OPINION OF ADVOCATE GENERAL LÉGER

delivered on 6 November 1997 *

1. The Bundesfinanzhof has asked the Court whether 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 [1] ('the contested regulation'), read in conjunction with certain provisions of Commission Regulation (EEC) No 3183/80 of 3 December 1980 laying down common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products, [2] is consistent with the principle of proportionality.

The relevant Community law

Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organisation of the markets in the sugar sector ('the basic regulation' or 'the 1981 reform') [3]

2. The common organisation of the markets in the sugar sector, which was established by Regulation No 1009/67/EEC of the Council of 18 December 1967, [4] was completely reorganised in 1981 by the adoption of the basic regulation.

3. The latter aims to maintain the necessary guarantees in respect of employment and standards of living for both producers of basic products and 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. [5]

4. The market is regulated by means of target prices and intervention prices which are fixed annually for certain products (in particular, white sugar and raw sugar), the storage of the products and the introduction of a common trading system at the external frontiers of the Community, based on a system of import levies and export refunds. The production quota system established in the sugar sector by Regulation No 1009/67 is also maintained. [6]

* Original language: French.

1 — OJ 1981 L 262, p. 14.

2 — OJ 1980 L 338, p. 1.

3 — OJ 1981 L 177, p. 4.

4 — OJ, English Special Edition 1967, p. 304.

5 — See the third, fourth and eighth recitals in the preamble.

6 — See the third, fifth, seventh, eighth and eleventh recitals in the preamble.

5. In order to control the increase in the cost of financing this new scheme, the producers themselves meet the cost in full. [7] This is undoubtedly an original, innovative aspect of the reform.

6. As the effectiveness of these measures depends on being fully informed of movements in trade with third countries, [8] Article 13 provides that all imports into and exports out of the Community are to be conditional on the presentation of an import licence or an export licence, the issue of which is 'conditional upon the lodging of a deposit which will guarantee that importation or exportation will be effected during the period of validity of the licence and which will be forfeit in whole or in part if the transaction is not effected, or is only partially effected, within that period'.

7. Three types of quota, governed by specific rules set out in Articles 23 to 32, must be distinguished:

— the A quota, which is the basic quota;

— the B quota, which is the quantity of sugar produced exceeding the basic quota but within the 'maximum quota' corresponding to quota A multiplied by a coefficient;

— the C quota (or 'production in excess of the quota'), which is the quantity of sugar produced in a specific marketing year and which exceeds the 'maximum quota' (A and B quotas).

8. The sale of A sugar is guaranteed by means of an intervention price (Articles 5 and 9) and receives export aid (Article 18). There is no intervention price for B sugar, but it can be exported to non-member countries and receive export aid corresponding to the difference between the intervention price and the world market price of sugar. This aid is paid in the form of an export refund (Article 19).

9. Article 24 provides that the Member States are to allocate an A quota and a B quota to each sugar-producing undertaking established in their territory for a certain period. These quotas accordingly limit the quantity of sugar which the undertaking can produce and sell direct on the Community or the world market, in return for which the undertaking may receive refunds.

10. All the costs of disposing of Community sugar surpluses are met by the producers of A and B sugars themselves, by means of contributions to production and to storage costs (Article 8). In return, producers of A and B sugars are free to market them within the Community.

7 — See the eleventh recital in the preamble.

8 — See the ninth recital in the preamble.

11. Whereas the operation of the system for the A and B quotas is regulated in detail, only the essential principles of the system for the C quota are set out and the Commission is left to adopt the detailed implementing rules. Article 26 provides as follows:

'1. Subject to paragraph 2, C sugar which is not carried forward pursuant to Article 27 ... 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.

Articles 8, 9, 18 and 19 shall not apply to this sugar ...

2. Exceptionally, and to the extent necessary to guarantee the Community's sugar supplies, it may be decided that Article 18 shall apply to C sugar. In that event it shall be decided at the same time that the entire quantity of the C sugar in question may finally be disposed of on the internal market without the amount laid down in paragraph 3 being levied.

3. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 41. [9]

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.'

12. In order to smooth out annual variations in production, Article 27 permits producers to carry forward a quantity of C sugar to the following marketing year, up to a maximum of their A quota production. The quantity which is carried forward must be stored for 12 months and is deemed to form part of the A quota for the following marketing year. Producers who opt to carry forward a quantity of C sugar in this way must contribute to the storage costs (Article 27(3), second paragraph).

9 — The so-called 'Management Committee' procedure.

The contested regulation

13. This regulation introduces the measures necessary for implementing Article 26 of the basic regulation, that is to say, it lays down detailed rules in relation to the production of C sugar.

14. Producers of C sugar must furnish proof that it was not sold on the internal market and that it was exported to non-member countries.

15. Such proof must be submitted to the competent agency of the Member State on whose territory the C sugar was produced (Article 2(1)) and it must comply with the requirements in the first paragraph of Article 2(2).

16. If no such proof is furnished, Article 3(1)(a) of the contested regulation provides that the quantities of C sugar are to be considered as having been disposed of on the internal market and charges will become payable.

Regulation No 3183/80

17. Because of the overwhelming importance of import and export licences in the common organisation of agricultural markets, [10] this regulation lays down common detailed rules for the application of the system of import and export licences and advance-fixing certificates for agricultural products.

18. An export licence constitutes authorisation and gives rise to an obligation to export, under that licence, the specified net quantity of the relevant product during the period of validity of the licence (Article 8). The issue of a licence is conditional upon the provision of security (Article 13).

19. An application for a licence must be sent to the competent national agency. No application will be considered (Article 12) unless it is completed in accordance with the requirements of pre-established application forms (Article 16).

20. Licences are drawn up in at least two copies, the first of which, called 'holder's copy' and marked 'No 1', is issued to the

10 — See the fifth and twelfth recitals in the preamble.

applicant, the second being retained by the issuing agency (Article 19).

21. *Copy No 1 of the export licence* is submitted to the customs office responsible for completing the customs formalities relating to exportation from the Community (Article 22(1)(b)). After *attribution and endorsement*, the office in question returns copy No 1 of the licence to the party concerned (Article 22(3)).

22. Release of the security is subject to the *production of proof* 'of completion of customs formalities as referred to in Article 22(1)(b) relating to the product concerned' (Article 30(1)(b)) and proof that *the product has*, within 60 days from the day of completion of customs formalities (*force majeure* excepted), *left the geographical territory of the Community* (first indent).

23. This proof is furnished by the production of Copy No 1 of the licence endorsed as provided in Article 22 (Article 31(1)(a)).

24. Furthermore, Article 31(2)(b) requires the production of additional proof which is to be furnished by 'a copy or copies of the control copy provided for in Article 10 of Regulation (EEC) No 223/77', [11] namely Control Copy T No 5 ('copy T 5').

25. Article 10 of Regulation No 223/77 provides that 'proof that the conditions prescribed by a Community measure as to the use and/or destination of goods imported to, exported from or moving within the Community have been complied with, shall be furnished by the production of Control Copy T No 5'.

26. In addition, Article 13 of Regulation No 223/77 states that 'if goods subject to control as to use and/or destination are not placed under a Community transit procedure, a Control Copy T No 5 shall be prepared in respect of such goods in addition to the document relating to the procedure used [Copy No 1 bearing the attributions and endorsements]. The control copy shall be issued and used subject to the conditions laid down in Article 12'.

11 — Commission Regulation (EEC) No 223/77 of 22 December 1976 on provisions for the implementation of the Community transit procedure and for certain simplifications of that procedure (OJ 1977 L 38, p. 20).

27. Under Article 12, the customs office of departure (within whose area the C sugar was produced) issues Copy T No 5. The same office verifies that the goods conform with the particulars shown in Copy No 1 (of the export certificate issued to the producer of the goods). In addition, the goods may be examined.

28. If examination of the goods confirms the particulars in Copy No 1, the export declaration is accepted by the customs office, which places on it the attributions and endorsements (Article 11 of Regulation No 223/77), certifying that the producer's export declaration is correct, and issues Control Copy T No 5. The date of this verification is deemed to be the date of export.

29. The original of Control Copy T No 5 accompanying the goods is returned to the holder of the export licence after completion of the customs formalities by the customs office of destination and a copy of this document is retained by the customs office of departure.

30. Finally, if the party concerned is unable, owing to circumstances beyond his control, to produce Copy T No 5 within three months following its issue, he may apply to the competent agency for other documents to be accepted as equivalent, stating the grounds for such application and furnishing supporting documents (Article 31(4)). Therefore the acceptance of documents equivalent to Copy T No 5 presupposes that the customs formalities described above were completed beforehand.

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 [12]

31. Following the reform of the common agricultural policy in the sugar sector by the basic regulation, [13] this regulation lays down special detailed rules for the application of the system of import and export licences established by Article 13 of the basic regulation.

32. For C sugar, *the licence issued is valid solely for export from the territory of the Member State in which the product was produced* (Article 3(1), second paragraph), and is conditional upon the manufacturer in question having '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

12 — OJ 1981 L 258, p. 16.

13 — See the first recital in the preamble.

concerned, account being taken, as regards sugar, of any quantities carried forward to the marketing year in question' (Article 4).

33. An application for an export licence for C sugar and the licence itself must state the general particulars specified in Article 16 of Regulation No 3183/80 and the additional information in Article 3 of Regulation No 2630/81.

Facts and procedure

34. The Bundesfinanzhof has requested a preliminary ruling in the context of proceedings between Südzucker Mannheim/Ochsenfurt AG ('Südzucker'), a German undertaking established in Mannheim, and the Hauptzollamt (Principal Customs Office), Mannheim.

35. Südzucker sold a quantity of C sugar which it manufactured during the 1986/87 marketing year to A. Töpfer/Hamburg, also established in Germany.

36. The sugar was exported to Switzerland without customs clearance on export. Consequently Südzucker was thus unable to provide Copies No 1 and T No 5 with the requisite attributions and endorsements.

37. Later applications by Südzucker for retroactive issue of Copy T No 5 and for attribution on the export licence were refused.

38. By decision of 9 June 1992, the Hauptzollamt Mannheim, finding that proof of exportation had not been furnished in the prescribed manner, demanded payment by Südzucker of the amount provided for by Article 3(1)(a) of the contested regulation.

39. Südzucker took the view that the documents it had produced were equivalent to those required by the contested regulation [14] and instituted proceedings against the decision before the Finanzgericht Mannheim. The action was dismissed on the ground that proof that the C sugar had been exported had not been furnished by the production of the documents and information laid down in Article 2(2)(a) of the contested regulation.

14 — Namely consignment documents and export declarations, copies of rail waybills and receipts for duties paid, issued by the Swiss customs authorities.

40. Südzucker has therefore appealed to the Bundesfinanzhof on a point of law against the decision of the Finanzgericht Mannheim.

The question referred

41. Considering that the outcome of the case depended on whether Articles 2 and 3 of the contested regulation were valid, the Bundesfinanzhof referred the following question to the Court for a preliminary ruling:

'Is 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, read in conjunction with Commission Regulation (EEC) No 3183/80 of 3 December 1980 laying down common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products, valid, having regard in particular to the Community law principle of proportionality, in so far as its result is that sugar is deemed to have been disposed of on the internal market — that being the basis for levying the charge on sugar production — if it has actually been exported but without completion of the customs formalities, and proof consequently cannot be furnished by means of copy No 1 of the export licences bearing the attributions and endorsements of the customs authorities?'

42. According to the national court, Article 2(2)(b) of the contested regulation, which requires the producer to prove the export of C sugar by the production of the export licence bearing the necessary attributions and endorsements and of the Copy T No 5, is not unlawful because that obligation is specifically provided for by Article 26(3) of the basic regulation. [15]

43. On the other hand, the national court is in doubt as to whether the consequence arising from the non-production of such proof, namely, that the C sugar is deemed to have been sold on the internal market, is not contrary to the principle of proportionality, as laid down in the judgments in the *Man (Sugar)* [16] case and the *Maas* [17] case.

44. In those judgments the Court stated that, where Community legislation makes a distinction between a primary obligation and a secondary obligation it cannot, without breaching the principle of proportionality, penalise failure to comply with the secondary obligation as severely as failure to comply with the primary obligation.

15 — Order for reference, part II, paragraph 5.
16 — Case 181/84 [1985] ECR 2889, paragraph 20.
17 — Case 21/85 [1986] ECR 3537, paragraph 15.

45. The Court defined the primary obligation as one the observance of which is of fundamental importance to the proper functioning of the system in question or with which compliance is necessary in order to attain the objective of the legislation concerned, and the secondary obligation as *essentially of an administrative nature.*

46. On the basis of that distinction and the consequence thereof — the rule that failure to comply with the secondary obligation may not be penalised as severely as failure to comply with the primary obligation without infringing the principle of proportionality — the Court found that failure to fulfil a primary obligation may be penalised by the total loss of a deposit, without giving rise to any breach of the principle of proportionality.

47. The national court refers to this case-law and concludes that the primary obligation, which was fulfilled in the present case, was to export; it expresses doubt as to whether that obligation also included proof of completion of the customs formalities on exportation and production of the licence. [18]

18 — Order for reference, part II, paragraph 6.

48. It seems to me that the distinction drawn in the *Man (Sugar)* and *Maas* judgments between primary and secondary obligations is of no assistance in deciding whether Article 2(2) of the contested regulation is consistent with the principle of proportionality.

49. For a producer of C sugar, the primary obligation consists precisely in *not disposing of C sugar on the Community's internal market and in exporting it to non-member countries*, in accordance with the first paragraph of Article 26(1) of the basic regulation. In return, under the second paragraph of Article 26(1), the producer is exempted from payment of the contributions and costs inherent in the implementation of the 1981 reform. The contested regulation is simply a faithful application of this provision because it provides that a certain charge will be levied if proof of completion of the primary obligation is not produced. Furthermore, the principle that a right can be validly recognised only if proof of compliance with the conditions giving rise to that right is produced is generally accepted by all the Member States. I must conclude from this that the obligation to prove fulfilment of the primary obligation is necessarily included in that obligation. In other words, I conclude that, as the contested regulation makes no distinction between a primary and a secondary obligation, the *Man (Sugar)* and *Maas* judgments are not relevant.

50. In order to give a helpful reply to the national court, I think the question referred

must be understood as relating to the validity, by reference to the principle of proportionality, of the obligation to produce proof that the C sugar was not disposed of on the internal market and that it was exported to non-member countries, exclusively in the manner strictly laid down by Article 2(2) of the contested regulation. In other words, the national court seeks a ruling on whether the rule that such proof can only be constituted by proof of the customs processing of Copy No 1 of the export licence and Copy T No 5 conforms with the principle of proportionality.

The reply to the question referred

51. It is clear from the Court's consistent case-law that the principle of proportionality requires that acts of the Community institutions do not go beyond *what is appropriate and necessary to attain the objectives legitimately pursued by the legislation in question*; where there is a choice between several appropriate measures, recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued. [19]

19 — See, for example, Case C-354/95 *The Queen* v *Minister for Agriculture, Fisheries and Food, ex parte National Farmers' Union and Others* [1997] ECR I-4559, paragraphs 49 and 50.

52. The objective of the contested regulation is to introduce the measures necessary for implementing Article 26 of the basic regulation.

53. As there is a surplus on the sugar market in the Community, it is necessary to maintain the required guarantees of employment and standard of living for producers of basic products and manufacturers of sugar in the Community, to ensure the continuous supply of sugar to all consumers at reasonable prices, to establish machinery for regulating the sugar market and to control the increase in the cost of the common organisation of sugar markets. The system established by this regulation is therefore based on the principle that only those who finance the system may benefit from it.

54. As the producers of A and B sugar are the only ones who finance it, they alone are authorised to dispose of their production on the internal market with price guarantees or export aids.

55. By introducing Article 26 of the basic regulation, the Council shows that the objectives of the 1981 reform are attained if a *producer of C sugar proves that the sugar in excess of the quota has not been disposed of on the internal market and that it has been exported to non-member countries.*

56. Under Article 26, the essential principles permitting the correct operation of the C quota are as follows:

— in principle, C sugar cannot be disposed of on the internal market;

— likewise it must be exported to non-member countries in the natural state before 1 January following the end of the marketing year in question;

— sugar exported under the C quota must actually originate from production in excess of the quota and not from the A quota or the B quota;

— producers of C sugar are exempt from financing the system established for the A and the B quotas;

— on the other hand, those producers have no price guarantee or export aid;

— if he fails to prove that these requirements have been fulfilled, a producer of C sugar must pay a certain charge.

57. As these are the objectives of Article 26, we must consider whether the Commission has gone beyond what is appropriate and necessary for attaining them.

58. The Court has observed that 'where the evaluation of a complex economic situation is involved, the Commission and the Management Committee enjoy a wide measure of discretion. In reviewing the legality of the exercise of such discretion, the Court must confine itself to examining whether it is not vitiated by a manifest error or misuse of power or whether the institution in question has not exceeded the limits of its discretion'. [20]

59. The Court examines whether there is any manifest error in the evaluation of the situation of the market in question, whether the Commission has chosen a measure which is manifestly inappropriate to the objectives pursued, whether, where it had a choice between several appropriate measures, it chose the least onerous and, finally, whether the disadvantages caused are disproportionate to the aim pursued. [21]

60. No argument has been put forward in support of the first of these points.

20 — See, for example, Joined Cases C-296/93 and C-307/93 *France and Ireland* v *Commission* [1996] ECR I-795, paragraph 31.

21 — Ibid., paragraph 30.

61. Therefore it must be concluded that it has not been proved that the Commission made a manifest error in evaluating the market.

62. The next question is whether, as Südzucker claims, the measure adopted is manifestly inappropriate to the objective pursued and whether it would have been more appropriate to permit the production of means of proof other than those required by the contested regulation.

63. The function of the contested regulation is precisely to lay down the conditions for producing proof that C sugar has not been sold on the internal market and that its exportation to non-member countries has been effected.

64. Article 1(1) [22] of the contested regulation provides as follows:

'1. The C sugar ... referred to in Article 26(1) of Regulation (EEC) No 1785/81 *must be exported from the Member State on whose territory [it was] produced.*

Manufacturers of C sugar ... must furnish *proof* that it has been exported:

— as white sugar or raw sugar, non-denatured ... in its natural state,

— *without refund or levy,*

— *from the Member State on whose territory it was produced.*

If no proof is furnished that the sugar ... was exported from the Community before 1 January following the end of the marketing year during which the C sugar ... was produced, *the quantity in question shall be considered to have been disposed of on the internal market.*'

65. It is clear from Article 1(1) of the contested regulation that a manufacturer of C sugar must prove three things. First, he must prove that the C sugar exported is white sugar or non-denatured raw sugar and, secondly, that it was exported without refund or levy.

22 — Emphasis added.

66. In so far as only A and B sugars give rise to levies or refunds, it must follow that this provision requires the producer of C sugar to prove that the quantity of sugar exported from the Community in respect of the C quota was in fact produced in excess of the quota and that it does not originate from sugar produced in respect of the A and B quotas. In other words, he must prove that the operation of the rules regarding production under the A and B quotas has not been disrupted by the operation of the rules regarding production in excess of the quota.

67. Thirdly, he must show that the C sugar was exported *from the Member State on whose territory it was produced.*

68. Proof of these three matters must be submitted to the competent agency of the Member State on whose territory the C sugar was produced (Article 2(1) of the contested regulation) before 1 January following the end of the marketing year during which the C sugar was produced.

69. An examination of Article 1 thus shows that the Commission has given proper effect to the objectives of Article 26 of the basic regulation and that a producer of C sugar who merely proves that a certain quantity of C sugar has been exported from the Community would not satisfy the requirements of that provision.

70. Article 2(2) of the contested regulation, read in conjunction with Articles 3 and 4 of Regulation No 2630/81 and Articles 22, 30 and 31 of Regulation No 3183/80, harmonises the method of production of the proof referred to in Article 1 of the contested regulation.

71. Article 2(2) provides:

'2. Such proof [the proof referred to in Article 1] shall be furnished by the production of:

(a) *an export licence issued pursuant to Article 3 of Regulation (EEC) No 2630/81* to the manufacturer by the competent agency of the Member State referred to in paragraph 1;

(b) *the documents referred to in Article 30 of Regulation (EEC) No 3183/80* required for the release of the security;

(c) a statement by the manufacturer to the effect that the C sugar ... was produced by him.'

72. The export licence issued by the competent agency under Article 3 of Regulation No 2630/81 is in fact a manifold form consisting of Copy No 1, Copy No 2 and the request for exportation in respect of production in excess of the quota, together possibly with additional copies of the licence setting out particulars of the licence holder and the goods for which the licence is requested.

73. This form is then processed in the same way as that laid down by Regulation No 3183/80, which I have described.

74. Regarding the most important rules of the latter regulation, it will be recalled that Copy No 1 of the export licence is delivered to the customs authorities of the country of departure. Copy No 2 is retained by the agency responsible for issuing the export licence. The customs office of departure verifies that the particulars shown in Copy No 1 which is handed to the person entitled accord with the goods. Conformity is evidenced by the endorsements and attributions, after which Copy T No 5 is issued by the competent customs office. When the goods have been safely delivered, all these documents bearing the requisite endorsements and control markings (the 'attributions') are sent by the producer of the C sugar to the competent authority.

75. By means of this information the authority verifies that the requirements of Article 26 of the basic regulation have been fulfilled and it can then take the appropriate measures. [23]

76. I therefore conclude that the documents required under Article 2 of the contested regulation are not only necessary, but also entirely appropriate to the objective of the 1981 reform.

77. Südzucker claims that means of proof other than those specified by Article 2, in particular those issued by the authorities of non-member countries, would be equally appropriate and less onerous.

78. I have real doubts in that regard because, in my opinion, the customs processing of Copy No 1 and Copy T No 5 ensures rational administration of the common agricul-

23 — That is to say, impose penalties for non-compliance with the rules, or forestall crisis situations on the internal market by proposing the adoption of new measures (such as export levies in the event of a sugar shortage, etc.).

tural policy in the sugar sector at less cost to the Community. Furthermore, it enables producers of C sugar to understand clearly their obligations and to receive equal treatment.

79. Therefore, since the goods are checked even before they leave Community territory, all the information in a document is authenticated by the competent authorities, which facilitates equal treatment of producers. Consequently the harmonised production of proof is reliable, clear to the user and easy to administer for the Commission. It should be borne in mind that, pursuant to Article 5 of Council Regulation (EEC) No 729/70 of 21 April 1970 on the financing of the Common Agricultural Policy, [24] the expenditure of the Member States in respect of measures financed by the EAGGF are charged to the Community budget only after the accounts have been cleared by the Commission.

80. The means of proof proposed by Südzucker, however, do not offer these advantages. They do not necessarily testify to the same controls because the customs authorities of the non-member countries issuing them are not necessarily guided by the same objective as that of the 1981 reform. The Member States cannot, on that basis, be granted the power to assess the proof which must be produced to show that the production scheme for sugar in excess of the quota has functioned correctly, without adversely affecting the reform. If they were granted such power the Commission would encounter greater difficulty in examining files and, ultimately, not only would there be a risk of the system being paralysed, but there would be an even greater danger of different treatment for producers, depending on the country in which they were established.

81. Furthermore, it must be stressed that, in the present case, Südzucker has fulfilled none of the obligations laid down by the contested regulation because neither the export licence bearing the attributions and endorsements nor Copy T No 5 have been produced, and counsel for Südzucker has observed that it was not a matter of calling into question the whole of the law relating to export licences in the agriculture sector or the law of the common organisation of the sugar markets, or of not using the same licences in the future, but of obtaining satisfaction from its national court by means of a judgment given in equity on a quite exceptional basis. [25]

82. Consequently the solution proposed by Südzucker is not a more suitable and less onerous means than the customs processing of Copy No 1 of the export licence.

24 — OJ, English Special Edition 1970 (I), p. 218.

25 — At the hearing in open court on 25 September 1997.

Conclusion

83. For the reasons given above, I propose that the Court reply as follows to the question from the Bundesfinanzhof:

Consideration 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, read in conjunction with Commission Regulation (EEC) No 3183/80 of 3 December 1980 laying down common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products, in so far as it requires producers of sugar in excess of the quota to furnish proof that C sugar has not been sold on the internal market and that it has been exported to non-member countries, by producing only the documents specified by Article 2(2) of Regulation No 2670/81, has not revealed any factor of such a kind as to affect the validity of that regulation.