In Case 292/82

REFERENCE to the Court under Article 177 of the EEC Treaty by the Finanzgericht [Finance Court] Hamburg for a preliminary ruling in the proceedings pending before that court between

FIRMA E. MERCK, Darmstadt,

and

HAUPTZOLLAMT [Principal Customs Office] HAMBURG-JONAS

on the validity of Article 1 (a) of Commission Regulations (EEC) Nos 2271/78 of 29 September 1978 (Official Journal, L 275, p. 28), 2555/78 of 31 October 1978 (Official Journal, L 307, p. 32), 2807/78 of 30 November 1978 (Official Journal, L 334, p. 32), 3115/78 of 30 November 1978 (Official Journal, L 370, p. 26), 181/79 of 31 January 1979 (Official Journal, L 26, p. 36), 410/79 of 28 February 1979 (Official Journal, L 50, p. 28) and 615/79 of 30 March 1979 (Official Journal, L 79, p. 28) fixing the rates of refunds applicable from 1 October 1978 to 30 April 1979 to sugar and molasses exported in the form of goods not covered by Annex II to the EEC Treaty,

THE COURT (Second Chamber)

composed of: K. Bahlmann, President of Chamber, P. Pescatore and O. Due, Judges,

Advocate General: Sir Gordon Slynn
Registrar: H. A. Rühl, Principal Administrator

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — The regulations applicable

A — Common organization of the market in sugar

Article 1 of Regulation (EEC) No 3330/74 of the Council of 19 December 1974 on the common organization of the market in sugar (Official Journal 1974, L 359, p. 1) provides *inter alia* that:

"1. The common organization of the market in sugar shall comprise a price and trading system and cover the following products:

CCT heading No		Description of goods
(a)	17.01	Beet sugar and cane sugar, solid
...		...
(c)	17.03	Molasses ...
(d)	17.02	Other sugars (but not including lactose and glucose); sugar syrups (but not including lactose syrup and glucose syrup); artificial honey (whether or not mixed with natural honey); caramel

. . . ."

Articles 9 and 19 of the regulation make provision for the fixing of production and export refunds.

Thus Article 9 (4) provides that:

"It may be decided to grant production refunds on the products listed in Article 1 (1) (a), and the syrups listed in Article 1 (1) (d), used in the manufacture of certain products of the chemical industry."

Article 19 (1) provides that:

"To the extent necessary to enable the products listed in Article 1 (1) (a), (c) and (d) to be exported in the natural state, or in the form of goods listed in Annex I to this Regulation, on the basis of quotations or prices for the products listed in Article 1 (1) (a) and (c) on the world market, the difference between those quotations or prices and prices within the Community may be covered by an export refund."

Finally, Annex I to Regulation No 3330/74 includes *inter alia* mannitol and sorbitol, which are classified under subheadings 29.04 C II and III of the Common Customs Tariff, and sorbitol cracking products, which are classified under subheading 38.19 T. Those products are used in medicine and for other purposes.

B — Production refunds

Article 1 of Council Regulation (EEC) No 1400/78 of 20 June 1978 laying down general rules for the production refund on sugar used in the chemical industry (Official Journal 1978, L 170, p. 9) provides for a production refund to be granted on the products listed in Article 1 (1) (a) of Regulation No 3330/74 and on the sucrose syrups of subheading ex 17.02 D II of the Common Customs Tariff which are basic products used in the manufacture of the products of the chemical industry listed in the annex to Regulation No 1400/78. That annex includes *inter alia* mannitol and sorbitol.

It follows that a production refund on sugar used in the chemical industry was only provided for in the case of solid beet sugar and cane sugar classified under heading 17.01 of the Common Customs Tariff and the sucrose syrups classified under subheading ex 17.02 D II. Consequently, invert sugar, which basically consists of glucose, fructose and water, is not, for example, a syrup on which such refunds are paid.

C — Export refunds

(a) Article 4 (3) of Regulation (EEC) No 2682/72 of the Council of 12 December 1972 laying down general rules for granting export refunds on certain agricultural products exported in the form of goods not covered by Annex II to the Treaty, and the criteria for fixing the amount of such refunds (Official Journal, English Special Edition 1972 (9-28 December), p. 42) as amended in particular by Council Regulation (EEC) No 707/78 of 4 April 1978 (Official Journal 1978, L 94, p. 7), provides that:

"In fixing the rate of the refund account shall be taken, where appropriate, of production refunds, aids or other measures having equivalent effect applicable in all Member States, in accordance with the Regulation on the common organization of the market in the product in question, to basic products . . .".

That regulation is applicable as regards the basic products listed in Annex A thereto or the products resulting from the processing of those basic products and exported in the form of goods listed in Annexes B and C.

Annex A to the regulation includes *inter alia* the basic products classified under subheading ex 17.02 D II described as:

"Beet or cane syrup containing, in the dry state, 98% or more by weight of sucrose (including invert sugar expressed as sucrose)."

Annex C includes *inter alia* mannitol and sorbitol.

(b) The rates of export refunds for the period in question, namely 1 October 1978 to 30 April 1979, were established by Commission Regulations Nos 2271/78 of 29 September 1978 (Official Journal 1978, L 275, p. 28), 2555/78 of 31 October 1978 (Official Journal 1978, L 307, p. 32), as amended by Regulation No 2680/78 of 15 November 1978 (Official Journal, L 322, p. 20), 2807/78 of 30 November 1978 (Official Journal 1978, L 334, p. 32), 3115/78 of 29 December 1978 (Official Journal 1978, L 370, p. 26), 181/79 of 31 January 1979 (Official Journal 1979, L 26, p. 36), as amended by Regulation No 336/79 of 21 February 1981 (Official Journal 1981, L 45, p. 22), 410/79 of 28 February 1979 (Official Journal 1979, L 50, p. 28) and 615/79 of 30 March 1979 (Official Journal 1979, L 79, p. 28) fixing the rates of refunds applicable to sugar and

molasses exported in the form of goods not covered by Annex II to the Treaty. The fourth recital of the preamble to those regulations refers to Article 4 (3) of Regulation No 2682/79 cited above. Article 1 of the contested regulations is worded as follows:

"The rates of the refunds applicable ... to the basic products appearing in Annex A to Regulation (EEC) No 2682/72 and listed in Article 1 (1) of Regulation (EEC) No 3330/74, exported in the form of goods listed in Annex I to Regulation (EEC) No 3330/74, are fixed as shown:

(a) in Table I of the Annex hereto for those same goods, in so far as they are shown in the Annex to Regulation (EEC) No 1400/78;

(b) in Table II of the Annex hereto for goods other than those mentioned under (a)."

All the corresponding regulations covering the period 1 May 1979 to 30 June 1980 retained the same wording as that of Article 1 cited above. However, Commission Regulation No 1678/80 of 27 June 1980 fixing the rates of the refunds applicable from 1 July 1980 to sugar and molasses exported in the form of goods not covered by Annex II to the Treaty (Official Journal 1980, L 166, p. 34), the wording of which is in other respects identical to that of Article 1 of the contested regulations, provides in Article 1 (a) that the rates of the refunds applicable are fixed as shown:

"in Table I of the Annex hereto for those same goods, in so far as they are shown in the Annex to Regulation (EEC) No 1400/78 and have benefited from the granting of a production refund."

II — Facts and national procedure

Between October 1978 and April 1979 the plaintiff in the main action, Firma E. Merck, of Darmstadt (hereinafter referred to as "the plaintiff"), exported from the Federal Republic of Germany to various non-member countries mannitol classified under subheading 29.04 C II of the Common Customs Tariff and sorbitol classified under tariff subheadings 29.04 C III (b) 2 and 38.19 T I (b).

The plaintiff claimed from the Hauptzollamt [Principal Customs Office] Hamburg-Jonas export refunds applicable to sugar exported in the form of the goods mentioned above.

In each case the Hauptzollamt calculated those refunds on the basis of the lower rates shown in Table I of the annexes to Regulations Nos 2271/78, 2555/78, 2680/78, 2807/78, 3115/78, 181/79, 336/79, 410/79 and 615/79 cited above.

In each case the plaintiff lodged an objection against those decisions. It contended that it had not been granted any production refund in respect of the goods exported because the German customs authorities had considered that the sugar solution used in the manufacture of those goods, namely invert sugar, did not constitute a sucrose syrup which qualified for the refund referred to in Article 1 of Regulation No 1400/78 cited above. The plaintiff accordingly believes that it is entitled to claim export refunds at the rates not reduced by production refunds.

The Hauptzollamt maintained its point of view, however.

The plaintiff then appealed against the decision of the Hauptzollamt to the Finanzgericht Hamburg. It contended that it was an infringement of the prohibition of discrimination laid down in the second subparagraph of Article 40

(3) of the EEC Treaty to apply in its case, when it had not been granted a production refund in respect of goods exported, the same lower rates of refund as those applied in the case of producers who had received a production refund. In the plaintiff's view, that situation could be avoided by a proper interpretation of the regulation in force until 30 June 1980. According to that interpretation, the rates of refund shown in Table I of the annexes to the regulations cited above should be applied only in respect of goods for which a production refund has in fact been granted. Consequently, the rates of refund shown in Table II of the annexes should be applied to the plaintiff's exports. The wording of the provisions in question was amended as from 1 July 1980 in line with that interpretation, which is the only correct one.

The Hauptzollamt contended that it was bound by the regulations in question, the terms of which are clear and do not admit of the construction which the plaintiff places upon them. In order for the rates shown in Table I of the annexes to those regulations to apply the goods exported simply have to be listed in the annexes to Regulations Nos 3330/74 and 1400/78.

The Finanzgericht stayed the proceedings and referred the following questions to the Court for a preliminary ruling:

"1. Is Article 1 (a) of Commission Regulations (EEC) Nos 2271/78, 2555/78, 2807/78, 3115/78, 181/79, 410/79 and 615/79 void in the light of Article 4 (3) of Regulation (EEC) No 2682/72 of the Council, as amended by Council Regulation (EEC) No 707/78, in so far as it provides, in the case of exports of mannitol and sorbitol classified under headings 29.04 C II, 29.04 C III and 38.19 T of the Common Customs Tariff in respect of which no production refund has been granted, for the application of the rates of export refund specified in Table I instead of those specified in Table II of the annexes to the aforementioned regulations fixing rates of refund?

2. If that question is answered in the affirmative, what legal consequences does the invalidity of those regulations entail?"

In the order for reference, which was registered at the Court on 16 November 1982, the Finanzgericht points out in particular that the wording of the regulations on rates of refund makes it impossible to apply Table II of the annexes to the regulations in question.

However, the Finanzgericht is doubtful about the validity of Article 1 (a) of the regulations in question. Article 4 (3) of Regulation No 2682/72 might require the Commission to apply the higher rates of export refund shown in Table II of the annexes to the regulations in cases where no production refund has been granted. That view is supported by Article 1 (a) of Regulation No 1678/80, according to which the table in the annex is applicable to the goods which are listed in the annex to Regulation No 1400/78 and on which a production refund has been granted. Like the earlier regulations fixing rates of refund, Regulation No 1678/80 is based on Regulation No 3330/74 and refers to the rules contained in Article 4 (3) of Regulation No 2682/72 and in Regulation No 1400/78. In the light of those considerations the conclusion could be drawn that the question whether a production refund had in fact been granted should also have been considered when the rates of export refund were applied during the period in question.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the European Economic Community, written observations were submitted by the Commission, represented by C. Berardis and J. Sack, members of its Legal Department, acting as Agents.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General the Court decided to open the oral procedure without any preparatory inquiry.

By order of 4 May 1983 the Court decided to assign the case to the Second Chamber.

III — Written observations submitted to the Court

1. The first question

The *Commission* states first of all that, according to the information which it had when the regulations in question were adopted, only basic products attracting a production refund were used to make mannitol and sorbitol.

For the purposes of clarity and rationalized administration the Commission therefore considered it necessary to apply to the final product concerned a rate of export refund reduced by the amount of the production refund. The purpose of that simplified administrative procedure was to avoid unnecessary and costly investigations to ascertain whether the production refund had actually been granted in each case.

It was not until 12 June 1979, after receiving a letter from the plaintiff, that the Commission first learned that, instead of using the basic product on which production refunds were paid to make mannitol and sorbitol, an undertaking was using an invert sugar solution as a result of a new process.

Alerted by this isolated case to the new economic and technical circumstances, the Commission began to study the question of adapting the relevant legislation on export refunds to meet the new situation. First of all, of course, it had to make sure that it was administratively possible to check whether basic products not attracting production refunds had been used to make mannitol and sorbitol. Having resolved that question the Commission adapted its implementing rules (Regulation No 1678/80, cited above) relatively quickly.

From those remarks it is clear that the validity of the previous regulations cannot be questioned.

Furthermore, the Commission does not deny that it has a legal duty to adopt rules, if necessary, to new technical developments in order to ensure that the rules which it adopts are appropriate and that all manufacturers and traders concerned are treated in the same way. However, there is no discrimination within the meaning of Article 40 (3) of the Treaty if the Commission carefully considers the implications of new developments and only when it is sufficiently certain that comparable circumstances do exist and adequate checks can be made allows payments to be made from public funds in respect of new manufacturing methods. Therefore the alleged fact that exporters of mannitol and sorbitol made from an

invert sugar solution on which no production refund is paid are in a worse position does not constitute discrimination against particular groups or persons as they are free to use the basic product of their choice and thus receive the full rate of refund.

The principle of equal treatment does not mean that new developments should be taken into account immediately when it is still not at all certain that circumstances which are comparable in every respect actually exist. Even if this proves to be the case, the Commission is under no duty to adopt rules retroactively if the existing provisions are adapted quickly and it proves difficult to check manufacturing methods used in the past. This is especially true where an undertaking concerned waits for some time before informing the Community institutions of the new situation.

The Commission accordingly believes that the first question of the Finanzgericht Hamburg should be answered as follows:

Consideration of Article 1 (a) of Commission Regulations Nos 2271/78, 2555/78, 2807/78, 3115/78, 181/79, 410/79 and 615/79 fixing the rates of refund applicable to sugar and molasses exported in the form of goods not covered by Annex II to the Treaty has disclosed no factor of such a kind as to affect the validity of those provisions.

2. The second question

The Commission's view is that the second question does not therefore arise. However, if the Court decides that the regulations in question are unlawful on account of an omission, it should, in accordance with its case-law, merely declare that they are incompatible with the Treaty. It will then be for the Commission to adopt the necessary measures.

IV — Oral procedure

At the hearing on 15 September 1983 oral argument was presented on behalf of Merck by G. Reinhardt, Leiter der Steuerabteilung, and D. Pütter, Leiter der Zoll- und Verbrauchsteuerabteilung and on behalf of the Commission by J. Sack, a member of its Legal Department.

The plaintiff in the main proceedings stated that until 1976 it produced mannitol and sorbitol itself from sugar in the crystalline state, which was inverted and then hydrogenized. However, for technical and economic reasons it made certain changes in its method of manufacture after 1976. Owing to those changes it no longer produced invert sugar itself but bought it from a manufacturer. The German customs authorities refused to pay the plaintiff the export refunds at the higher rates set out in Table II of the annex to the regulations in question and the plaintiff subsequently formed an association with the manufacturer of invert sugar with a view to obtaining more favourable customs treatment. In this way the two undertakings were able to receive production refunds from January 1980.

The Advocate General delivered his opinion at the sitting on 6 October 1983.

Decision

1 By order dated 21 October 1982, which was received at the Court on 16 November 1982, the Finanzgericht [Finance Court] Hamburg referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty two questions as to the validity of Article 1 (a) of Commission Regulations (EEC) Nos 2271/78 of 29 September 1978 (Official Journal, L 275, p. 28), 2555/78 of 31 October 1978 (Official Journal, L 307, p. 32), 2807/78 of 30 November 1978 (Official Journal, L 334, p. 32), 3115/78 of 29 December 1978 (Official Journal, L 370, p. 26), 181/79 of 31 January 1979 (Official Journal, L 26, p. 36), 410/79 of 28 February 1979 (Official Journal, L 50, p. 28) and 615/79 of 30 March 1979 (Official Journal, L 79, p. 28) fixing the rates of refunds applicable from 1 October 1978 to 30 April 1979 to sugar and molasses exported in the form of goods not covered by Annex II to the EEC Treaty.

2 Those questions were raised in an action concerning the amounts of export refunds on sugar exported in the form of mannitol classified under subheading 29.04 C II of the Common Customs Tariff and sorbitol classified under tariff subheadings 29.04 C III and 38.19 T. For its exports of those products from October 1978 to April 1979 the plaintiff in the main action, Firma E. Merck, Darmstadt, obtained refunds only at the reduced rates set out in Table I of the annex to the regulations cited above. It submitted to the Finanzgericht Hamburg that those rates were applicable only to goods in respect of which production refunds had already been paid. Since no such refunds had been paid in respect of the goods in question, it therefore asked that the export refunds be granted at the full rates set out in Table II of that annex.

3 According to the file and additional information provided by Merck at the hearing, until 1976 it produced mannitol and sorbitol from sugar in crystalline form, turning it into an invert solution and then subjecting it to hydrogenation. Those operations were all carried out on its premises. For that production Merck at that time obtained production refunds and reduced export refunds.

4 However, as from 1976 Merck introduced changes in its method of manufacture for technical and economic reasons. Owing to those changes it

stopped inverting the sugar itself and purchased invert sugar from another producer in the Community. Apart from those changes the production process remained basically the same but the plaintiff was no longer able to obtain production refunds.

5 The Finanzgericht Hamburg, assuming that the grant by the German authorities of the export refunds at the reduced rates was based on a correct interpretation of the regulations in question, decided to stay the proceedings and referred the following questions to the Court:

"1. Is Article 1 (a) of Commission Regulations (EEC) Nos 2271/78, 2555/78, 2807/78, 3115/78, 181/79, 410/79 and 615/79 void in the light of Article 4 (3) of Regulation (EEC) No 2682/72 of the Council, as amended by Council Regulation (EEC) No 707/78, in so far as it provides, in the case of exports of mannitol and sorbitol classified under headings 29.04 C II, 29.04 C III and 38.19 T of the Common Customs Tariff in respect of which no production refund has been granted, for the application of the rates of export refund specified in Table I instead of those specified in Table II of the annexes to the aforementioned regulations fixing rates of refund?

2. If that question is answered in the affirmative, what legal consequences does the invalidity of those regulations entail?"

6 Before the first question is answered the Community rules on production and export refunds on sugar must be examined.

7 Article 1 (1) of Regulation (EEC) No 3330/74 of the Council of 19 December 1974 on the common organization of the market in sugar (Official Journal, L 359, p. 1), amended *inter alia* by Council Regulation (EEC) No 705/78 of 4 April 1978 (Official Journal, L 94, p. 1), lists the various products governed by that regulation. Articles 9 and 19 of Regulation No 3330/74 make provision for the fixing of both production and export refunds, the latter type of refunds being provided for in respect of *inter alia* certain products referred to in Article 1 (1) exported in the form of goods listed in Annex I to the regulation. That annex includes *inter alia* mannitol and sorbitol.

8 Article 1 of Council Regulation (EEC) No 1400/78 of 20 June 1978 laying down general rules for the production refund on sugar used in the chemical industry (Official Journal, L 170, p. 9) provides for the grant of a production refund on certain "basic products" referred to in Article 1 (1) of Regulation No 3330/74, cited above, used in the manufacture of the products of the chemical industry listed in the annex to Regulation No 1400/78. That annex includes mannitol and sorbitol. It is clear however from those provisions that invert sugar does not constitute such a basic product attracting the refunds in question.

9 As far as export refunds are concerned, Article 4 (3) of Regulation (EEC) No 2682/72 of the Council of 12 December 1972 laying down general rules for granting export refunds on certain agricultural products exported in the form of goods not covered by Annex II to the Treaty and the criteria for fixing the amount of such refunds (Official Journal, English Special Edition 1972 (9-28 December), p. 42), as amended in particular by Council Regulation (EEC) No 707/78 of 4 April 1978 (Official Journal, L 94, p. 7), provides that:

"In fixing the rate of the refund account shall be taken, where appropriate, of production refunds, aids or other measures having equivalent effect applicable in all Member States, in accordance with the regulation on the common organization of the market in the product in question, to basic products . . .".

That regulation is applicable *inter alia* to the basic products listed in Annex A thereto exported in the form of the goods listed in Annex C. Annex A to the regulation covers *inter alia* certain sugar syrups, including invert sugar. Annex C includes mannitol and sorbitol.

10 The rates of export refunds for the period in question, namely 1 October 1978 to 30 April 1979, were fixed by the Commission in the contested regulations. In each case the fourth recital in the preamble to those regulations refers to Article 4 (3), cited above, of Regulation No 2682/72 and Article 1 is worded as follows:

"The rates of the refunds applicable . . . to the basic products appearing in Annex A to Regulation (EEC) No 2682/72 and listed in Article 1 (1) of Regulation (EEC) No 3330/74, exported in the form of goods listed in Annex I to Regulation (EEC) No 3330/74, are fixed as shown:

(a) in Table I of the annex hereto for those same goods, in so far as they are shown in the annex to Regulation (EEC) No 1400/78;

(b) in Table II of the annex hereto for goods other than those mentioned under (a)."

11 The same wording was used in the regulations fixing the rates for the period from 1 May 1979 to 30 June 1980. However, since the adoption of Commission Regulation No 1678/80 of 27 June 1980 fixing the rates of the refunds applicable from 1 July 1980 to sugar and molasses exported in the form of goods not covered by Annex II to the Treaty (Official Journal, L 166, p. 34) the rates are fixed as shown in Table I of the annex for those goods only "in so far as they are shown in the Annex to Regulation (EEC) No 1400/78 and have benefited from the granting of a production refund".

12 If the wording of the contested regulations, read together with the annex to Regulation No 1400/78 only, is referred to, then, as the Finanzgericht points out, the export refunds on mannitol and sorbitol should in any event be granted for the period in question at the reduced rates set out in Table I of the annex to the contested regulations. However, as the Court has emphasized in previous decisions, in interpreting a provision of Community law it is necessary to consider not only its wording but also the context in which it occurs and the objects of the rules of which it is part.

13 The purpose of the refunds on exports to non-member countries of goods which are not covered by Annex II to the Treaty but which are made from agricultural products originating in the Community is to offset the production costs of the Community processing industry in so far as these are caused by the fact that agricultural prices are higher in the Community than on the world market. The grant of the refunds is therefore meant to ensure

that the Community industry and the industries of non-member countries which obtain supplies of agricultural products on the world market compete under equal condiditons.

14 In creating such equal conditions of competition it is necessary however to avoid over-compensation due to the fact that export refunds may be granted in addition to other aid received by the Community industry concerned, in particular in the form of production refunds. For this reason Article 4 (3), cited above of Regulation No 2682/72 provides that in fixing the rate of the export refund account is to be taken, where appropriate, of production refunds as regards the basic products used.

15 It was precisely in order to achieve that balance intended by the Council regulations that the Commission included two tables of rates in the contested regulations, one for goods in respect of which production refunds have been paid and the other for goods in respect of which such refunds cannot be paid. In their preambles all those regulations expressly refer to Article 4 (3) of Regulation No 2682/72 and Article 1 of each regulation provides that, in the case of products which are listed in the annex to Regulation No 1400/78 in respect of which therefore a production refund may where appropriate be granted, a reduced export refund is to be granted. In the case of all the other products, however, provision is made for the grant of an unreduced export refund.

16 In the observations which it submitted to the Court the Commission explained that its information at the time at which the contested rules were adopted was that only basic products attracting a production refund were used to make mannitol and sorbitol. In making Article 1 of the contested regulations refer to the annex to Regulation No 1400/78 it thus had no intention to reduce export refunds on commodities not attracting production refunds. Its intention was merely to simplify administration and avoid unnecessary and costly investigations into whether producers had in each case actually exercised their right to such a refund. When in June 1979

Merck informed the Commission that it was making mannitol and sorbitol from a commodity not attracting a production refund the Commission adapted its rules to the new situation as quickly as possible by adopting Regulation No 1678/80, cited above.

17 In view of those circumstances and in order to give practical effect to the provisions in question in keeping with the purposes of the Community rules of which they form part they must be construed as providing for the grant of export refunds at the full rate on commodities fulfilling the conditions expressly laid down by those provisions but whose manufacture did not attract a production refund under Regulation No 1400/78, cited above.

18 In view of that interpretation of the provisions at issue the questions concerning their validity have no purpose.

19 In reply to the questions of the Finanzgericht Hamburg it must therefore be stated that Article 1 of Commission Regulations Nos 2271/78, 2555/78, 2807/78, 3115/78, 181/79, 410/79 and 615/79 must be interpreted as making provision, in the case of exports of mannitol and sorbitol classified under headings 29.04 C II, 29.04 C III and 38.19 T of the Common Customs Tariff which fulfil the conditions expressly laid down by those provisions but in respect of which it has not been possible for any production refund to be granted, for the application of the rates of export refund specified in Table II of the annex to the aforementioned regulations and that consideration of the questions raised has disclosed no factor of such a kind as to affect the validity of those regulations as so construed.

Costs

20 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the proceedings pending before the national court, costs are a matter for that court.

On those grounds,

THE COURT (Second Chamber),

in answer to the questions submitted to it by the Finanzgericht Hamburg by order of 21 October 1982, hereby rules:

1. **Article 1 of Commission Regulations Nos 2271/78, 2555/78, 2807/78, 3115/78, 181/79, 410/79 and 615/79 must be interpreted as making provision, in the case of exports of mannitol and sorbitol classified under headings 29.04 C II, 29.04 C III and 38.19 T of the Common Customs Tariff which fulfil the conditions expressly laid down by those provisions but in respect of which it has not been possible for any production refund to be granted, for the application of the rates of export refund specified in Table II of the annex to the aforementioned regulations.**

2. **Consideration of the questions raised has disclosed no factor of such a kind as to affect the validity of those regulations as so construed.**

Bahlmann Pescatore Due

Delivered in open court in Luxembourg on 17 November 1983.

For the Registrar

H. A. Rühl

Principal Administrator

K. Bahlmann

President of the Second Chamber