

## Case C-161/96

**Südzucker Mannheim/Ochsenfurt AG**

**v**

**Hauptzollamt Mannheim**

(Reference for a preliminary ruling  
from the Bundesfinanzhof)

(Common organisation of the markets in the sugar sector —  
Failure to complete the customs formalities for export from the Community —  
Consequences — Principle of proportionality)

Opinion of Advocate General Léger delivered on 6 November 1997 .....	I - 283
Judgment of the Court (Fifth Chamber), 29 January 1998 .....	I - 299

### Summary of the Judgment

1. *Community law — Principles — Proportionality — Primary obligation and secondary obligation — Identical penalty — Not permissible*
2. *Agriculture — Common organisation of the markets — Sugar — Production in excess of the quota (C sugar) — Charge imposed on sugar disposed of on the internal market — Levied where sugar is exported, but customs formalities have not been completed — Principle of proportionality — No breach*  
(Commission Regulations No 2670/81, Arts 2(2) and 3, and No 3183/80)

1. In order to establish whether a provision of Community law is in conformity with the principle of proportionality it is necessary to ascertain whether the means which it employs are appropriate and necessary to attain the objective sought. Where Community legislation makes a distinction between a primary obligation, compliance with which is necessary in order to attain the objective sought, and a secondary obligation, essentially of an administrative nature, 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.

2. Compliance with the customs formalities provided for on the export of sugar produced in excess of the quota (C sugar), like the actual exportation, must be regarded as forming part of the primary obligations under the system in question, in so far as those formalities are not only intended to simplify administrative procedures but are also necessary to the proper functioning of the quota system in the sugar sector. They are not therefore to

be classed as secondary obligations of an essentially administrative nature, failure to comply with which cannot be penalised as severely as infringement of a primary obligation without breaching the principle of proportionality.

It is, in consequence, compatible with the principle of proportionality to charge the amount provided for by Article 3 of Regulation No 2670/81, laying down detailed implementing rules in respect of sugar production in excess of the quota, on C sugar, where the sugar in question has unarguably been exported from the Community but the customs formalities have not been completed, with the result that proof of exportation cannot be produced by means of copy No 1 of the export licence bearing the necessary attributions and endorsements, in accordance with Article 2(2) of Regulation No 2670/81, read in conjunction with Regulation No 3183/80, laying down common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products.