JUDGMENT OF THE COURT OF FIRST INSTANCE (Fifth Chamber)

7 December 2004 *

In Case T-240/02,

Koninklijke Coöperatie Cosun UA, established in Breda (Netherlands), represented by M. Slotboom, N. Helder and J. Coumans, lawyers,

applicant,

v

Commission of the European Communities, represented by X. Lewis, acting as Agent, and by F. Tuytschaever, lawyer, with an address for service in Luxembourg,

defendant,

APPLICATION for annulment of Commission Decision REM 19/01 of 2 May 2002, declaring the application for remission of import duties presented by the Kingdom of the Netherlands for the benefit of the applicant to be inadmissible,

* Language of the case: Dutch.

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES
(Fifth Chamber),

composed of P. Lindh, President, R. García-Valdecasas and K. Jürimäe, Judges,
Registrar: J. Plingers, Administrator,

having regard to the written procedure and further to the hearing on 16 September 2004,

gives the following

Judgment

Legal framework

Common organisation of the markets in the sugar sector

1 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) ('the basic regulation') governs inter alia the production, importation and exportation of sugar. In particular, it provides for a system of production quotas which, according to the fifteenth recital in its preamble, constitutes a means of guaranteeing producers Community prices and an outlet for their production.

2 Under that quota system, Article 24 of the basic regulation fixes for each marketing year (that is to say, from 1 July in one year until 30 June in the following year) basic quantities for 'A sugar' and 'B sugar', to be allocated by each Member State to the sugar-producing undertakings established in its territory. Each producer undertaking is thus allocated one A quota and one B quota for each marketing year. Any quantity of sugar which is produced outside the sum of its A and B quotas is termed 'C sugar' or 'non-quota sugar'.

3 The conditions governing the disposal of sugar vary according to its categorisation. A sugar and B sugar are the subject of various support mechanisms laid down in the basic regulation, with A sugar benefiting from a higher level of guarantees (guaranteed intervention prices and export aid in the form of refunds) than that afforded to B sugar (export refunds only).

4 C sugar is not eligible for the price support system nor for the export refunds system. Furthermore, C sugar may not be disposed of on the internal market and must, accordingly, be disposed of outside the Community and sold on the world market. Article 26 of the basic regulation provides in that regard:

'1. C sugar which is not carried forward ... 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.

...

3. Detailed rules for the application of this article shall be adopted in accordance with the procedure laid down in Article 41.

These rules shall provide in particular for the levying of a charge on the C sugar ... referred to in paragraph 1 in respect of which proof of its export in the natural state within the prescribed period was not furnished at a date to be determined.'

5 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) specifies the circumstances in which exports of C sugar are to be considered to have taken place. Article 1 of that regulation, in the version resulting from Commission Regulation (EEC) No 3892/88 of 14 December 1988 amending Regulation (EEC) No 2670/81 (OJ 1988 L 346, p. 29), provides in particular:

'1. The export referred to in Article 26(1) of [the basic regulation] shall be considered to have taken place if:

(a) the C sugar ... is exported from the Member State on whose territory it was produced;

(b) the export declaration in question is accepted by the Member State referred to under (a) before 1 January following the end of the marketing year during which the C sugar ... was produced;

(c) the C sugar ... left the customs territory of the Community at the latest within 60 days from 1 January referred to under (b);

(d) the product has been exported without refund or levy ... from the Member State referred to under (a).

Except in the case of force majeure, if all of the conditions provided for in the first subparagraph are not complied with, the quantity of C sugar ... in question shall be considered to have been disposed of on the internal market.

In the case of force majeure, the competent agency of the Member State on whose territory the C sugar ... has been produced shall adopt the measures which are necessary by virtue of the circumstances invoked by the interested party.'

6 Article 3 of Regulation No 2670/81, as amended by Article 1 of Commission Regulation (EEC) No 3559/91 of 6 December 1991 amending Regulation No 2670/81 (OJ 1991 L 336, p. 26), is worded as follows:

'1. 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

1.00 ECU;

...

4. In the case of quantities of C sugar ... which, prior to export, were destroyed or damaged without possibility of recovery, in circumstances recognised by the competent agency of the Member State concerned as a case of force majeure, the relevant amount referred to in paragraph 1 shall not be levied.'

Equity clause in the Community customs legislation

7 The Community customs legislation allows for the repayment in whole or in part of import or export duties paid or for a remission of the amount of a customs debt. The conditions for remission are set out in Article 13 of Council Regulation (EEC) No 1430/79 of 2 July 1979 on the repayment or remission of import or export duties (OJ 1979 L 175, p. 1), in the version resulting from Council Regulation (EEC) No 3069/86 of 7 October 1986 amending Regulation (EEC) No 1430/79 (OJ 1986 L 286, p. 1). Article 13(1) provides:

'Import duties may be repaid or remitted in special situations ..., which result from circumstances in which no deception or obvious negligence may be attributed to the person concerned.

...'

8 Article 14 of Regulation No 1430/79 states that the provisions of Article 13 are also to apply to the repayment or remission of export duties.

9 Article 1(2)(a) of Regulation No 1430/79 provides that 'import duties' means 'customs duties and charges having equivalent effect, as well as agricultural levies and other import charges laid down within the framework of the common agricultural policy or in that of specific arrangements applicable, pursuant to Article 235 of the treaty [now Article 308 EC], to certain goods resulting from the processing of agricultural products'.

10 Article 1(2)(b) of Regulation No 1430/79 states that 'export duties' means 'agricultural levies and other export charges laid down within the framework of the common agricultural policy, or in that of specific arrangements applicable, pursuant to Article 235 of the treaty, to certain goods resulting from the processing of agricultural products'.

Facts

11 The applicant, which is a co-operative established in the Netherlands, produced C sugar during the marketing years 1991/1992 and 1992/1993. Between 10 February and 23 September 1993, acting through its subsidiary Limako Suiker BV, it sold to the company Django's Handelsonderneming a number of consignments of C sugar intended for export to Croatia and Slovenia. Between 22 July and 16 August 1993 and between 26 August and 24 September 1993, the applicant sold consignments of C sugar to the companies NV Voeders SA Aliments Serry and Sieger BV which were intended for Morocco.

12 On 24 June 1993, the Netherlands Tax Inquiry and Investigation Department ('the FIOD') requested the Hoofdproduktschap Akkerbouw ('the HPA'), the competent authority in the Netherlands for the application of the provisions relating to the common organisation of markets, including the sugar market, to provide information for the purposes of an investigation relating in particular to Django's Handelsonderneming. The HPA provided the FIOD with information concerning irregularities relating to customs documents for operations involving exports of C sugar. The FIOD asked the HPA to maintain a certain distance in their dealings with the applicant, in view of the investigation that was being undertaken. The irregularities found in the export documents received by the HPA gave rise to the opening of a judicial fraud inquiry against Django's Handelsonderneming.

13 In June and August 1993, the HPA contacted the applicant and its subsidiary Limako Suiker to inform them of the incorrect stamping of the customs documents for goods intended for Croatia and Slovenia. In October 1993, incorrectly stamped documents relating to consignments of sugar intended for Morocco were received by the HPA.

14 On 14 October 1993, the Netherlands authorities provided the applicant with a statement of the numbers of the export forms in relation to which there was no proof of export from the Community.

15 On 25 April 1994, the HPA imposed a charge on the applicant of NLG 6 284 721.03, on the ground that it had failed to prove that a certain number of consignments of C sugar had left the territory of the Community for the specified destinations in Croatia, Slovenia and Morocco. On 13 June 1994, the amount of the levy was reduced to NLG 6 250 856.78, that is to say EUR 2 836 515.14, by reason of an error made in the original calculation.

16 On 18 May 1994, the applicant lodged an objection with the HPA in relation to the levy imposed. On 19 June 1995, that objection was rejected by the HPA. On 14 July 1995, the applicant brought an appeal against that decision before the College van Beroep voor het bedrijfsleven (Administrative Court for Trade and Industry) ('the CBB').

17 On 24 April 1995, the applicant applied to the HPA for remission of duties charged, under Article 239 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1) and Article 905 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 (OJ 1993 L 253, p. 1). On 6 August 2001, the Kingdom of the Netherlands applied to the Commission for remission of the import duties, for the benefit of the applicant.

18 On 2 May 2002, the Commission adopted Decision REM 19/01 declaring the application for remission of import duties presented by the Kingdom of the Netherlands for the benefit of the applicant to be inadmissible ('the contested decision'). On the basis of that decision, the HPA informed the applicant on 6 June 2002 that its application for remission was inadmissible.

Procedure and forms of order sought

19 By application lodged at the Registry of the Court of First Instance on 9 August 2002, the applicant brought the present action.

20 On hearing the report of the Judge-Rapporteur, the Court of First Instance (Fifth Chamber) decided to open the oral procedure. By way of measures of organisation of procedure, the Court invited the Commission to produce certain documents. The Commission complied with that request with the prescribed period.

21 By decision of 9 June 2004, lodged at the Court of First Instance on 11 June 2004, the CBB referred two questions for a preliminary ruling under Article 234 EC (Case C-248/04 *Koninklijke Coöperatie Cosun*) in the context of the proceedings between the applicant and the HPA relating to the levy imposed on the former by reason of the non-exportation of the quantities of C sugar concerned. By the first of those questions, the CBB asks the Court of Justice whether, if the possibility of remission under Article 13 of Regulation No 1430/79 is not applicable to levies on C sugar, the basic regulation and Regulation No 2670/81 are invalid in view of the absence of the possibility of repaying or remitting the levies in question on equitable grounds. By the second question, the national court asks the Court of Justice what effects the possible invalidity of those regulations might have on the obligation to pay the levy on C sugar in circumstances such as those which arise in the present case.

22 By letter of 1 September 2004, the applicant requested that these proceedings be stayed until the delivery of the judgment of the Court of Justice disposing of the action in Case C-248/04 *Koninklijke Coöperatie Cosun*. By letter of 9 September 2004, the Commission submitted its observations in relation to that request, stating that it did not appear to it to be necessary to stay the proceedings.

23 The parties presented oral argument and their answers to the questions put by the Court at the hearing on 16 September 2004. At the hearing, the applicant renewed its request that the proceedings be stayed, and the Commission once again requested that they continue. As the Commission opposed the application for a stay and in the absence of special circumstances justifying such a measure, the Court did not allow the application.

24 The applicant claims that the Court should:

— annul the contested decision;

— order the Commission to pay the costs.

25 The Commission claims that the Court should:

— dismiss the action as unfounded;

— order the applicant to pay the costs..

Law

26 In support of its application, the applicant relies primarily on a plea in law claiming breach of Articles 1 and 13 of Regulation No 1430/79 and, in the alternative, on a plea claiming breach of the principles of equality and legal certainty and of a supposed principle of equity.

The first plea, claiming breach of Articles 1 and 13 of Regulation No 1430/79

Arguments of the parties

27 The applicant submits that the import levy imposed on it under Article 26 of the basic regulation and Article 3 of Regulation No 2670/81 must be regarded as an import or export duty within the meaning of Article 1(2) of Regulation No 1430/79. That levy constitutes a charge having equivalent effect, or at the very least an agricultural levy or other import or export charge laid down within the framework of the common agricultural policy, for the purposes of the latter provision.

28 The applicant argues that the question whether the amount concerned is an import or export duty within the meaning of that provision must be answered by reference only to objective criteria linked to the nature of the levy. It states that, according to the recitals in the preamble to the basic regulation, the production levy for C sugar pursues the same objectives as a customs duty, namely the protection of the internal market, the stabilisation of the markets and the safeguarding of supplies. The levy aims in particular to restore the commercial relationships disturbed by the fact the C sugar was not exported (Case C-101/99 *British Sugar* [2002] ECR I-205, paragraph 41).

29 The applicant also observes that, according to the third recital in the preamble to Regulation No 2670/81, C sugar which has not been exported is to be placed on a similar footing to sugar imported from non-member countries. It concludes from that that C sugar is made subject to a levy by reason of crossing the frontier, that is to say an import levy.

30 The applicant also notes that, in accordance with Article 3 of Regulation No 2670/81, the amount of the production levy is fixed by reference to the import levies applying to sugar. It submits in that regard that, contrary to the funding of the Commission in the contested decision, that reference to import levies does not constitute merely a basis for calculation and, accordingly, that the production levy is a customs duty. The fact that Article 3 of Regulation No 2670/81 refers to a standard amount as well as to import levies only serves to assimilate non-exported C sugar all the more closely to imported sugar, since, as the recitals in the preamble to Regulation (EEC) No 2645/70 of the Commission of 28 December 1970 on the provisions applicable to sugar produced in excess of the maximum quota (OJ, English Special Edition, 1970 (III), p. 957) make clear, the standard amount is calculated on the basis of the cost of disposing of imported sugar and thus has the objective of correcting the advantage that a producer of C sugar may have over an importer of sugar from non-member countries, since the former does not incur certain costs that are incurred by the latter.

31 Lastly, the applicant maintains that the Community legislature could not have opted for another method of calculating the charge to be imposed on C sugar, observing that when the Commission adopted the first implementing regulation concerning the common organisation of the markets in the sugar sector ('the COM in sugar'), namely Regulation No 2645/70, it made the conscious decision that it was necessary to place producers of C sugar in the same position as importers. The applicant concludes from this that it would not be acceptable to choose a different basis of calculation or to place a producer of C sugar in a position different from that of an importer.

32 The Commission considers that the contested decision was right to hold that the application for remission was inadmissible, as the charge which a sugar producer must pay for exceeding the production quota allocated to it cannot be regarded as an import duty and cannot therefore be the subject of remission under the Community customs legislation.

Findings of the Court

33 Articles 13 and 14 of Regulation No 1430/79 allow for a repayment or remission of import or export duties in the special situations which result from circumstances in which no deception or obvious negligence may be attributed to the person concerned.

34 In the present case, the application for remission of duties which was the subject of the contested decision referred to a charge claimed from the applicant under Article 26 of the basic regulation and Article 3 of Regulation No 2670/81 by reason of the non-disposal of certain quantities of C sugar outside the Community. The question which arises is whether that charge should be regarded as an import or export duty for the purposes of Article 13 of Regulation No 1430/79 and, accordingly, whether the application for remission came within the scope of that provision.

35 Under Article 1(2)(a) and (b) of Regulation No 1430/79, import duties or export duties include, first, customs duties, secondly, charges having equivalent effect to customs duties and, thirdly, agricultural levies and other import charges or export charges laid down within the framework of the common agricultural policy or in that of specific arrangements applicable, pursuant to Article 308 EC, to certain goods resulting from the processing of agricultural products.

36 It must be pointed out at the outset that the charge imposed does not, formally speaking, come within any of the three categories listed in Article 1(2)(a) and (b) of Regulation No 1430/79.

37 As Article 26 of the basic regulation and Article 3(1) of Regulation No 2670/81 make clear, the charge falls to be levied where there is an absence of proof, on the date determined for that purpose, of the export of a quantity of C sugar within the prescribed period. That charge is therefore imposed on a producer of C sugar by reason of the fact that that non-quota sugar, which was produced within the Community, was disposed of on the internal market.

38 It follows that the charge imposed on the C sugar does not constitute a customs duty, that is to say a duty based on the Common Customs Tariff of the European Communities, within the meaning of Articles 23 and 26 EC. Nor is it a charge having equivalent effect, such a charge being constituted according to settled case-law by any pecuniary charge, whatever its designation and mode of application, which is imposed unilaterally on goods by reason of the fact that they cross a frontier, and which is not a customs duty in the strict sense (Case C-90/94 *Haahr Petroleum* [1997] ECR I-4085, paragraph 20; and Case C-213/96 *Outokumpu* [1998] ECR I-1777, paragraph 20). Lastly, the charge in question is not strictly an agricultural charge 'on imports or exports', that is to say a levy charged on agricultural products by reason of their crossing the external frontiers of the Community.

39 The applicant maintains, however, that the amount charged on the non-exported C sugar must be regarded as an import or export duty since it pursues the same objectives as a customs duty, since it is fixed on the basis of import levies applicable to sugar and since it serves to place non-quota sugar that is not exported on a similar footing to sugar imported from non-Member countries.

40 It should be pointed out in that regard that the levy imposed on non-quota sugar that is not exported forms part of the machinery of the COM in sugar. That machinery, which includes the fixing of target or intervention prices, the introduction of a common trading system with third countries and the establishment of a production quota system, aims to ensure the attainment of common

objectives, in particular, that the necessary safeguards for the employment and standard of living of producers, the availability of sugar supplies to all consumers and the stability of the sugar market are maintained.

41 It is also important to note, however, that each of the mechanisms referred to pursues specific objectives or responds to particular needs. Thus, contrary to what the applicant maintains, it cannot be considered that the charge on production which applies to C sugar pursues strictly the same objectives as a customs duty or, more precisely, the same objectives as the import levies and export refunds provided for under the COM in sugar.

42 As the fifth recital in the preamble to the basic regulation makes clear, the introduction of a common trading system at the external frontiers of the Community, including a system of import levies and export refunds, aims to stabilise the Community market by preventing in particular fluctuations in sugar prices on the world market affecting the prices ruling within the Community. To that end, the rules of the COM in sugar provide for the charging of a levy on imports from third countries and the payment of a refund on exports to such countries, each of which is designed to cover the difference between prices ruling outside and within the Community, when prices on the world market are lower than the Community prices.

43 The COM in sugar also introduces a system of production quotas, which, according to the fifteenth recital in the preamble to the basic regulation, constitutes a means of guaranteeing producers Community prices and an outlet for their production. Under that system, the basic regulation created a mechanism for managing the situation where sugar is produced outside the A and B quotas allocated to producers, namely C sugar. Since the C sugar category covers exclusively sugar

surpluses which must not disturb the market, the Community legislature laid down, under Article 26 of the basic regulation, a prohibition on the disposal of C sugar on the internal market, and, as a corollary, created an obligation to export it (*British Sugar*, paragraph 41).

44 The consequence of a breach of that obligation is the imposition of a charge on the producer. That penalty is thus primarily deterrent in nature and is intended to ensure that the prohibition on disposing of C sugar on the internal market is complied with. Accordingly, the amount is fixed by reference to the highest import levy during the period comprising the marketing year during which the sugar in question was produced and the six months following that marketing year. The eleventh recital in the preamble to the basic regulation states that that charge also contributes to ensuring that the producers themselves meet in full the cost of disposing of the surpluses of Community production over consumption.

45 In the light of the above, it cannot be considered that the fact that the charge imposed on non-exported C sugar is calculated on the basis of import levies, plus a standard amount fixed on the basis of the costs of disposing of imported sugar, means that that charge is converted into an import duty. As the Commission rightly states in the tenth recital in the preamble to the contested decision, import levies serve only to constitute the basis or method of calculation for determining the charge. That basis of calculation was chosen by the Community legislature by reason of the objectives which the imposition of that charge on non-quota sugar which is not exported within the prescribed period seeks to achieve, in particular, as mentioned above, that of ensuring that the prohibition on disposal on the internal market is complied with.

46 That conclusion is not invalidated by the applicant's argument that the third recital in the preamble to Regulation No 2670/81 provides that C sugar which has not been exported is to be placed on a similar footing to sugar imported from non-member countries. The recital in question states that it is 'when the charge to be levied in cases of disposal on the internal market is fixed' that C sugar which has not been

exported is to be placed on a similar footing to sugar imported from non-member countries. The recitals to Regulation No 2670/81 thus serve only to confirm the argument that the reference to import levies only constitutes the basis of calculation of the charge in question.

47 Accordingly, the charge imposed on the applicant under Article 26 of the basic regulation and Article 3 of Regulation No 2670/81 by reason of the non-disposal of certain quantities of C sugar outside the Community does not constitute an import or export duty for the purposes of Article 13 of Regulation No 1430/79 and the Commission has not contravened those provisions by declaring the application for remission inadmissible.

48 This plea must accordingly be rejected.

The second plea, claiming breach of the principles of equality and legal certainty and of a supposed principle of equity

Arguments of the parties

49 In the alternative, the applicant maintains that, even if the charge in respect of which remission was applied for does not constitute an import or export duty within the meaning of Regulation No 1430/79, the Commission should have considered the application having regard to Article 13 of that regulation, which constitutes a general equity clause (Joined Cases T-186/97, T-187/97, T-190/97, T-190/97 to T-192/97, T-210/97, T-211/97, T-216/97 to T-218/97, T-279/97, T-280/97, T-293/97 and T-147/99 *Kaufring and Others* v *Commission* [2001] ECR II-1337, paragraph 224), and that, by simply rejecting the application as inadmissible, it contravened the principles of equality and of equity.

50 The applicant states that the effect of the contested decision is that it has no right to obtain a remission based on special circumstances, observing that, as Article 8(1) and Article 2(1) of Council Decision 94/728/EC, Euratom of 31 October 1994 on the system of the European Communities' own resources (OJ 1994 L 293, p. 9) make clear, the Netherlands authorities have no power to ensure that the principle of equity is complied with, as they are obliged to levy the charge imposed by Article 3 of Regulation No 2670/81 and to make it available to the Commission.

51 The applicant is thus treated differently from undertakings in a similar situation wishing to make an application for remission of import or export duties by reason of special circumstances. Unlike the latter, the applicant cannot invoke any remission procedure on grounds of equity. The levy on C sugar production that has not been exported is thus similar from every point of view to a customs duty charged on sugar imported from third countries, save as regards legal protection. The refusal to apply the rule concerning remission laid down in Article 13 of Regulation No 1430/79 in cases identical to other cases in which operators have benefited from that rule is contrary to the principle of equality.

52 In that regard, the applicant maintains that the two conditions required by Article 13 of Regulation No 1430/79 for remission or repayment of duties are satisfied in the present case. It argues, first, that no allegations of deception or negligence can be made against it, as the non-exportation of C sugar in the present case is entirely attributable to a fraud committed by others. Secondly, it submits that the situation in the present case is comparable to that which arose in Case C-61/98 *De Haan* [1999] ECR I-5003. The applicant observes that, in this case, the Netherlands authorities were aware, at a very early stage, of the fraud regarding the consignments of C sugar sold by it, but decided not to inform the applicant of the investigation being undertaken and, accordingly, deprived it of the possibility of meeting its obligations and exporting its production of C sugar as it was required to do.

53 In the further alternative, and were the Court to consider that Article 13 of Regulation No 1430/79 was inapplicable, the applicant submits that the Commission was none the less obliged to consider the application for remission, even outside the framework of the regulation, and that, by simply declaring the application inadmissible, it contravened the principles of legal certainty, equality and equity. The applicant argues that if the Commission were not under such an obligation there would be a gap in the legal protection available to it. It observes that the Court has confirmed that higher-ranking legal principles, including in particular the principle of proportionality, apply to the imposition of levies on C sugar (Case C-161/96 *Südzucker* [1998] ECR I-281, paragraphs 34 and 35). It also refers to the Opinion of Advocate General Mischo in *British Sugar,* in which he states that Article 3 of Regulation No 2670/81 must be interpreted and applied in accordance with general principles of law.

54 The Commission submits that remission of the levy on the ground that the C sugar was not exported falls to be considered in the legislative framework applying to it, and that the principle of equity does not oblige it to undertake an investigation which that framework does not require. It considers that the situation of a producer of C sugar who does not comply with its obligation to export that sugar is not the same as that of an operator who imports a quantity of sugar into the Community and that the fact that those operators are treated differently does not therefore give rise to a breach of the principle of equality. It also observes that Article 1(1) of Regulation No 2670/81 allows for remission of a levy for non-exportation of C sugar to be available in special circumstances, particularly in cases of force majeure.

55 As regards the argument put by the applicant by way of further alternative, the Commission considers that application of the equity clause provided for under the customs legislation to a case which does not come within its scope would itself undermine the principles of legal certainty and equality. It maintains, lastly, that the

applicant is confusing the general equity clause in the Community customs legislation with a supposed principle of equity. The latter is not a general principle of Community law, since the equity of a measure is by tradition reviewed in the context of the application of the principle of proportionality.

Findings of the Court

56 By the second plea, raised in the alternative, the applicant essentially claims that, even if the charge imposed on it does not constitute an import or export duty, the Commission contravened the principles of equality and legal certainty and a supposed principle of equity by rejecting the application for remission as inadmissible, without considering the merits of the application from a substantive point of view, either under Regulation No 1430/79 or in the light of those principles.

57 It must be stated, first, that equity cannot be regarded as allowing any derogation from the application of provisions of Community law, save as provided for by the legislation or where the legislation is itself declared invalid (Case C-263/97 *First City Trading and Others* [1998] ECR I-5537, paragraph 48). As was held above, the charge provided for under Article 26 of the basic regulation and Article 3 of Regulation No 2670/81 does not come within the scope of Article 13 of Regulation No 1430/79.

58 It is important to point out in that regard that the legislation relating to the COM in sugar provides, in particular at the second and third subparagraphs of Article 1(1) and at Article 3(4) of Regulation No 2670/81, that the levy on C sugar is not to be

imposed in circumstances recognised by the national authorities as constituting a case of force majeure. Accordingly, equity cannot justify extending the scope for derogation from the requirement to impose the charge in question in cases where force majeure is not involved.

59 Secondly, by virtue of settled case-law, the principle of equality, which forms part of the fundamental principles of Community law, requires that similar situations should not be treated differently unless differentiation is objectively justified (Joined Cases 201/85 and 202/85 *Klensch and Others* [1986] ECR 3477, paragraph 9; Case T-571/93 *Lefebvre and Others* v *Commission* [1995] ECR II-2379, paragraph 78).

60 The Court considers that a Community producer of C sugar and an economic operator subject to import or export duties are not, in any event, in similar situations. As stated above, the circumstances in which the charge falls to be levied, namely the absence of proof of the export of a quantity of C sugar in the prescribed period and the import of goods into the Community customs territory, are not the same in the two cases. A sugar producer is subject to the prohibition on disposal of his non-quota production on the internal market and, as a corollary, to the obligation to export it (*British Sugar*, paragraph 41). Furthermore, a producer of C sugar must observe a chronological sequence of production, that is to say, he must have actually produced a volume of sugar equivalent to the total of his A and B quotas before he may categorise a quantity of sugar as C sugar (*British Sugar*, paragraph 44). An importer, on the other hand, is not subject to those obligations.

61 It follows that the conditions which would allow for a finding of discrimination are not satisfied in the present case.

62 Thirdly, as regards the principle of legal certainty, contrary to what the applicant maintains, the absence of a specific mechanism which would allow it to apply for remission, on grounds of equity, of the charge imposed on it cannot constitute an infringement of that principle. Repayment or remission of duties on grounds of equity are exceptions and can only be allowed in the cases specifically laid down, as the provisions which provide for them must be strictly interpreted. In that regard, the Court considers that the principle of legal certainty is complied with in the present case in that the obligations of the economic operator required to pay the charge provided for in Article 26 of the basic regulation and Article 3 of Regulation No 2670/81 arise from a clearly defined legal situation, which allows that economic operator to be aware of the obligations applying to its activities.

63 It follows from the above that this complaint must be rejected. Accordingly, this plea must also be rejected.

64 The action must accordingly be dismissed in its entirety.

Costs

65 Under Article 87(2) of the Rules of Procedure of the Court of First Instance, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicant has been unsuccessful, it must be ordered to pay its own costs as well as those incurred by the Commission, in accordance with the form of order sought by the Commission.

On those grounds,

THE COURT OF FIRST INSTANCE (Fifth Chamber)

hereby:

1. **Dismisses the action;**

2. **Orders the applicant to pay its own costs as well as those incurred by the Commission.**

Lindh García-Valdecasas Jürimäe

Delivered in open court on 7 December 2004.

H. Jung
Registrar

P. Lindh
President