrangements by exporting sugar obtained from raw sugar beet in compensation for raw cane sugar imported from Cuba. That infringement related to the export of 11 268 097 kg of white sugar, having a customs value of FF 12 845 630, and the duties, charges and levies not paid by Eridania amounted to FF 38 476 561.

The Directeur Général des Douanes et Droits Indirects took the view that the inward processing arrangements, under the suspension system, were not applicable to this case by virtue of Article 9 of Regulation No 3677/86, because raw cane sugar and raw beet sugar were not classified under the same tariff subheading. Accordingly, on 4 October 1994, it commenced proceedings against

* Original language: Spanish.

1 — OJ 1986 L 351, p. 1.

Eridania before the Tribunal d'Instance, Lille, for recovery of FF 38 476 561 in respect of the unpaid duties, charges and levies. [2]

5. The validity of Article 9 of Regulation No 3677/86 was challenged in those proceedings, and the Tribunal d'Instance, Lille, considered that the decision to be given called for a preliminary ruling by the Court of Justice on the following three questions:

'(1) Is Article 9 of Council Regulation (EEC) No 3677/86 of 24 November 1986 laying down provisions for the implementation of Regulation (EEC) No 1999/85 valid, in that it provides that, in order for goods to rank as equivalent goods, they must fall within the same subheading of the Common Customs Tariff as the import goods, notwithstanding that the basic regulation, Regulation No 1999/85 of 16 July 1985, does not lay down any such condition?

(2) Is Article 9 of Council Regulation (EEC) No 3677/86 of 24 November 1986 valid, in that it provides that, in order for goods to rank as equivalent goods, they must fall within the same subheading of the Common Customs Tariff as the import goods, notwithstanding that such a condition gives rise to disproportionate effects for economic operators?

(3) Is Article 9 of Council Regulation (EEC) No 3677/86 of 24 November 1986 valid, having regard to the principles of the protection of legitimate expectations and legal certainty, in that it provides that, in order for goods to rank as equivalent goods, they must fall within the same subheading of the Common Customs Tariff as the import goods, notwithstanding that that article, combined with the provisions of Regulation No 2658/87 on the combined nomenclature, suddenly made it impossible, with effect from 1 January 1988 and only until 1 January 1992, for persons to avail themselves of the inward processing relief arrangements in respect of compensation on an equivalent basis as between cane sugar and beet sugar?'

6. Before analysing those questions in detail, I shall briefly summarize the legislation governing inward processing arrangements.

The rules governing inward processing customs arrangements

7. At the material time, inward processing arrangements were governed by Regulation

2 — The French customs administration accused Générale Sucrière of the same infringements and brought legal proceedings to recover the charges, duties and taxes evaded. That decision of the customs administration was reversed by reason of a defect of form by judgment of the Cour d'Appel, Paris, of 13 September 1996.

No 1999/85 [3] — the basic regulation — which was implemented by Regulation No 3677/86.

8. Those rules lay down economic arrangements for inward processing operations intended to facilitate the use by Community undertakings of goods from non-member countries for the manufacture and processing of goods for export. The inward processing arrangements allow 'goods imported from non-member countries to escape customs duties if they undergo certain working or processing operations in the Community and are then re-exported as compensating products outside the Community'. [4] Article 1(2) of Regulation No 1999/85 provides for two types of inward processing:

— the suspension system, under which the non-Community goods are not subject to import duties;

— the drawback system, which entails the release into free circulation of the goods from non-member countries and refund or remission of the import duties paid on those goods when they are re-exported outside the customs territory of the Community as compensating goods.

9. In short, inward processing arrangements, under the suspension system, allow non-Community goods to be brought into the customs territory of the Community without the need to complete the clearance formalities for release into circulation and without payment of import duties, the aim being that the goods should undergo processing and be re-exported outside the Community after being incorporated in a compensating product deriving from the processing operations. Since the foreign goods will not be absorbed into the Community economy, it is logical that they should be exempt from import duties, so as to encourage processing of them by a Community undertaking under the best competitive conditions, with a view to their later export to non-member countries. [5]

10. Inward processing constitutes an exception to the general rule that goods from non-member countries brought into the Community customs territory must be cleared for free circulation and have import duties levied

3 — Council Regulation (EEC) No 1999/85 on inward processing relief arrangements (OJ 1986 L 188, p. 1).

4 — Case C-437/93 *Temic Telefunken* [1995] ECR I-1687, paragraph 19.

5 — For a detailed analysis of inward processing arrangements, see *inter alia* U. Baumann, 'Le régime douanier du perfectionnement actif', *Revue du Marché Commun*, 1984, No 280, p. 406; C.-J. Berr and H. Trémeau, *Le Droit Douanier*, Economica, Paris, 1992; and J.-F. Durand, 'Régimes douaniers économiques. Régimes de transformation à l'importation', *Juris-Classeur Europe*, volume 542, 1995.

on them. As a result, use of this customs procedure, designed to enhance the export capacity of Community undertakings, is subject to the grant of authorization by the customs authorities of the Member State where the processing operations take place. Such authorization will be granted, pursuant to Articles 5 and 6 of Regulation No 1999/85, if the necessary economic conditions are met, that is to say if the inward processing helps to create favourable conditions for the export of compensating products without prejudice to the essential interests of Community producers.

The inward processing arrangements are normally brought to an end by the export under customs control of the compensating products outside the Community customs territory or where the other conditions laid down in Article 18 of Regulation No 1999/85 are satisfied.

11. Under the inward processing arrangements, the processing operations are carried out on non-Community goods in order to convert them into compensating products which will then be re-exported. The general rule is therefore compensation as between identical goods. However, Article 2(1) of Regulation No 1999/85 allows exceptional recourse to equivalent compensation in the following terms:

'When the conditions laid down in paragraph 2 are fulfilled and subject to paragraph 4, the customs authority shall authorize:

(a) compensating products to be obtained from equivalent goods;

...'.

The term equivalent goods means, according to Article 1(3)(d) of Regulation No 1999/85, 'Community goods which are used instead of the import goods for the manufacture of compensating products'. The system of equivalent compensation thus allows the re-export of equivalent Community goods in place of the products imported from non-member countries under inward processing arrangements. Such equivalent compensation constitutes an exception the purpose of which is to ensure that Community undertakings do not have to maintain separate production lines for non-Community goods with a view to converting them into compensating products where they use similar Community products. Moreover, Article 1(2)(b) of Regulation No 1999/85 allows equivalent compensation with prior re-export of the Community goods.

Since equivalent compensation constitutes an exception, Article 2(4) of Regulation No 1999/85 allows the adoption of measures to prohibit or limit its use.

12. As a condition for Community goods to be regarded as equivalent to goods imported under the inward processing arrangements, Article 2(2) of Regulation No 1999/85 provides that they 'shall be of the same quality and have the same characteristics as the import goods'.

13. To clarify the conditions of availability of equivalent compensation, Article 9 of Regulation No 3677/86, the validity of which is challenged in these proceedings, provided as follows:

'Without prejudice to Article 10, where use is to be made of equivalent compensation or prior exportation, the equivalent goods must fall within the same subheading of the Common Customs Tariff, be of the same commercial quality and have the same technical characteristics as the import goods.'

Thus, Article 9 of Regulation No 3677/86 clarifies the provisions of Article 2(2) of the basic regulation in two ways: first, it makes it clear that 'quality' means commercial quality and 'characteristics' means technical characteristics, and, secondly, it indicates that the equivalent goods must be classified under the same subheading of the Common Customs Tariff.

14. Regulation No 1999/85 and Regulation No 3677/86 entered into force on 1 January 1987 and, since cane sugar and beet sugar shared the same tariff classification, [6] equivalent compensation was available as between those two products under the inward processing arrangements. However, that situation changed as from 1 January 1988 as a result of the entry into force of a new tariff and statistical nomenclature, known as the 'Combined Nomenclature', introduced by Regulation (EEC) No 2658/87 [7] pursuant to the International Convention on the Harmonized and Commodity Description and Coding System of 14 June 1983, concluded by the Community by Decision 87/369/EEC. [8] In the combined nomenclature, cane sugar and beet sugar were placed in two separate subheadings (NC codes 1701 11 10 and 1701 12 10 respectively). As a result of that change in their tariff classification, equivalent compensation as between cane sugar and beet sugar ceased to be possible under inward processing arrangements.

6 — Both products belonged to the same tariff subheading, according to the classification laid down by Regulation (EEC) No 950/68 of the Council on the common customs tariff (OJ, English Special Edition 1968(I), p. 275).

7 — Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1987 L 256, p. 1).

8 — Council Regulation (EEC) No 87/369/EEC of 7 April 1987 concerning the conclusion of the International Convention on the Harmonized and Commodity Description and Coding System (OJ 1987 L 198, p. 1).

15. Regulation No 3677/86 was amended on a number of occasions, until it was codified by Regulation (EEC) No 2228/91, [9] which entered into force on 1 October 1991. Article 9 of the latter regulation continued to make equivalent compensation subject to the same requirements, namely classification under the same NC code, the same commercial quality and the same technical characteristics. However, Article 11 indicates that equivalent compensation as between certain goods such as rice, indicated in Annex IV, is to be subject to the special conditions laid down in it.

16. Regulation No 3677/86 was subsequently amended by Regulation (EEC) No 3709/92, [10] Article 1(6) of which amends the said Annex IV as follows:

'3. Sugar

Recourse to equivalent compensation is permitted between raw cane sugar of CN code 1701 11 90 and raw beet sugar of CN code 1701 12 90'.

That exception, which took effect retroactively from 1 January 1992, again allows equivalent compensation between cane sugar and beet sugar under the inward processing arrangements.

17. The same situation has obtained since 1 January 1994, the date of entry into force of the Community Customs Code [11] and the provisions for its implementation. Article 115 of that code repeats literally the provisions of Article 2 of Regulation No 1999/85 concerning equivalent compensation and, for its part, Article 569 of Regulation (EEC) No 2454/93 [12] maintains the same three criteria — tariff classification, technical characteristics and commercial quality — as Article 9 of Regulation No 3677/86, and at the same time Annex 78 thereto allows, by way of exception, equivalent compensation between cane sugar and beet sugar, even though those two products do not belong to the same NC code — an exception introduced by Regulation No 3709/92.

The preliminary questions

18. In the three questions on which it seeks a preliminary ruling, the national court raises the possibility that Article 9 of Regulation No 3677/86 might be incompatible with the principles of the hierarchy of norms, proportionality, the protection of legitimate expectations and legal certainty, since it introduces an additional criterion — classification under

9 — Commission Regulation (EEC) No 2228/91 of 26 June 1991 laying down provisions for the implementation of Regulation (EEC) No 1999/85 on inward processing relief arrangements (OJ 1991 L 210, p. 1).

10 — Commission Regulation (EEC) No 3709/92 of 21 December 1992 amending Commission Regulation (EEC) No 2228/91 of 26 June 1991 laying down provisions for the implementation of Regulation (EEC) No 1999/85 on inward processing relief arrangements (OJ 1992 L 378, p. 6).

11 — Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1).

12 — Commission Regulation (EEC) No 2454/93 of 2 June 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ 1993 L 253, p. 1).

the same tariff subheading — not expressly provided for in Regulation No 1999/85 as a precondition for equivalent compensation under inward processing arrangements.

The first question

19. By this question, the national court seeks to ascertain whether Article 9 of Regulation No 3677/86 is valid despite the fact that it lays down an additional requirement for equivalent compensation — classification under the same tariff subheading — which does not appear in Article 2(2) of Regulation No 1999/85. The Tribunal d'Instance, Lille, considers that the additional requirement may entail a breach of the principle of the hierarchy of norms and result in the invalidity of Article 9 of that regulation.

20. The Court of Justice has repeatedly held that basic regulations must contain the essential elements of the matter to be dealt with but need not set out all the details, which may be provided for by the adoption of implementing provisions. 'Nevertheless, an implementing regulation ... must respect the basic elements laid down in the basic regulation.' [13] Moreover, 'an implementing regulation must also be given, if possible, an interpretation consistent with the provisions of the basic regulation'. [14]

Those dicta do not mean that the Community institutions have no latitude in adopting implementing provisions. In fact, implementing provisions may add detail to, clarify and expound the rules in the basic instrument, provided that they respect the essential elements and objectives laid down in it. [15]

21. In the present case, there is no doubt that the relationship between Regulation No 1999/85 and Regulation No 3677/86 is that between a basic measure and an implementing measure. [16] That conclusion is clearly apparent from the following factors:

— the legal basis of Regulation No 3677/86, according to its preamble, is Regulation No 1999/85;

13 — Case 46/86 *Romkes* [1987] ECR 2671, paragraph 16; Case C-417/93 *Parliament* v *Council* [1995] ECR I-2019, paragraph 18.

14 — Case C-90/92 *Dr Tretter* [1993] ECR I-3569, paragraph 11, and Case C-61/94 *Commission* v *Germany* [1996] ECR I-3989, paragraph 52.

15 — See Case 23/75 *Rey Soda* [1975] ECR 1279, paragraphs 10 to 14, and Case 230/78 *Eridania* [1979] ECR 2749, paragraphs 7 and 8.

16 — Opinion of Advocate General Van Gerven in Case C-291/91 *TVU* [1993] ECR I-579, paragraph 7.

— Regulation No 3677/86 was adopted under the procedure governed by Article 31 of Regulation No 1999/85;

— Article 1(1) of Regulation No 3677/86 expressly describes Regulation No 3677/86 as the 'basic regulation' and in its very title it states that it contains 'certain provisions for the implementation' of that regulation.

22. Consequently, Article 9 of Regulation No 3677/86, in laying down the conditions for equivalent compensation under the inward processing arrangements, must respect the essential elements laid down by Article 2(2) of Regulation No 1999/85 concerning the criteria to be observed in determining whether goods are similar. With regard to that rule in Regulation No 1999/85, Article 9 clarifies two points: first, it makes it clear that 'quality' means commercial quality and that 'characteristics' means technical characteristics and, secondly, it indicates that the equivalent goods must be included under the same subheading of the Common Customs Tariff. The first clarification is a perfectly valid application of the rule in Regulation No 1999/85 and is not an issue in this case. However, in the case of the second clarification introduced by Article 9 — classification of the goods under the same tariff subheading — the question is raised in this case whether it is a permissible clarification of Regulation No 1999/85 or whether, on the contrary, it represents an additional criterion, imposed by that provision as a precondition for equivalent compensation and not provided for in Article 2(2) of Regulation No 1999/85.

23. In its observations, Eridania expresses the view that the need for the goods to be classifiable under the same tariff subheading amounts to a new condition, added *ex nihilo* by Article 9, which cannot be interpreted as a clarification of the criteria of quality and characteristics of the goods laid down in Regulation No 1999/85 for the availability of equivalent compensation. Moreover, the criterion of tariff classification is, in Eridania's opinion, more restrictive than the criteria of quality and technical characteristics of the goods because the tariff classification of goods is carried out for the purpose of levying import duties and controlling the movement of goods within the Community for statistical purposes. On the other hand, the criteria of the quality and characteristics of the goods are of an economic nature in harmony with the objective of the inward processing arrangements.

The French Government also considers that Article 9 of Regulation No 3677/86 is invalid because it introduces the criterion of classification of the goods under the same tariff subheading in addition to those provided for in Regulation No 1999/85 for equivalent compensation.

24. In my opinion, the arguments put forward by Eridania and the French Government to the effect that Article 9 of Regulation No 3677/86 is invalid because it contravenes the principle of the hierarchy of norms cannot be upheld. Personally, I consider that Article 9 clarifies and renders operative the conditions laid down by Regulation No 1999/85 for equivalent compensation, in compliance with the essential requirements prescribed by that regulation, without exceeding the latitude enjoyed by the Community institutions in adopting implementing provisions. In my view, there is no doubt that Article 9 can be interpreted in that way, which means that it conforms [17] with Article 2(2) of Regulation No 1999/85, for the reasons which I shall set out after making two preliminary observations.

25. When analysing the possibility that Article 9 of Regulation No 3677/86 is invalid, it should be borne in mind that the legality of a Community legislative measure must be appraised in relation to the circumstances existing at the time of its adoption and cannot depend on facts and circumstances arising at a later stage. [18] Furthermore, the validity of a Community legislative measure must be appraised generally and not by reference to the effects to which it gives rise in a given economic sector or its impact on a limited circle of economic agents.

In the present case, the first point implies that the validity of the said Article 9 should be analysed in relation to the circumstances existing when it was adopted and not to the impact of the amendment to the customs nomenclature effected by Regulation No 2658/87 on the application of that measure to inward processing arrangements as between cane sugar and beet sugar. The second point implies that the validity of Article 9 must be determined in relation to all economic sectors and not by reference to its effects on inward processing in the specific sector of sugar.

26. Having made those two points, I shall now turn to the reasons for which Article 9 of Regulation No 3677/86 is valid.

27. In the first place, I consider that the rule that the goods must fall within the same tariff subheading clarifies and gives effect to the requirements concerning technical characteristics and commercial quality. Use of the tariff classification provides the customs authorities with a clear, unequivocal and easily applicable criterion for determining equivalence as between import goods and the Community goods used in the production of the compensating product, which is re-exported under the inward processing arrangements. It seems logical that the Community legislature should have adopted that criterion because every tariff nomenclature

17 — The Community case-law prefers an interpretation of implementing provisions which renders them compatible with the basic measures. I refer to the judgments cited in footnote 13.

18 — See, *inter alia*, Case 40/72 *Schroeder* v *Bundesamt für Ernährung und Forstwirtschaft* [1973] ECR 125, paragraph 14, and Joined Cases 9/71 and 11/71 *Compagnie d'Approvisionnement* v *Commission* [1972] ECR 391, paragraph 39.

contains a list of goods drawn up principally by reference to their characteristics, their composition and their end use. [19] Moreover, the customs tariff contains rules intended to facilitate classification of goods under the relevant tariff heading or subheading.

Consequently, recourse to tariff classification clarifies, and seeks to facilitate the practical application of, the criteria concerning the characteristics and quality of the goods and is perfectly consistent with the aims of Article 2(2) of Regulation No 1999/85, which seeks to obviate abuse of equivalent compensation by requiring identity as between import goods and equivalent Community goods exported as a component of the compensating product.

28. Secondly, the inward processing arrangements constitute an exception to the general rule of release into free circulation and payment of import duties which applies to goods from non-member countries brought into the Community customs territory, and equivalent compensation constitutes in turn an exception to the general rule of compensation on an identical basis, which applies to inward processing. Without doubt, that fact justifies making equivalent compensation subject to rules which are capable of ensuring strict compliance. In that regard, I consider that classification under the same tariff subheading represents in practice the only objective criterion capable of determining whether the Community goods and the import goods possess the same technical characteristics and the same commercial quality, that is to say whether they are sufficiently similar to allow equivalent compensation. If tariff classification were not resorted to, innumerable difficulties would be faced by the customs authorities in determining in each case the equivalence between the import goods and the Community product.

29. Thirdly, Article 2(4) of Regulation No 1999/85 allows measures to be adopted to prohibit or limit equivalent compensation, in accordance with the procedure laid down in Article 31. In the same way, it is possible for such a limitation of equivalent compensation to be brought about by another Community provision. In the present case, equivalent compensation as between cane sugar and beet sugar ceased to be possible as a result of the amendment to the tariff nomenclature made by Regulation No 2658/87.

Moreover, given that Article 2(4) of Regulation No 1999/85 allows a considerable degree of latitude to the Community institutions in adopting implementing rules intended to limit or prohibit equivalent compensation, *a fortiori* the implementing powers of those institutions must include the possibility of adding detail to the criteria

19 — Berr and Trémeau, op. cit., p. 119.

laid down by Regulation No 1999/85 in order to determine equivalence as between the imported product and the Community product exported on a compensatory basis.

30. Finally, it may be inferred from a systematic and historical interpretation that the criterion of tariff classification has been and is used generally in Community customs legislation to determine similarity or equivalence as between goods.

31. Thus, in relation to the application of the economic conditions for inward processing, Article 5(2) of Regulation No 3677/86 uses, to determine whether goods produced in the Community are comparable with import goods, the same criteria as Article 9, namely tariff classification, commercial quality and technical characteristics. Article 552 of Regulation No 2454/93 does the same.

32. Also, under the rules on inward processing in force prior to the adoption of Regulation No 1999/85, Article 24 of Directive 69/738/EEC [20] allowed equivalent compensation in the case of compensating products obtained from the treatment of 'goods of the same kind and quality and having the same technical characteristics'.

For its part, Article 2(2) of Directive 75/349/EEC [21] provided that '[c]ompensation goods must fall within the same tariff subheading, be of the same commercial quality and possess the same technical characteristics as import goods'.

The rules on inward processing adopted after Regulation No 1999/85 continue to refer to the criterion of tariff classification. This course is followed in Article 10 of Regulation No 2228/91 and Article 569 of Regulation No 2454/93, which implements Article 115 of the Community Customs Code, whose wording coincides with that of Article 2 of Regulation No 1999/85.

33. The criterion of tariff classification has been and is also used in the context of the outward processing arrangements, which cover the opposite situation to inward processing. The outward processing arrangements allow the temporary export of Community goods so that they can be processed and the products resulting from those operations can be cleared for free circulation, with total or partial exemption from import duties. [22] Under the outward processing

20 — Council Directive 69/73/EEC on the harmonization of the provisions laid down by law, regulation or administrative action in respect of inward processing arrangements (OJ, English Special Edition 1969 (I), p. 75).

21 — Commission Directive 75/348/EEC of 26 May 1975 on detailed rules concerning equivalent compensation and prior exportation under inward processing arrangements (OJ 1975 L 156, p. 25).

22 — See J.-F. Durand, 'Régimes douaniers économiques. Régimes de transformation à l'exportation', *Juris-Classeur Europe*, volume 543, 1995.

arrangements, the general rule is compensation on an identical basis, since, following the processing operations carried out on the Community goods temporarily exported outside the Community, the resultant compensating product is reimported. However, the Community rules allow, as an exception, equivalent compensation within the standard exchange system. In such circumstances the compensating product is replaced by goods imported from a non-member country, referred to as 'substitute products'. For such standard interchange to be feasible, Article 19 of Regulation (EEC) No 2473/86, [23] and subsequently Article 155 of the Community Customs Code, indicate that the Community goods exported temporarily and the substitute product 'shall have the same tariff subheading, be of the same commercial quality and possess the same technical characteristics'.

34. As is apparent, the criterion of tariff classification is expressly mentioned in the basic provisions governing the standard exchange system under the outward processing arrangements. Without doubt, that legislative approach is more appropriate than that used in inward processing and it ensures that no questions arise of the kind referred by the national court in these proceedings. And that inclusion of the criterion of tariff classification in the basic provisions governing outward processing confirms that the detailed definition of the criteria for allowing equivalent compensation under the inward processing arrangements effected by Article 9 of Regulation No 3677/86 is compatible with Article 2(2) of Regulation No 1999/85, since the similarity of the economic arrangements under the two customs regimes justifies the application of identical criteria to determine equivalence as between Community goods and import goods. In the context of inward processing, the Community legislature chose to include in the basic provision the bare bones of the criteria to be met for equivalent compensation to be available, subsequently adding detail and laying down arrangements for their application in Article 9 of Regulation No 1999/85, whereas under the outward processing regime those criteria were provided for entirely in the basic provisions.

35. In view of the foregoing considerations, it is my view that Article 9 of Regulation No 3677/86 is valid and is compatible with Article 2(2) of Regulation No 1999/85 since use of the criterion of tariff classification for the application of equivalent compensation constitutes a clarification and practical implementation of the criteria laid down in the last-mentioned provision.

The second question

36. By its second question, the national court seeks to ascertain whether Article 9 of Regulation No 3677/86 contravenes the principle of proportionality by introducing

23 — Council Regulation (EEC) No 2473 of 24 July 1986 on outward processing arrangements and the standard exchange system (OJ 1986 L 212, p. 1).

the criterion of tariff classification as a precondition for equivalent compensation.

37. Since I have reached the conclusion that that provision is in conformity with the requirements of Article 2(2) of Regulation No 1999/85, its compatibility with the principle of proportionality would also affect that provision of the basic regulation by reference to which it was adopted, in so far as the possibility of recourse to tariff classification as a criterion for equivalent compensation is to be inferred from it. Therefore, the issue underlying the national court's second question is the compatibility of that criterion with the principle of proportionality.

38. Eridania submits in its observations that the criterion of tariff classification of the goods is not conducive to the aim of obviating abuse of the inward processing regime, which exists to promote exports by Community undertakings. In its opinion, tariff classification is a criterion of a purely administrative and statistical, but not economic, nature, the application of which imposed disproportionate sacrifices on the Community sugar-refining industries, undermining their competitiveness on the world market. In any event, Eridania considers that by virtue of the principle of proportionality the criterion of tariff classification must be regarded as only indicative, so as to constitute a sufficient condition, but not a necessary condition, for equivalent compensation.

39. The French Government also considers that the criterion of tariff classification is not in conformity with the principle of proportionality since it is not apt to attain the objective of the inward processing arrangements, which is to promote exports by Community undertakings if the prescribed economic conditions are met for the interest of Community producers not to be adversely affected. The French Government sets out in detail the reasons for which it considers that the criterion of tariff classification prevented inward processing as between cane sugar and beet sugar without any economic justification based on the requirements of the Common Agricultural Policy or the commercial policy of the Community.

40. In my opinion, the arguments put forward by Eridania and the French Government cannot be upheld.

41. According to the case-law of the Court of Justice, '[t]he principle of proportionality, which is one of the general principles of Community law, requires that measures adopted by Community institutions do not exceed the limits of what is appropriate and necessary in order to attain the objectives legitimately pursued by the legislation in question; when there is a choice between several appropriate measures recourse must be had to the least onerous, and the disadvantages caused must not be disproportion-

ate to the aims pursued'. [24] When the Community legislature enjoys a discretion, the legality of a measure can be affected only if the measure is manifestly inappropriate having regard to the objective which the Community institution seeks to pursue. [25]

42. The criteria laid down by Article 9 of Regulation No 3677/86 seek to guarantee strict application of the exception to inward processing arrangements represented by equivalent compensation. Such compensation is possible only when there is a high degree of similarity between the import goods and the Community goods exported in the form of a compensating product. This requirement of equivalence seeks to reconcile two opposing interests:

— on the one hand, the desire of Community exporters to achieve maximum flexibility in their production processes, without having to be subject to the obligation of compensation on an identical basis.

— on the other, the interests of Community producers, who must not be drastically harmed by the import of non-Community goods under the inward processing arrangements.

43. In order to achieve a proper balance between the two opposing interests, it is necessary to adopt objective criteria which can be applied easily. In that connection, I consider that the criterion of tariff classification is conducive to the fulfilment of that function and is in conformity with the objectives pursued by the inward processing arrangements. Moreover, it has not been shown that there is any alternative criterion which would enable a similar degree of precision to be achieved in the application of equivalent compensation. Classification under the same tariff subheading thus constitutes a necessary condition for equivalent compensation, but not a sufficient condition, because the goods must also display the same technical characteristics and the same commercial quality.

In any event, it cannot be considered that the criterion of tariff classification is manifestly inimical to attainment of the objectives pursued by the equivalent compensation system under the inward processing arrangements, and therefore its use may be prescribed by the Community legislature within the discretion available to it by virtue of its political responsibilities, without offending against the principle of proportionality.

44. That conclusion is not undermined, as the Commission states in its observations, by

24 — Joined Cases C-296/93, and C-307/93 *France and Ireland* v *Commission* [1996] ECR I-795, paragraph 30, and Joined Cases C-133/93, C-300/93 and C-362/93 *Crispoltoni and Others* [1994] ECR I-4863, paragraph 41.

25 — Case C-280/93 *Germany* v *Council* [1994] ECR I-4973, paragraph 90, and Case C-331/88 *Fedesa and Others* [1990] ECR I-4023, paragraph 14.

the fact that a specific group of economic agents, in this case the Community sugar exporters has been particularly affected over a given period of time by use of the criterion of tariff classification. As the Court of Justice has held, [26] the obligation of the Community institutions to see that the charges imposed on economic agents do not go further than is necessary to achieve the aim pursued cannot be examined in relation to any one particular group of operators. The impact on the interests of the Community sugar-exporting undertakings over a given period resulting from the application of the criterion of tariff classification likewise cannot be regarded as discriminatory.

45. Accordingly, I do not consider the criterion of tariff classification laid down by Article 9 of Regulation No 3677/86 in relation to equivalent compensation to be contrary to the principle of proportionality.

The third question

46. By its third question, the national court seeks to ascertain whether Article 9 of Regulation No 3677/86, by laying down the criterion of tariff classification, contravened the principles of the protection of legitimate expectations and legal certainty, owing to the fact that it precluded the possibility of equivalent compensation as between cane sugar and beet sugar from 1 January 1988 to 1 January 1992.

47. With respect to the protection of legitimate expectations, the Court of Justice has held that it is one of the fundamental principles of Community law. However, economic agents cannot legitimately expect that an existing situation which can be changed at the discretion of the Community institutions will be maintained. [27] In relation to agricultural legislation, the Court has stated repeatedly that economic agents cannot claim the right to maintenance of an advantage which they derive from the establishment of the common organization of the markets and which they enjoyed at a particular time. [28]

48. In my opinion, the impossibility of resorting to equivalent compensation as between cane sugar and beet sugar, resulting from the criterion of tariff classification laid

26 — Case 5/73 *Balkan* [1973] ECR 1091, paragraph 22, and Joined Cases 154/78, 205/78, 206/78, 226/78 to 228/78, 263/78, 264/78, 31/79, 39/79, 83/79 and 85/79 *Valsabbia* v *Commission* [1980] ECR 907, paragraph 118.

27 — See, *inter alia*, Case C-353/92 *Greece* v *Council* [1994] ECR I-3411, and Case C-350/88 *Delacre and Others* v *Commission* [1990] ECR I-395.

28 — *Crispoltoni*, cited above, paragraph 58, and *Delacre*, cited above, paragraph 34.

down by Article 9 of Regulation No 3677/86 and the amendment of the tariff nomenclature made by Regulation No 2658/87, does not constitute a breach of the principle of the protection of legitimate expectations. Economic agents were not induced either by the Community regulations or by the conduct of the Community institutions to entertain a legitimate expectation that equivalent compensation between cane sugar and beet sugar would be maintained indefinitely. The fact that such compensation was possible until 31 December 1987 gave them no reason to expect that it would continue to be so thereafter. Equivalent compensation constitutes an exception to the general rule of compensation on an identical basis under the inward processing arrangements, so that there can hardly be any legitimate expectation that exceptional situations will be maintained.

Furthermore, legitimate expectations likewise cannot be invoked to claim that an exceptional situation should be maintained simply because that situation was subsequently restored by a Community legislative measure, as occurred in this case when Regulation No 3709/92 reintroduced, with effect from 1 January 1992, equivalent compensation as between cane sugar and beet sugar. That fact does not enable economic agents to invoke the principle of the protection of legitimate expectations to claim a vested right in maintenance of that advantage.

49. Moreover, application of the criterion of tariff classification made it possible for any prudent and diligent economic agent to foresee that an amendment to the customs nomenclature would prevent equivalent compensation as between cane sugar and beet sugar if the two products were then classified under different subheadings. They cannot therefore claim that their legitimate expectations have been frustrated when that situation arises. [29]

50. As regards the principle of legal certainty, which forms part of the Community legal order, it is necessary, according to the Court of Justice, for legislation which imposes charges on the taxpayer to be clear and precise so that he can be absolutely certain what his rights and obligations are and may take steps accordingly, and so that the courts can ensure compliance with it. [30]

51. Article 9 of Regulation No 3677/86, which lays down the criterion of tariff classification, in my opinion meets the requirements of the principle of legal certainty since it enables economic agents to ascertain whether or not equivalent compensation is available as between two products under the inward processing arrangements. A change to the tariff nomenclature may alter the result obtained from application of the criterion of tariff classification, but that does not

29 — Case 265/85 *Van den Bergh en Jurgens* v *Commission* [1987] ECR 1155, paragraph 44, and *Delacre*, cited above, paragraph 37.

30 — Case 169/80 *Gondrand and Garancini* v *France* [1981] ECR 1931; Case 257/86 *Commission* v *Italy* [1988] ECR 3249, paragraph 12, and Joined Cases 92/87 and 93/87 *Commission* v *France and United Kingdom* [1989] ECR 405, paragraph 22.

mean, contrary to what Eridania contends, that the conditions for equivalent compensation have been changed in an ambiguous and unclear manner. What is more, economic agents had considerable advance notice that, as from 1 January 1988, there would be a change to the Common Customs Tariff, as a result of application of the International Convention on the Harmonized and Commodity Description and Coding System of 14 June 1983, concluded by the Community by Decision 87/369.

52. The adoption of Regulation No 3709/92, which allows, by way of exception, equivalent compensation as between cane sugar and beet sugar as from 1 January 1992, likewise does not offend against the requirements of the principle of legal certainty, since it reflects in clear and precise terms a choice made by the Community legislature.

53. Consequently, Article 9 of Regulation No 3677/86 does not, by laying down the criterion of tariff classification for equivalent compensation, contravene the principle of proportionality or the principle of legal certainty.

Final comment

54. It is clear from the reasoning set out above that no factor has come to light in this case which might affect the validity of Article 9 of Regulation No 3677/86.

55. However, I must confess that it does not seem to me to be very logical to prohibit equivalent compensation as between cane sugar and beet sugar from 1 January 1988 to 31 December 1992 when it had been permitted earlier and now continues to be acceptable after that period. That fact is clearly indicative of a malfunctioning of the Community legislative process, because the requisite change to the legislation governing the inward processing arrangements was not made at the appropriate time, that is to say before the entry into force of the new tariff nomenclature established by Regulation No 2658/87.

56. The legislative amendment was made in 1992, with the adoption of Regulation No 3709/92, which entered into force on 1 January 1993 but whose provisions concerning authorization of equivalent compensation as between cane sugar and beet sugar were applied retroactively from 1 January 1992. Despite what is stated in the sixth recital in the preamble to Regulation No 3709/92, it does not seem, as the French Government pointed out, that the introduction of new arrangements for the supply of raw sugar to Community refineries was the reason for establishing an exception allowing equivalent compensation as between cane sugar and

beet sugar. I am inclined to think that that amendment was made when the Community institutions were alerted to the problem which confronted the Community sugar companies as a result of the new tariff nomenclature.

57. In its oral observations, the French Government suggested that the situation of the sugar companies affected by the unavailability of equivalent compensation between 1988 and 1992 could have been resolved by declaring Regulation No 3709/92 invalid because it only allowed retroactivity of the authorization for equivalent compensation during 1992 and should have done so with effect from 1988. Quite apart from the fact that in these proceedings the national court does not query the validity of that regulation, the French Government's thesis seems to be entirely without foundation.

58. In its observations, the French government and Eridania also argue that the prohibition of equivalent compensation as between cane sugar and beet sugar constituted a breach of the fundamental right to pursue an occupational activity upheld by the case-law of the Court of Justice. [31] That argument seems to me to be wholly unfounded because the unavailability for a period of time of an exception — equivalent compensation — lawfully made to the general rule of compensation on an identical basis, which forms part of the inward processing arrangements, cannot constitute excessive and intolerable intervention affecting the essence of the sugar companies' freedom to pursue a business activity.

59. Having set out the basis of the conclusion which I suggest that the Court of Justice adopt in answering the questions from the national court, it would be wrong not to mention the serious effects which Eridania might suffer as a result of the decision to be given in due course by the Tribunal d'Instance, Lille. However, within the Community legal order the Court of Justice has at its disposal no machinery enabling it to eliminate the effects suffered by the sugar companies as a result of the slowness and inadequate functioning of the Community legislative process. The Court of Justice would have to exceed the limits which in general define the exercise of its judicial function and, in particular, confine the scope of the preliminary ruling to the terms in which the national court framed the question, so as to change the consequences, however appropriate or inappropriate, of the legislative measures adopted by the Community legislature within the discretion enjoyed by it in relation to the inward processing arrangements. In a Community governed by the rule of law, it is essential that each authority discharges its function and assumes its responsibilities without interfering with the action of the others. In any event, the national court, depending on the possibilities available to it under its own legal order and in any event observing the uniformity needed for the application of Community law, may be able, if that is permissible in the proceedings before it, to adapt the scope of the Community measure on the validity of which the Court of Justice is to give a ruling.

31 — See, *inter alia*, Case 265/87 *Schräder* [1989] ECR 2237, paragraph 15, and Case 5/88 *Wachauf* [1989] ECR 2609, paragraph 18.

Conclusion

60. Having regard to the foregoing considerations, I propose that the Court of Justice reply as follows to the questions submitted by the Tribunal d'Instance, Lille, as follows:

(1) Article 9 of Regulation No 3677/86 of 24 November 1986 laying down provisions for the implementation of Regulation (EEC) No 1999/85 on inward processing relief arrangements is valid and is compatible with Article 2(2) of Regulation No 1999/85, since use of the criterion of tariff classification to determine the availability of equivalent compensation under the inward processing arrangements constitutes a clarification and a practical implementation of the criteria laid down in the latter provision.

(2) The criterion of tariff classification laid down by Article 9 of Regulation No 3677/86 in relation to equivalent compensation is compatible with the principle of proportionality and does not have a disproportionate impact on economic agents.

(3) Article 9 of Regulation No 3677/86, in laying down the criterion of tariff classification, does not breach the principles of the protection of legitimate expectations or legal certainty, despite the fact that the amendment to the tariff nomenclature made by Regulation No 2658/87 precluded equivalent compensation as between cane sugar and beet sugar from 1 January 1988 to 1 January 1992.