JUDGMENT OF THE COURT (Sixth Chamber)

10 January 2002 *

In Case C-101/99,

REFERENCE to the Court under Article 177 of the EC Treaty (now Article 234 EC) by the High Court of Justice of England and Wales, Queen's Bench Division, for a preliminary ruling in the proceedings pending before that court between

The Queen

and

Intervention Board for Agricultural Produce,

ex parte:

British Sugar plc,

on the interpretation of Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organisation of the markets in the sugar sector (OJ 1981 L 177, p. 4), as amended by Council Regulation (EEC) No 305/91 of 4 February 1991 (OJ 1991 L 37, p. 1), on the validity of Commission Regulation (EEC)

* Language of the case: English.

No 2630/81 of 10 September 1981 on special detailed rules for the application of the system of import and export licences in the sugar sector (OJ 1981 L 258, p. 16), on the interpretation and validity of Commission Regulation (EEC) No 2670/81 of 14 September 1981 laying down detailed implementing rules in respect of sugar production in excess of the quota (OJ 1981 L 262, p. 14), as amended by Commission Regulation (EEC) No 3559/91 of 6 December 1991 (OJ 1991 L 336, p. 26), and on the interpretation of Commission Regulation (EEC) No 3665/87 of 27 November 1987 laying down common detailed rules for the application of the system of export refunds on agricultural products (OJ 1987 L 351, p. 1),

THE COURT (Sixth Chamber),

composed of: F. Macken, President of the Chamber, N. Colneric (Rapporteur), C. Gulmann, J.-P. Puissochet and J.N. Cunha Rodrigues, Judges,

Advocate General: J. Mischo,

Registrar: H. von Holstein, Deputy Registrar,

after considering the written observations submitted on behalf of:

— British Sugar plc, by T. Sharpe QC and D. Jowell, Barrister, instructed by R. Fleck and A. Lidbetter, Solicitors,

— the United Kingdom Government, by M. Ewing, acting as Agent, and K. Parker QC,

— the French Government, by K. Rispal-Bellanger and C. Vasak, acting as Agents,

— the Commission of the European Communities, by P. Oliver, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of British Sugar plc, represented by T. Sharpe and D. Jowel, of the United Kingdom Government, represented by G. Amodeo, acting as Agent, and K. Parker, and of the Commission, represented by P. Oliver, at the hearing on 8 March 2001,

after hearing the Opinion of the Advocate General at the sitting on 15 May 2001,

gives the following

Judgment

1 By order of 26 February 1999, received at the Court on 18 March 1999, the High Court of Justice of England and Wales, Queen's Bench Division, referred to the Court for a preliminary ruling under Article 177 of the EC Treaty (now Article 234 EC) six questions on the interpretation of Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organisation of the markets in the sugar sector (OJ 1981 L 177, p. 4), as amended by Council Regulation (EEC) No 305/91 of 4 February 1991 (OJ 1991 L 37, p. 1) ('the basic regulation'), on the validity of Commission Regulation (EEC) No 2630/81 of 10 September 1981 on special detailed rules for the application of the system of import and export

licences in the sugar sector (OJ 1981 L 258, p. 16), on the interpretation and validity of Commission Regulation (EEC) No 2670/81 of 14 September 1981 laying down detailed implementing rules in respect of sugar production in excess of the quota (OJ 1981 L 262, p. 14), as amended by Commission Regulation (EEC) No 3559/91 of 6 December 1991 (OJ 1991 L 336, p. 26) ('Regulation No 2670/81'), and on the interpretation of Commission Regulation (EEC) No 3665/87 of 27 November 1987 laying down common detailed rules for the application of the system of export refunds on agricultural products (OJ 1987 L 351, p. 1).

2 Those questions were raised in proceedings brought by British Sugar plc before the national court in response to the decision of the Intervention Board for Agricultural Produce ('IBAP') to demand the payment of a charge pursuant to Article 3(1) of Regulation No 2670/81 for failure to dispose of C sugar outside the Community and to reject its application for refunds on sugar exports.

Community law

3 In connection with the common organisation of the markets in the sugar sector, the basic regulation seeks to maintain the necessary guarantees in respect of employment and standards of living for producers of basic products and for manufacturers of sugar in the Community and to ensure the continuous supply of sugar to all consumers at reasonable prices, by stabilising the sugar market.

4 In order to control sugar production within the Community, the basic regulation introduced a system of production quotas which, according to the 15th recital in the preamble to that regulation, constitutes a means of guaranteeing producers Community prices and an outlet for their production.

5 The second subparagraph of Article 24(1) provides:

'... For the purposes of this Regulation:

(a) "A sugar" ... mean[s] any quantity of sugar ... the production of which is attributable to a specific marketing year and which is produced by the undertaking concerned within its A quota;

(b) "B sugar" ... mean[s] any quantity of sugar ... the production of which is attributable to a specific marketing year and which is produced by the undertaking concerned outside its A quota but within the sum of its A and B quotas;

(c) "C sugar" ... mean[s] any quantity of sugar the production of which is attributable to a specific marketing year and which is produced either by the undertaking concerned outside the sum of its A and B quotas or by an undertaking which has no quota'.

6 The conditions under which sugar may be disposed of vary according to its classification. The basic regulation provides several support mechanisms for A and B sugar, the guarantees for sugar produced as part of A quota being greater than those for B sugar. The prices are as a matter of course fixed before the beginning of each marketing year, which runs from 1 July to 30 June.

7 A and B sugar may be exported to non-member countries, covered by an aid to export which amounts to the difference between Community prices and prices on the world sugar market. That aid is paid in the form of export refunds in accordance with Article 19 of the basic regulation. Article 3 of Commission Regulation No 3665/87 provides that:

'1. The day of export means the date on which the customs authority accepts the export declaration in which it is stated that a refund will be applied for.

...

3. Any other act having the same effect in law as the acceptance of the export declaration shall be deemed to be equivalent to such acceptance.

...'

8 Article 4(1) and (4) of that regulation makes payment of the export refund conditional upon acceptance of the export declaration and upon proof of export, which must be furnished within 60 days of the date of that acceptance, except in the case of '*force majeure*'.

9 Producers are required, by means of a complicated financing mechanism, to bear the cost of those export refunds, since the common organisation of the sugar market has to be self-financing.

10 Sugar producers are required to pay a minimum price for the beet they use for producing A and B sugar, the price for A sugar being higher than for B sugar. There is no such requirement in the case of beet processed into C sugar.

11 Whilst the operation of the A and B sugar schemes is organised in detail, only the essential principles of the operation of the C sugar scheme are set down. Article 26(1) of the basic regulation provides:

'... C sugar which is not carried forward pursuant to Article 27 and C isoglucose may not be disposed of on the Community's internal market and must be exported in the natural state before 1 January following the end of the marketing year in question'.

No refund is provided for on the export of C sugar.

12 The duty to export is, however, mitigated by the possibility of carrying forward provided for by Article 27 of the basic regulation, as the result of an amendment made by Council Regulation (EEC) No 192/82 of 26 January 1982 (OJ 1992 L 21, p. 1), which provides:

'1. Each undertaking shall be free to decide to carry forward the whole or part of its sugar production outside its A quota to the next marketing year to be treated as part of that year's production. That decision shall be irrevocable.

2. Undertakings which take the decision referred to in paragraph 1 shall:

— inform the Member State concerned, before 1 February, of the quantity or quantities of sugar being carried forward, and

— undertake to store such quantity or quantities ...'.

13 The detailed rules governing carrying forward are laid down in Commission Regulation (EEC) No 65/82 of 13 January 1982 laying down detailed rules for carrying forward sugar to the following marketing year (OJ 1982 L 9, p. 14), as amended by Commission Regulation (EEC) No 948/82 of 26 April 1982 (OJ 1982 L 113, p. 7) (Regulation No 65/82), the second recital in the preamble to which states as follows:

'[T]he concept of carrying forward can apply only to sugar which has in fact been produced;... it is therefore appropriate to provide that an undertaking may take a decision to carry forward only in respect of that sugar outside its quota A whose production has been verified by the Member State concerned and to establish the rules for such verification, in particular as regards the information to be supplied for this purpose by the undertaking.'

14 According to the first subparagraph of Article 2(1) of Regulation No 65/82:

'An undertaking may decide to carry forward sugar only if the Member State concerned verifies that such sugar was produced as B sugar or as C sugar.'

15 In accordance with Article 13 of the basic regulation, all exports of sugar out of the Community are conditional upon the presentation of an export licence. Certain conditions are imposed in respect of that licence by Article 4 of Regulation No 2630/81, which provides:

'An export licence for C sugar ... may be issued only after the manufacturer in question has provided the competent body with proof that the quantity for which the licence is requested, or an equivalent quantity, has actually been produced in excess of the A and B quotas of the undertaking concerned, account being taken, as regards sugar, of any quantities carried forward to the marketing year in question.'

16 In addition, Article 3(1) of Regulation No 2630/81 requires licences for the export of C sugar to contain the endorsement 'for export under Article 26(1) of Regulation (EEC) No 1785/81'.

17 Article 1(1) of Regulation No 2670/81 sets out the conditions governing acceptance that the exportation referred to in Article 26(1) of the basic regulation has taken place. In particular, the sugar must in fact have left the customs territory of the Community. Except in case of *force majeure*, if the conditions laid down by that provision are not all satisfied, the quantity of C sugar in question is to be considered to have been disposed of on the internal market.

18 Article 3(1) of Regulation No 2670/81 provides:

'The Member State concerned shall impose on the quantities which, within the meaning of Article 1(1) have been disposed of on the internal market, a charge equal to the sum of:

(a) for C sugar, per 100 kilograms:

— the highest import levy per 100 kilograms of white or raw sugar, as the case may be, applicable during the period comprising the marketing year during which the sugar in question was produced and the six months following that marketing year, and

— ECU 1;

...'

19 Article 3(2) of Regulation No 2670/81 provides that:

'The Member State concerned shall, before 1 May following 1 January referred to in Article 1, notify those manufacturers who are required to pay the charge referred to in paragraph 1 of the total amount to be paid.

Such total amount shall be paid by the manufacturers in question before 20 May of the same year.'

The main proceedings and the questions referred

20 It appears from the order for reference that in 1992 British Sugar was the only company in the United Kingdom producing sugar from sugarbeet. It possessed the entire Community production quota allocated to the United Kingdom. In or around August 1992 British Sugar became aware that the volume of sugar which it would produce in the 1992/93 marketing year would be abnormally large.

21 In September 1992 British Sugar signed a contract with a customer for the export of sugar produced during the marketing year 1992/93. That contract was subsequently altered to provide for the export of C sugar before a quantity equivalent to the A and B quotas had actually been produced.

22 On 16 October 1992 British Sugar applied to IBAP for 'a C Quota export licence' with a view to exporting 10 000 tonnes of sugar. On 26 November 1992 it applied for a licence for the export of 10 000 tonnes more. Each of the two licences was granted on the very day of the application. They were valid until 31 January 1993 and 28 February 1993 respectively, and included the endorsement referred to in Article 3(1) of Regulation No 2630/81. No proof of previous production of the A and B quotas was required.

23 On 7 January 1993, the date on which British Sugar's total production exceeded the sum of its A and B quotas, the quantity of sugar exported by British Sugar as C sugar was 16 650.465 tonnes.

24 Following scrutiny visits beginning on 23 October 1993, IBAP found that sugar described as C sugar had been exported.

25 On receiving information from IBAP, the customs authorities opened an investigation which was completed in April 1995. On being notified by IBAP of an alleged infringement of the rules regulating the common organisation of the sugar market, the Commission informed IBAP in July 1996 that in its view British Sugar was liable to pay a charge under Article 3 of Regulation No 2670/81. In November 1996, IBAP informed British Sugar that it considered that the exports made between November 1992 and January 1993 were not exports of C sugar but rather exports of A and B sugar and that a charge would probably be imposed on it pursuant to Article 3 of Regulation No 2670/81. On 19 May 1997 IBAP demanded £6 641 608.10 from British Sugar.

26 In those circumstances British Sugar requested IBAP, in light of the purported 'reclassification', to pay it the export refunds which would normally have been payable to it in respect of the sugar which IBAP was now treating as A and B sugar. IBAP rejected that request by letter of 5 June 1997.

27 On 13 August 1997 British Sugar applied to the High Court (Queen's Bench Division) for leave to apply for judicial review of IBAP's decision to impose the charge and its refusal to grant export refunds. Leave was granted on 29 October 1997.

28 The High Court of Justice of England and Wales, Queen's Bench Division, decided to refer the following questions to the Court for a preliminary ruling:

'1. Under the EC sugar regime and in particular under Article 24(1)(c) of Council Regulation (EEC) No 1785/81 of 30 June 1981, may an undertaking awarded a quota by a national authority attribute sugar as C sugar when that sugar is produced during a marketing year before the undertaking has actually completed production of a volume of sugar that is equivalent to the sum of its A and B quotas?

2. If the answer to Question 1 is "Yes", was Article 4 of Commission Regulation No 2630/81 (EEC) of 10 September 1981 (now replaced by Article 5 of Commission Regulation (EC) No 1464/95 of 27 June 1995 on special detailed rules for the application of the system of import and export licences in the sugar sector (OJ 1995 L 144, p. 14) *ultra vires* and void for the reason that it imposed a requirement which is not found in or justified by Regulation No 1785/81, namely, that an export licence for C sugar may only be issued after the manufacturer in question has provided the competent agency with proof that the quantity for which the licence is requested, or an equivalent quantity, has actually been produced in excess of the A and B quotas of the undertaking concerned?

3. If the answer to Question 1 or Question 2 is "No", in the circumstances of this case, is the national authority, in maintaining that the sugar exported as C sugar was A or B quota sugar and/or in then seeking to impose a charge pursuant to Article 3 of Commission Regulation (EEC) No 2670/81 of

14 September 1981 for the failure to dispose of C sugar outside the EC, in breach of one or more of the following general principles of Community law:

(a) the principle of [the protection of] legitimate expectations;

(b) the principle of legal certainty:

(c) the principle of non-discrimination;

(d) the principle of proportionality;

(e) the principle of the proper use of powers;

with the effect that the demand for the charge in the present case is void and unenforceable?

4. Further or alternatively, if the answer to Question 1 is "No":

(a) Does the national authority have a discretion to vary the amount of the charge to be imposed pursuant to Article 3 of Commission Regulation (EEC) No 2670/81?

(b) If the answer to Question 4(a) is "yes", what factors may the national authority take into account in exercising such a discretion in the light, in particular, of the circumstances of this case?

(c) If the answer to Question 4(a) is "no", is Article 3(1) of Regulation No 2670/81 void to the extent that it requires a national authority to levy a charge even when the amount of sugar disposed of on the internal market does not, in practice, exceed the sum of the relevant manufacturer's A and B quotas?

5. Is the national authority, in the circumstances of this case, prevented from levying a charge pursuant to Article 3(1) of Commission Regulation No 2670/81 where it has not notified the undertaking of such a charge in accordance with the time-limit contained in Article 3(2) of Regulation No 2670/81 before 1 May of the relevant year and/or is the undertaking relieved of any obligations to pay such a charge in the above circumstances?

6. In the circumstances of this case, is the national authority obliged to pay the export refunds which the undertaking would have applied for at the time of export and would have been payable if the sugar described as C Sugar and exported under C sugar licences had been designated as A and B quota sugar, on the grounds that:

(a) the national authority can retrospectively accept an export declaration under Article 3 of Commission Regulation No 3665/87 and the circumstances of the present case constitute a reason of *force majeure* entitling it to extend the period for the furnishing of proof under Article 4 of Commission Regulation No 3665/87?

And/or on the grounds that:

(b) a refusal to pay such export refunds would constitute a breach of the principles of [the protection of] legitimate expectations and/or legal certainty and/or proportionality and/or proper use of powers?'

The first question

29 By its first question, the national court seeks to ascertain whether an undertaking may attribute sugar as C sugar where it is undeniable that during a marketing year it has produced that sugar before it has actually produced a volume of sugar equivalent to its A and B quotas.

Arguments put forward in the observations submitted to the Court

30 First, British Sugar maintains that sugar may be treated as C sugar before the sum of the A and B quotas has in fact been produced. In its view, the wording of Article 24(1)(b) and (c) of the basic regulation merely indicates that C sugar quantities are those in excess of the sum of the A and B quotas, but does not imply any chronological sequencing. That interpretation is borne out by the fact that it is possible to carry sugar forward to the following marketing year, which demonstrates that classification as C sugar is not purely mechanical. Undertakings are free, as they should be, to sell sugar on world markets at any time.

31 British Sugar then claims that the profit motive is the guarantor of an adequate sugar supply, since the financial incentives and the requirements of profitable sugar production eliminate the risk of C sugar being produced at the expense of A and B sugar.

32 Lastly, since undertakings in the various Member States produce sugar at different times, it would be arbitrary and discriminatory to force British Sugar to wait until it has completed production of its A and B sugar before it can sell C sugar.

33 By contrast, the United Kingdom and French Governments and the Commission maintain that Article 24 of the basic regulation, given an interpretation in keeping with the normal meaning of its wording, requires a chronological sequence to be followed.

34 Those Governments emphasise in particular the objective of the common organisation of the sugar market as stated in the 15th recital in the preamble to the basic regulation. They point out how important it is, in their view, for sugar manufacturers to fill their A and B quotas before starting production of C sugar, in order that the growers should receive all the benefits provided for by that regulation.

35 The United Kingdom Government also stresses the importance of ensuring the availability of supplies. It contends that, if manufacturers were to choose to produce and export C sugar instead of completing their A and B quotas, and then to fail to fill those quotas in the end, less sugar would be available for consumption. Furthermore, an increase in the world sugar price to a level above the Community price would jeopardise the availability of supplies.

36 The United Kingdom Government and the Commission also submit that freedom for manufacturers to depart from the sequence of production established by the second subparagraph of Article 24(1) of the basic regulation would entail difficult reclassification procedures, which would disturb the operation of the market.

Findings of the Court

37 Under the common organisation of the market all sugar produced within the Community falls into one of the following categories: A sugar, B sugar or C sugar.

38 In accordance with the second subparagraph of Article 24(1) of the basic regulation, in respect of a given marketing year and a specific undertaking, A sugar means any quantity of sugar produced within the undertaking's A quota, B sugar means any quantity of sugar outside its A quota but within the sum of its A and B quotas, and C sugar means any quantity of sugar outside the sum of its A and B quotas or produced by an undertaking without any quota.

39 It is true that the wording of that provision does not imply that production must follow a chronological sequence. The one condition for sugar to be treated as C sugar is, in the case of an undertaking having a quota, that it should exceed the A and B quotas.

40 Nevertheless, classifying sugar by category is essential for the management of the market in order to attain the objectives of the common organisation of the market in sugar.

41 It should be noted that the basic regulation set up a framework for managing the situation where sugar is produced outside the A and B quotas. The C sugar category covers exclusively sugar surpluses which must not disturb the market. C sugar can be carried forward to the following marketing year. C sugar not carried forward may not, according to the prohibition laid down by the Community legislature in the first subparagraph of Article 26(1) of the basic regulation, be disposed of on the internal market and, as a corollary, must be exported.

42 It is clear from the second indent of the first subparagraph of Article 27(2) of the basic regulation that undertakings which take the decision to carry forward undertake to store the quantity carried forward. By Regulation No 192/82 the Council itself amended the basic regulation with regard to storage. As the second recital in the preamble to that regulation makes clear, the date of 1 February for the beginning of the obligatory storage period for B or C sugar carried forward had to be abandoned so that producers who, on account of the region in which they are established, begin their production earlier can make use of the opportunity to carry sugar forward 'as soon as their production exceeds their A quota'. As the Advocate General has observed in points 53 and 54 of his Opinion, that implies a sequential interpretation of Article 24 of the basic regulation.

43 It must, furthermore, be borne in mind that the common organisation of the market in sugar is based on a self-financing system. No levy is charged on manufacturers' C sugar production. The cost of export refunds is paid for by production levies. It follows that any attribution of sugar as C sugar before the actual production of A and B sugar is complete entails a twofold risk. First, manufacturers might, in certain circumstances, avoid payment of the levy on the quota sugar which they ought to have produced, thus increasing the costs borne by the other manufacturers of quota sugar. Second, additional supplies of C sugar on the world market could influence the price on that market and, therefore, the export refunds payable, which are financed out of the production levies. Consequently, to permit the production and export of C sugar where the A and B quotas have not already been filled could destabilise the self-financing system.

44 Those considerations are sufficient to show that the regulation requires a chronological sequence of production.

45 That being so, the Commission was entitled to lay down in Article 4 of Regulation No 2630/81 that an export licence for C sugar may be issued only where proof is supplied that A and B sugar has already been produced.

46 There is in any event nothing to prevent the Community legislature from preferring, in the agricultural sector and in order to attain the objectives of the common organisation of the sugar market, a quota system to one based on the supposition that, as British Sugar claims, the pursuit of profit by traders would in itself make it possible to attain those objectives.

47 Admittedly, the date from which undertakings may start to export C sugar, namely, the date at which a given undertaking's total production exceeds the sum of its A and B quotas, varies according to, *inter alia*, the quota allocated to each undertaking. However, contrary to British Sugar's submission, that fact cannot be regarded as amounting to discrimination. It is no more than the logical consequence of quotas being allocated on the basis of the objective referred to in paragraph 41 of this judgment.

48 The answer to be given to the first question must therefore be that Article 24(1)(c) requires an undertaking to have in fact produced a volume of sugar equal to the sum of its A and B quotas before it may attribute sugar as C sugar.

The fifth question

49 By its fifth question, which it is appropriate to consider in second place, the national court seeks to ascertain whether, in the circumstances of the case in the main proceedings, the competent national authority is precluded from imposing the payment of a charge on an undertaking pursuant to Article 3(1) of Regulation No 2670/81, when it has not notified the undertaking of that requirement within the period prescribed by Article 3(2) of that regulation.

Arguments put forward in the observations submitted to the Court

50 British Sugar maintains that IBAP's demand for a charge to be paid under Article 3(1) of Regulation No 2670/81 ought to have been made before 1 May 1994, that is to say, 1 May following 1 January following the end of the marketing year in question which, in the case in the main proceedings, was the 1992/93 marketing year. According to British Sugar, it was only on 29 September 1994 that IBAP informed it of its intention to take action on account of the export of sugar as C sugar during that marketing year. The charge in question was not formally claimed until 6 November 1996 and there was no excuse for the delay.

51 While it acknowledges that a charge pursuant to Article 3(1) of Regulation No 2670/81 was not imposed on British Sugar within the period prescribed by Article 3(2) of that regulation, the United Kingdom Government maintains that the time taken to demand that charge from British Sugar is attributable to the negotiations for the purpose of compounding the Customs & Excise's proceedings and to the need to be assured by the Commission of the basis for the demand and the correct calculation of the amount. According to that Government, British Sugar was well aware of the fact that, if it had exported sugar as C sugar before fulfilling its A and B quotas, it could be liable to a penalty of several million

pounds for disposing of C sugar on the internal market. Since the anti-fraud unit (Unité de Coordination de la Lutte Anti-fraude, 'UCLAF') was investigating the matter, the Commission was unwilling to take a position until July 1996, which was when UCLAF had completed its investigation and drawn up its report. The United Kingdom Government adds that there followed correspondence with the Commission for the purpose of ensuring that IBAP had correctly calculated the amount claimed.

52 According to the Commission, Article 3(2) of Regulation No 2670/81 must be construed as requiring the Member States to act within the period which it prescribes only where they are aware of the irregularity concerned.

Findings of the Court

53 For the purpose of answering the fifth question certain features of the C sugar regime should be borne in mind.

54 In the first place, C sugar the marketing of which has not been carried forward may not be disposed of on the internal market and must, in consequence, be exported before 1 January following the end of the marketing year in question.

55 In the second place, in accordance with Article 13 of the basic regulation, all exports of sugar out of the Community are conditional upon the presentation of an export licence which, according to Article 4 of Regulation No 2630/81, may be issued only after the manufacturer in question has provided the competent national authority with proof that the quantity for which the licence is requested, or an equivalent quantity, has actually been produced in excess of that manufacturer's A and B quotas.

56 In the third place, if no proof is supplied of a quantity of C sugar's having been exported out of the Community, that quantity is deemed to have been disposed of on the internal market. In that case, Article 3(2) of Regulation No 2670/81 provides that the Member State concerned is to notify the manufacturers who are required to pay the charge of the total amount to be paid before 1 May following 1 January following the end of the marketing year in question.

57 The time-limit set by Article 3(2) of Regulation No 2670/81 is mandatory and allows of no exception.

58 None the less, there may be some justification for exceeding the time-limit where an irregularity has occurred. The time-limit fixed by Article 3(2) of the regulation may therefore be exceeded where the competent national authority does not know the exact details of an undertaking's sugar production and where that lack of knowledge may reasonably be attributed to the undertaking, because it has not acted in good faith and has not complied with all the relevant provisions.

59 It is for the national court to make the necessary inquiries and to draw the appropriate conclusions therefrom, taking into consideration, *inter alia*, how far the competent national authority was aware of the situation in question and the care and attention exercised by that authority.

60 As regards the information available to the competent national authorities, it must be stated that Article 4 of Regulation No 2630/81 requires them to ascertain whether the conditions for granting an export licence have been satisfied. Accordingly, those authorities must be deemed to be duly informed of detailed

production figures and to possess all the information necessary in order to determine the quantities of sugar produced and exported.

61 When deciding whether there may be justification for exceeding the time-limit fixed by Article 3(2) of Regulation No 2670/81, the national court must therefore take into consideration the fact that the competent national authorities are required to ascertain whether the quantity in respect of which an export licence is applied for has actually been produced in excess of the A and B quotas. Exceeding the time-limit cannot be justified where the national authority, as the national court has found in the circumstances of this case, possessed the information which would enable it to establish whether or not the undertaking had in fact produced a quantity of sugar equivalent to the sum of its A and B quotas.

62 That interpretation of Article 3(2) of Regulation No 2670/81 cannot be invalidated by the argument put forward by the United Kingdom Government that an investigation carried out by UCLAF or the need to reach agreement with the Commission as to the amount to be claimed can in themselves justify exceeding the time-limit fixed by that provision. It is abundantly clear that it is for the competent national authorities alone to check the evidence supplied, to decide whether it is necessary to open an investigation and to draw the appropriate administrative consequences therefrom.

63 It follows from those considerations that the answer to be given to the fifth question must be that as a matter of principle the competent national authority is not authorised to demand that an undertaking pay a charge pursuant to Article 3(1) of Regulation No 2670/81 where it has not informed the undertaking of that requirement within the period prescribed by Article 3(2) of that regulation. Exceeding the time-limit may be permissible where the competent national authority, without negligence on its part, did not know the details of the undertaking's sugar production and where that lack of knowledge may reasonably be attributed to the undertaking, because it has not acted in good faith and has not complied with all the relevant provisions.

The sixth question

64 By its sixth question the national court is in substance asking whether the competent national authority may, without infringing Articles 3 and 4 of Regulation No 3665/87 or the general principles of Community law, refuse to accept retrospectively an export declaration presented for the purpose of obtaining export refunds and of extending the period allowed for supplying proof of export where, because the undertaking has applied for and obtained from that authority a C sugar export licence for sugar which it was impossible to regard as C sugar, the undertaking has neither applied for nor obtained the export refunds to which it would have been entitled if the sugar had been exported as A or B sugar.

Arguments put forward in the observations submitted to the Court

65 British Sugar claims that, since the sugar it exported between November 1992 and January 1993 was not, according to IBAP, C sugar but rather A and B sugar, it is entitled to some £6 million by way of export refunds which it would have received at the material time for exporting A and B sugar to non-member countries. It maintains that, in so far as it is permissible to reclassify sugar retrospectively as A and B sugar, it must be permissible to accept an export declaration with retrospective effect.

66 The United Kingdom Government and the Commission argue that, in the circumstances of the main proceedings, the competent national authority has no power either to pay export refunds or to accept an export declaration with retrospective effect. An export declaration must be made before export takes place. The fact that British Sugar failed to comply with the Community legislation cannot constitute a case of '*force majeure*' within the meaning of Article 4(4) of Regulation No 3665/87. The Commission adds that without such prior declaration the risk of abuse and fraud is manifest.

Findings of the Court

67 It is clear from the wording of Article 4(1) and (4) of Regulation No 3665/87 that, first, the acceptance of the export declaration and, second, the proof of export, furnished within 60 days of the date of such acceptance, save in case of *force majeure*, constitute essential conditions for the payment of export refunds.

68 According to the ninth recital in the preamble to the basic regulation, the competent authorities must be put in a position to monitor movements in trade with third countries continuously in order to enable them to assess trends thereof and, where appropriate, to apply such measures provided for in that regulation as may prove necessary. To that end, provision is made for the issue of licences. It follows that, in order to ensure such monitoring, an export declaration cannot be accepted after export has taken place.

69 As regards the concept of *force majeure* used in Article 4(4) of Regulation No 3665/87, it must be emphasised that it is to be understood to refer to unusual circumstances outside the control of the exporter (see, to that effect, Case 11/70 *Internationale Handelsgesellschaft* [1970] ECR 1125, paragraph 23). An exporter's mistake as to the classification of sugar does not amount to such circumstances.

70 The national court's reference to the general principles of Community law must be understood to mean that that court is seeking to ascertain whether, in light of those principles, the circumstances of the case in the main proceedings require the competent national authorities to pay export refunds.

71 The conditions applicable to the payment of export refunds on agricultural products are laid down in Regulation No 3665/87. In the light of the answer given to the first question, there are no grounds for considering that a situation such as that described by the national court could justify leaving those conditions out of account.

72 It must therefore be stated that, in a situation such as that described by the national court, refusal to pay export refunds does not infringe any general principle of Community law.

73 Having regard to the foregoing considerations, the answer to be given to the sixth question must be that the competent national authority may, without infringing Articles 3 and 4 of Regulation No 3665/87 or the general principles of Community law, refuse to accept retrospectively an export declaration presented for the purpose of obtaining export refunds and of extending the period allowed for supplying proof of export where, because the undertaking has applied for and obtained from that authority a C sugar export licence for sugar which it was impossible to regard as C sugar, the undertaking has neither applied for nor obtained the export refunds to which it would have been entitled if the sugar had been exported as A or B sugar.

The second, third and fourth questions

74 In light of the replies given to the first, fifth and sixth questions, there is no need to answer the second, third and fourth questions.

Costs

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

On those grounds,

THE COURT (Sixth Chamber),

in answer to the questions referred to it by the High Court of Justice of England and Wales, Queen's Bench Division, by order of 26 February 1999,

hereby rules:

1. **Article 24(1)(c) of Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organisation of the markets in the sugar sector, as amended by Council Regulation (EEC) No 305/91 of 4 February 1991, requires an undertaking to have in fact produced a volume of sugar equal to the sum of its A and B quotas before it may attribute sugar as C sugar.**

2. As a matter of principle the competent national authority is not authorised to demand that an undertaking pay a charge pursuant to Article 3(1) of Commission Regulation (EEC) No 2670/81 of 14 September 1981 laying down detailed implementing rules in respect of sugar production in excess of the quota, as amended by Commission Regulation (EEC) No 3559/91 of 6 December 1991, where it has not informed the undertaking of that requirement within the period prescribed by Article 3(2) of that regulation. Exceeding the time-limit may be permissible where the competent national authority, without negligence on its part, did not know the details of the undertaking's sugar production and where that lack of knowledge may reasonably be attributed to the undertaking, because it has not acted in good faith and has not complied with all the relevant provisions.

3. The competent national authority may, without infringing Articles 3 and 4 of Commission Regulation (EEC) No 3665/87 of 27 November 1987 laying down common detailed rules for the application of the system of export refunds on agricultural products or the general principles of Community law, refuse to accept retrospectively an export declaration presented for the purpose of obtaining export refunds and of extending the period allowed for supplying proof of export where, because the undertaking has applied for and obtained from that authority a C sugar export licence for sugar which it was impossible to regard as C sugar, the undertaking has neither applied for nor obtained the export refunds to which it would have been entitled if the sugar had been exported as A or B sugar.

Macken Colneric Gulmann

Puissochet Cunha Rodrigues

Delivered in open court in Luxembourg on 10 January 2002.

R. Grass F. Macken

Registrar President of the Sixth Chamber