Annotations

Comment on case C-33/08—Agrana Zucker GmbH v Bundesministerium für Land- und Forstwirtschaft, Umwelt und Wasserwirtschaft—Judgment of the Court (Second Chamber), 11.6.2009

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In this case the European Court had to decide about a legal provision concerning the restructuring of the sugar industry in the EU. Until mid-2006 the common organisation of the markets in the sugar sector was a complex system of guaranteed prices, production quotas, export refunds and import levies. EU producers were protected by high import duties, while the EU guaranteed intervention prices with an amount of almost three times world market prices. For certain countries the EU provided easier access to its market, with the African, Caribbean and Pacific (ACP) states as the major group. In 2004, following complaints of cane sugar exporting nations (led by Brazil and Australia), the WTO Appellate Body found the EU sugar-regime and the accompanying ACP-EU Sugar Protocol illegal.\(^1\) This decision was one of the factors that led to the reform of the common organisation of the markets in the sugar sector. Another aim was to ensure a long-term sustainable future of sugar production in the EU. The reform came into force on 1 July 2006. Its legal base was framed by Regulations (EC) No. 318/2006 of 20 February 2006 on the common organisation of the markets in the sugar sector and No. 320/2006 of the same date establishing a temporary scheme for the restructuring of the sugar industry. In accordance with Article 44 of Regulation No. 318/2006, the Commission laid down transitional measures by Regulation No. 493/2006 of 27 March 2006. As main outcomes of the reform, prices were cut by 36% as from 2009 and all EU sugar export subsidies were abolished. This was accompanied by generous compensations for farmers and a Restructuring Fund as an incentive to encourage uncompetitive sugar producers to leave the industry.

\(^1\) WTO Appellate Body, EC-Export Subsidies on Sugar—DS265, 266, 283.
Under examination in the present case was Article 11 of Council Regulation (EC) No. 320/2006 of 20 February 2006 which contains a transitional arrangement. The article obliges sugar-producing undertakings to which a quota has been allocated to contribute to the Restructuring Fund with a so-called temporary amount. The facts of the case were as follows: in 2006, the competent administrative authority allocated to an Austrian sugar-producing company, Agrana Zucker, a quota of 405,812.4 tonnes for sugar production for each of the marketing years 2006/07 to 2014/15. Later, that administrative authority set, pursuant to Article 3 of Regulation No. 493/2006, a production threshold of 348,565.56 tonnes for the marketing year 2006/07, thereby imposing a preventive withdrawal of 57,246.84 tonnes on that undertaking. In January 2007, Agrana Zucker was requested to pay the first instalment of the temporary amount according to Article 4(1) of Council Regulation (EC) No. 320/2006 for the marketing year 2006/07, totalling EUR 30,776,812.42. Pursuant to recital 4 of the preamble of that Regulation, the temporary amount serves for the financing of the restructuring measures and should be paid by producers which will eventually benefit from the restructuring process. Agrana Zucker appealed against the decision that obliged it to pay the temporary amount. The appellant stated that the temporary amount was calculated on the basis of the quota which had been allocated and without consideration of the preventive withdrawal of 57,246.84 tonnes of sugar.

The competent Austrian Administrative Court (Verwaltungsgerichtshof) asked the European Court of Justice for a preliminary ruling. The question was whether Article 11 of Regulation No. 320/2006 must be interpreted as meaning that even a sugar quota which cannot be fully utilised as a consequence of a preventive withdrawal in accordance with Article 3 of Regulation No. 493/2006 must be included in the calculation of the temporary amount. It also asked if Article 11 of Regulation No. 320/2006 was compatible with primary law, in particular with the principle of non-discrimination derived from Article 34 EC and the principle of the protection of legitimate expectations.

The Court of Justice answered the first question in the affirmative. He pointed out that a withdrawal under Article 3 of Commission Regulation (EC) No. 493/2006 is distinct from a renunciation of a quota under Article 3(1) of Regulation No. 320/2006, which is definitive and has the aim of reducing unprofitable sugar production capacity in the Community. In contrast, the quantities of sugar subject to a withdrawal under Article 3 of Regulation No. 493/2006 are only retained from the market until the beginning of the following marketing year. Considering this, the Court of Justice concluded that the temporary amount under Article 11 of Regulation No. 320/2006 has to