

Official Journal

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Legislation

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I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EEC) No 3665/87

of 27 November 1987

laying down common detailed rules for the application of the system of export refunds on agricultural products

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2727/75 of 29 October 1975 on the common organization of the market in cereals ⁽¹⁾, as last amended by Regulation (EEC) No 1900/87 ⁽²⁾, and in particular Articles 16 (6) and 24 thereof, and to the corresponding provisions of the other Regulations on the common organization of the markets in agricultural products,

Having regard to Council Regulation (EEC) No 2746/75 of 29 October 1975 laying down general rules for granting export refunds on cereals and criteria for fixing the amount of such refunds ⁽³⁾, and in particular Article 8 (2), second paragraph, and (3) thereof, and to the corresponding provisions of Regulations No 142/67/EEC (colza, rape and sunflower seed) ⁽⁴⁾, No 171/67/EEC (olive oil) ⁽⁵⁾, (EEC) No 766/68 (sugar) ⁽⁶⁾, (EEC) No 876/68 (milk and milk products) ⁽⁷⁾, (EEC) No 885/68 (beef and veal) ⁽⁸⁾, (EEC) No 2518/69 (fruit and vegetables) ⁽⁹⁾, (EEC) No 326/71 (raw tobacco) ⁽¹⁰⁾, (EEC) No 2743/75 (cereal-based compound feedstuffs) ⁽¹¹⁾, (EEC) No 2744/75 (products processed from cereals and rice) ⁽¹²⁾,

(EEC) No 2768/75 (pigmeat) ⁽¹³⁾, (EEC) No 2774/75 (eggs) ⁽¹⁴⁾, (EEC) No 2779/75 (poultrymeat) ⁽¹⁵⁾, (EEC) No 110/76 (fishery products) ⁽¹⁶⁾, (EEC) No 1431/76 (rice) ⁽¹⁷⁾, (EEC) No 519/77 (products processed from fruit and vegetables) ⁽¹⁸⁾, and (EEC) No 345/79 (wine) ⁽¹⁹⁾,

Having regard to Council Regulation (EEC) No 1676/85 of 11 June 1985 on the value of the unit of account and the conversion rates to be applied for the purposes of the common agricultural policy ⁽²⁰⁾, as last amended by Regulation (EEC) No 1636/87 ⁽²¹⁾, and in particular Article 2 (4) thereof,

Having regard to Council Regulation (EEC) No 1677/85 of 11 June 1985 on monetary compensatory amounts in agriculture ⁽²²⁾, as last amended by Regulation (EEC) No 1889/87 ⁽²³⁾, and in particular Article 12 thereof,

Having regard to Council Regulation (EEC) No 565/80 of 4 March 1980 on the advance payment of export refunds in respect of agricultural products ⁽²⁴⁾, as amended by Regulation (EEC) No 2026/83 ⁽²⁵⁾,

Whereas Commission Regulation (EEC) No 2730/79 ⁽²⁶⁾,

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 182, 3. 7. 1987, p. 40.

⁽³⁾ OJ No L 281, 1. 11. 1975, p. 78.

⁽⁴⁾ OJ No 125, 26. 6. 1967, p. 2461/67.

⁽⁵⁾ OJ No 130, 28. 6. 1967, p. 2600/67.

⁽⁶⁾ OJ No L 143, 25. 6. 1968, p. 6.

⁽⁷⁾ OJ No L 155, 3. 7. 1968, p. 1.

⁽⁸⁾ OJ No L 156, 4. 7. 1968, p. 2.

⁽⁹⁾ OJ No L 318, 18. 12. 1969, p. 17.

⁽¹⁰⁾ OJ No L 39, 17. 2. 1971, p. 1.

⁽¹¹⁾ OJ No L 281, 1. 11. 1975, p. 60.

⁽¹²⁾ OJ No L 281, 1. 11. 1975, p. 65.

⁽¹³⁾ OJ No L 282, 1. 11. 1975, p. 39.

⁽¹⁴⁾ OJ No L 282, 1. 11. 1975, p. 68.

⁽¹⁵⁾ OJ No L 282, 1. 11. 1975, p. 90.

⁽¹⁶⁾ OJ No L 20, 28. 1. 1976, p. 48.

⁽¹⁷⁾ OJ No L 166, 25. 6. 1976, p. 36.

⁽¹⁸⁾ OJ No L 73, 21. 3. 1977, p. 24.

⁽¹⁹⁾ OJ No L 54, 5. 3. 1979, p. 69.

⁽²⁰⁾ OJ No L 164, 24. 6. 1985, p. 1.

⁽²¹⁾ OJ No L 153, 13. 6. 1987, p. 1.

⁽²²⁾ OJ No L 164, 24. 6. 1985, p. 6.

⁽²³⁾ OJ No L 182, 3. 7. 1987, p. 1.

⁽²⁴⁾ OJ No L 62, 7. 3. 1980, p. 5.

⁽²⁵⁾ OJ No L 199, 22. 7. 1983, p. 12.

⁽²⁶⁾ OJ No L 317, 12. 12. 1979, p. 1.

as last amended by Regulation (EEC) No 1180/87 ⁽¹⁾, replaces Commission Regulation (EEC) No 192/75 ⁽²⁾ and lays down detailed rules for the application of the system of export refunds for agricultural products; whereas the provisions of Regulation (EEC) No 2730/79 have, however, been the subject of numerous and, in some cases, substantial amendments; whereas for reasons of clarity and administrative efficiency, the rules concerned should be consolidated and, in some cases, adjusted in the light of the experience gained;

Whereas the operative date for determining the amount of the refund should be specified; whereas certain Regulations provide that this date should be the day of exportation; whereas this day should be so determined as to accord with economic requirements, ensure equal treatment for exporters in Member States and reflect the tendency in the Community to carry out customs controls at the place of production; whereas the operative date for determining the items used in calculating the refund should accordingly be that on which the customs authority accepts the declaration in which the exporter states his intention to export the products in question and qualify for a refund;

Whereas the general rules laid down by the Council provide for the refund to be paid upon proof being furnished that the products have been exported from the Community; whereas, in order that the notion of 'exportation from the Community' may be interpreted in a uniform manner, it should be specified that a product shall be regarded as having been exported when it leaves the customs territory of the Community;

Whereas certain export transactions can lead to abuses; whereas, in order to prevent such abuses, payment of the refund should be subject to the condition that the product has not only left the customs territory of the Community but has also been imported into a non-member country and, where applicable, actually marketed there;

Whereas the competent authorities must verify that products leaving the Community or in transit to a particular destination are in fact those which were the subject of customs export formalities; whereas, to this end, when a product crosses the territory of other Member States before leaving the customs territory of the Community or reaching a particular destination, use should be made of the control copy referred to in Article 1 of Commission Regulation (EEC) No 2823/87 of 18 September 1987 on the documents to be used for the purpose of implementing Community measures entailing verification of the use and/or destination of goods ⁽³⁾; whereas, however, it seems desirable, in order to simplify administrative procedures, to provide for more flexible arrangements in the case of transactions coming within the

terms of Title IV, Chapter I, of Commission Regulation (EEC) No 1062/87 ⁽⁴⁾, as amended by Regulation (EEC) No 2823/87, which provides that when a carriage operation begins within the Community and is to end outside it no formalities need be carried out at the customs office of the frontier station;

Whereas the arrangements provided for in this Regulation may be accorded only to products which meet the requirements laid down in Article 9 (2) of the Treaty; whereas in the case of certain compound products the refund is fixed not on the basis of the product itself, but by reference to the basic products of which they are composed; whereas in cases where the refund is thus fixed on the basis of one or more components it is sufficient in order that the refund or the relevant part thereof may be granted that the component or components in question themselves meet the requirements laid down in Article 9 (2) or do so no longer solely because they have been incorporated in other products;

Whereas, in order to take into account the particular status of certain components, a list should be drawn up of products for which the refunds are fixed on the basis of one component;

Whereas the rate of refund is determined by the tariff classification of a product; whereas that classification may, for certain mixtures, result in the grant of a higher refund than is economically justified;

Whereas it is therefore necessary to adopt special provisions for determining the refund applicable to mixtures;

Whereas products should be of a quality such that they can be marketed on normal terms;

Whereas no export levy applies where an export refund has been fixed in advance or determined by tender, since exportation must be effected under the conditions thus fixed in advance or determined by tender; whereas, by the same token, it should be provided that where an export is subject to an export levy fixed in advance or determined by tender, exportation must be effected under the conditions laid down and therefore cannot qualify for an export refund;

Whereas exports of very small quantities of products are of no economic significance and are liable to overburden the competent authorities unnecessarily; whereas the competent services of the Member States should be given

⁽¹⁾ OJ No L 113, 30. 4. 1987, p. 27.

⁽²⁾ OJ No L 25, 31. 1. 1975, p. 1.

⁽³⁾ OJ No L 270, 23. 9. 1987, p. 1.

⁽⁴⁾ OJ No L 107, 22. 4. 1987, p. 1.

the option of refusing to pay refunds in respect of such exports;

Whereas, where the rate of the refund is varied according to the destination of the product, provision should be made for it to be verified that the product has been imported into the non-member country or countries for which the refund was fixed; whereas such a measure can be relaxed without difficulty in respect of exports where the refund involved is small and the transaction is such as to offer adequate assurances that the products concerned arrive at their destination;

Whereas, in order to put exports of products for which the refund varies according to destination on an equal footing with other exports, provisions should be made for a part of the refund equal to the amount thereof as calculated on the basis of the lowest rate of refund applicable on the day on which export takes place to be paid as soon as the exporter has furnished proof that the product has left the customs territory of the Community;

Whereas, where a single rate of refund applies to all destinations on the day on which the refund is fixed in advance, there is in certain cases a compulsory destination clause; whereas this situation should be treated as a variation of the refund where the rate of the refund applicable on the day on which export takes place is lower than the rate of the refund applicable on the day of advance fixing, adjusted where appropriate to the day on which export takes place;

Whereas exporters may be exempted from furnishing proof that agricultural products have reached their destination where the refund does not reach certain levels; whereas the purpose of this provision is to simplify the administrative work involved in the submission of the proof;

Whereas, to enable exporters to finance their transactions more easily, Member States should be authorized to advance all or part of the amount of the refund as soon as the export declaration is accepted, subject to the provision of security to guarantee repayment of the amount advanced if it should later be found that the refund ought not to have been paid;

Whereas Regulation (EEC) No 565/80 lays down general rules for paying, in advance of export, an amount equal to the export refunds;

Whereas Article 3 of Regulation (EEC) No 565/80 provides that products for which a refund equal to or greater than 0 has been fixed are eligible to benefit from that Regulation; whereas, to ensure equal treatment of all traders within the Community, negative monetary compensatory amounts should not be taken into consideration when determining whether or not a refund of 0 or more has been fixed; whereas, as a consequence thereof, products and goods may also benefit from that Regulation in cases where a negative monetary compensatory amount is greater than the refund;

Whereas Article 4 (5) and (6) of Regulation (EEC) No 565/80 provides that the day on which basic products are brought under customs control is to be used to determine the rate of refund applicable or, where the refund is fixed in advance, any adjustment to be made to that rate; whereas that day, as well as the operative day for determining the rate of refund and any adjustment in respect of products brought under the customs warehousing or free zone procedure, should be specified; whereas the dates should be so determined as to accord with economic requirements and ensure equal treatment for exporters in the Member States;

Whereas the operative date should accordingly be the day on which the customs authorities accept the declaration from the person concerned, in which he declares his intention to place the products or goods concerned under the arrangements provided for in Articles 4 and 5 of Regulation (EEC) No 565/80, and to export them, with a refund, after processing or storage; whereas that declaration must include the necessary particulars for the calculation of refunds and any compensatory amounts;

Whereas a security must be furnished to ensure that reimbursement will be made if the conditions for granting the refund are not fulfilled; whereas negative monetary compensatory amounts are to be deducted from the refunds; whereas in cases where no right to a refund is proved, the negative compensatory amounts may be payable; whereas the collection of such amounts must be ensured;

Whereas positive monetary compensatory amounts have an effect similar to refunds in trade with non-member countries; whereas such amounts should be paid in advance on similar conditions to refunds; whereas the advance payment of refunds has consequences for the period of validity of export licences; whereas to ensure equal treatment in all Member States, positive monetary compensatory amounts should be paid in advance only if they are granted in addition to a refund;

Whereas reimbursement of the amount paid in advance of export must be made if there proves to be no right to the export refund or if there was a right to a smaller refund; whereas the reimbursement must include an additional amount to avoid abuses; whereas in case of *force majeure* the additional amount is not reimbursed;

Whereas a time-limit must be set for the export of the products concerned; whereas that time-limit must be set taking into consideration the system of export licences and advance fixing certificates;

Whereas no refund is granted if the time-limits for export and for submitting the proof required for obtaining payment of the refund are not complied with; whereas the rules at present in force should, however, be relaxed; whereas measures should accordingly be adopted pursuant

to Commission Regulation (EEC) No 2220/85 ⁽¹⁾, as amended by Regulation (EEC) No 1181/87 ⁽²⁾;

Whereas certain destinations may be treated as exports from the Community; whereas products and goods delivered to victualling warehouses must subsequently be delivered for victualling; whereas deliveries to such warehouses cannot be treated as final exports for refund purposes;

Whereas, in cases where export is preceded by storage, it appears appropriate to restrict this Regulation to those forms of handling intended to ensure preservation of the goods in question; whereas, in order to clarify the situation, it should be laid down that these forms of handling do not in any way affect the refund to be applied;

Whereas it may be necessary for the exporter or transporter to carry out measures in order to avoid deterioration in the products for export during the 60-day period following acceptance of the export declaration and before departure from the customs territory of the Community or before arrival at destination; whereas freezing is such a measure which makes it possible to leave the products intact; whereas, in order to comply with this requirement, provision should be made for freezing to be carried out during the said period;

Whereas the purpose of paying the refund before processing takes place is to put Community products on an equal footing with products imported from non-member countries for processing and re-exporting;

Whereas the production methods for processed products and their control procedures require a degree of flexibility;

Whereas Article 2 of Council Regulation (EEC) No 1999/85 ⁽³⁾ provides for a system of equivalence under the inward processing arrangements;

Whereas a system of equivalence may also be authorized for the system whereby the refunds are paid before processing takes place, given that the two systems are similar;

Whereas products which are not eligible for refunds may not be equivalent products;

Whereas it is clear from the provisions of Commission Regulation (EEC) No 1687/76 ⁽⁴⁾ as last amended by Regulation (EEC) No 3497/87 ⁽⁵⁾ that intervention

products must reach the prescribed destination; whereas, as a result, such products may not be replaced by equivalent products;

Whereas in the case of ship and aircraft supplies and deliveries to the armed forces it is possible to lay down special rules for determining the amount of the refund;

Whereas in the Member States products imported from non-member countries for certain uses are exempt from duties; whereas, in so far as those outlets are substantial, Community products should be placed on an equal footing with such products from non-member countries; whereas this situation arises particularly in the case of products used in supplying ships and aircraft;

Whereas products taken on board ship as supplies are for consumption on board; whereas, whether these products are consumed as they are or used in the preparation of food on board, the refunds applicable to unprocessed products are granted on them;

Whereas, in view of the limited space available on aircraft, food has to be prepared before it is taken on board; whereas, with a view to harmonization, rules should be adopted so as to enable the same refund to be given on agricultural products consumed on board aircraft as are given to those consumed after preparation on board ship;

Whereas the export of ship and aircraft supplies is a very specialized trade warranting special arrangements for the advance of refunds;

Whereas, if use is made of these facilities and it is later found that the refund should not have been paid, the exporters will in effect have had the unjustified benefit of an interest-free loan; whereas provision should therefore be made to prevent exporters from benefiting in this way;

Whereas in order to maintain the competitiveness of Community goods supplied to platforms in certain areas close to Member States, refunds should be made available at the rate applicable to victualling within the Community; whereas the payment of a refund rate above the lowest in respect of deliveries to a particular destination cannot in any event be justified unless there is no doubt that the goods have reached that destination; whereas the delivery of supplies to platforms in isolated sea areas is necessarily a specialized operation such that it would appear possible to exercise sufficient control over these deliveries; whereas subject to adequate control measures being specified it would appear reasonable to apply to these deliveries the rate of refund for victualling within the Community; whereas it is possible to provide for a simplified procedure for deliveries of lesser importance; whereas, since the width

⁽¹⁾ OJ No L 205, 3. 8. 1985, p. 5.

⁽²⁾ OJ No L 113, 30. 4. 1987, p. 31.

⁽³⁾ OJ No L 188, 20. 7. 1985, p. 2.

⁽⁴⁾ OJ No L 190, 14. 7. 1976, p. 1.

⁽⁵⁾ OJ No L 330, 21. 11. 1987, p. 30.

of territorial waters varies according to the Member States between 3 and 12 miles, it would also be reasonable to regard as exports deliveries to all such platforms beyond a three-mile limit;

Whereas when a naval vessel belonging to a Member State is victualled on the high seas by a naval supply vessel operating from a Community port it is possible to obtain certification of that delivery from a competent authority; whereas it would be reasonable to apply to such deliveries the same rate of refund as applies to victualling in a Community port;

Whereas it is desirable that agricultural products used in supplying ships and aircraft should qualify for an identical refund whether they are taken on board a ship or an aircraft within the Community or outside it;

Whereas deliveries of such supplies in non-member countries may be direct or indirect; whereas methods of supervision appropriate to each type of delivery should be introduced;

Whereas under the second subparagraph of Article 1 (1) of Council Directive 81/177/EEC of 24 February 1981 on the harmonization of procedures for the export of Community goods⁽¹⁾ the island of Heligoland does not qualify as a destination for which refunds are payable; whereas the consumption of agricultural products from the Community in the island of Heligoland should be encouraged and whereas the necessary provisions should be adopted for that purpose;

Whereas, if an application for repayment or remission of duties is subsequently refused, the products concerned may be eligible for an export refund or will be subject, as the case may be, to an export levy or export charge; whereas, consequently, it is necessary to lay down special provisions;

Whereas, generally, armed forces stationed in a non-member country which do not come under the command of that country, international organizations and diplomatic bodies established in a non-member country obtain their supplies free of import duty; whereas it appears possible to take specific measures in respect of armed forces which are under the command either of a Member State or an international organization of which at least one of the Member States is a member, in respect of international organizations of which at least one Member State is a member and in respect of diplomatic bodies;

Whereas a provision should be introduced whereby the refund must be paid by the Member State on whose territory the export declaration was accepted;

Whereas it may happen that by reason of circumstances beyond the control of the exporter the control copy cannot be produced although the product has left the customs territory of the Community or has reached a particular destination; whereas such a situation may impede trade; whereas in such circumstances other documents should be recognized as equivalent;

Whereas in the interests of sound administrative practice applications for payment of the refund, accompanied by all relevant documents, should be required to be made within a reasonable period, save in cases of *force majeure* and in particular when it has not been possible to comply with the time-limit because of administrative delays beyond the control of the exporter;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Monetary Committee and of all the relevant Management Committees,

HAS ADOPTED THIS REGULATION:

TITLE 1

FIELD OF APPLICATION

Article 1

Without prejudice to derogations provided for in Community rules specific to certain products, this Regulation lays down common detailed rules for the application of the system of export refunds (hereinafter referred to as 'refunds') established by or provided for in:

- Articles 20 and 28 of Regulation No 136/66/EEC (oils and fats),
- Article 17 of Regulation (EEC) No 804/68 (milk and milk products),
- Article 18 of Regulation (EEC) No 805/68 (beef and veal),
- Article 9 of Regulation (EEC) No 727/70 (raw tobacco),

⁽¹⁾ OJ No L 83, 30. 3. 1981, p. 40.

- Article 30 of Regulation (EEC) No 1035/72 (fruit and vegetables),
- Article 19 of Regulation (EEC) No 1785/81 (sugar and isoglucose),
- Article 16 of Regulation (EEC) No 2727/75 (cereals),
- Article 15 of Regulation (EEC) No 2759/75 (pig-meat),
- Article 9 of Regulation (EEC) No 2771/75 (eggs),
- Article 9 of Regulation (EEC) No 2777/75 (poultrymeat),
- Article 25 of Regulation (EEC) No 3796/81 (fishery products),
- Article 17 of Regulation (EEC) No 1418/76 (rice),
- Articles 11 and 12 of Regulation (EEC) No 426/86 (products processed from fruit and vegetables),
- Article 56 of Regulation (EEC) No 822/87 (wine).

Article 2

1. For the purposes of this Regulation:

(a) 'product' means:

- agricultural products listed in Annex II to the Treaty, and
- agricultural products exported in the form of goods not listed in Annex II to the Treaty, which are listed in Article 1 of Council Regulation⁽¹⁾ (EEC) No 3035/80⁽¹⁾;

(b) 'import duties' means customs duties and charges having equivalent effect and agricultural levies and other import charges provided for under the common agricultural policy or under specific trade arrangements applicable to certain goods resulting from the processing of agricultural products;

(c) 'exporting Member State' means the Member State in which the export declaration is accepted.

2. For the purposes of this Regulation refunds fixed under a tendering procedure shall rank as refunds fixed in advance.

TITLE 2

EXPORTS TO NON-MEMBER COUNTRIES

CHAPTER 1

ENTITLEMENT TO REFUND

Section 1

General Provisions

Article 3

1. The day of export means the date on which the customs authority accepts the export declaration in which it is stated that a refund will be applied for.
2. The date of acceptance of the export declaration shall determine:
 - (a) the rate of the refund where the refund is not fixed in advance;
 - (b) any adjustments to be made to the rate of the refund where it is so fixed.
3. Any other act having the same effect in law as the acceptance of the export declaration shall be deemed to be equivalent to such acceptance.

4. The day of export shall be used to establish the quantity, nature and characteristics of the product exported.

5. The document used for export to enable products to qualify for a refund must include all information necessary for the calculation of the amount of the refund, and in particular:

- (a) a description of the products in accordance with the nomenclature used for refunds;
- (b) the net mass of the products or, where applicable, the unit of measurement to be taken into account in calculating the refund; and,
- (c) in so far as is necessary for calculating the refund, particulars of the composition of the products or the relevant reference.

If the document mentioned in this paragraph is the export declaration, this document must also include these references and the reference 'refund code'.

⁽¹⁾ OJ No L 323, 29. 11. 1980, p. 27.

6. At the time of such acceptance, or of such equivalent act, the products shall be placed under customs control until they leave the customs territory of the Community.

Article 4

1. Without prejudice to the provisions of Articles 5 and 16, the refund shall be paid only upon proof being furnished at the products for which the export declaration was accepted have, within 60 days from the date of such acceptance of the export declaration, left the customs territory of the Community in the unaltered state.

2. For the purposes of this Regulation, products delivered as catering supplies to drilling or extraction rigs as defined by Article 42 (1) (a) shall be deemed to have left the customs territory of the Community.

3. Compliance with the provisions of paragraph 1 shall not be prejudiced by freezing of products or goods.

The same shall hold true as regards repackaging, provided that such repackaging does not result in a change either in the subheading of the Combined Nomenclature or in the subheading of the nomenclature used for refunds or other amounts applicable to exports. The item concerned may be repackaged only after notification to, and approval of, the customs authorities.

Where repackaging occurs, the control copy T 5 referred to in Article 1 of Regulation (EEC) No 2823/87 shall be completed with the appropriate entry.

4. Where an exporter is unable by reason of *force majeure* to comply with the period specified in paragraph 1, such period may at the exporter's request be extended for such period as the competent agency of the Member State in which the export declaration was accepted considers necessary in view of the circumstances invoked.

Article 5

1. Payment of the differentiated or non-differentiated refund shall be conditional not only on the product having left the customs territory of the Community but also — save where it has perished in transit as a result of *force majeure* — on its having been imported into a non-member country and, where appropriate, into a specific non-member country within 12 months following the date of acceptance of the export declaration:

(a) where there is serious doubt as to the true destination of the product, or

(b) where, by reason of the difference between the amount of the refund on the exported product and the amount of the import duties applicable to an identical product on the date of acceptance of the export declaration, it is possible that the product may be re-introduced into the Community.

However that period may be extended under the conditions laid down in Article 47.

In the cases referred to in the first subparagraph, the provisions of Articles 17 (3) and 18 shall apply.

In addition, the competent authorities of the Member States may require that additional evidence be provided such as to satisfy them that the product has actually been placed on the market in the non-member country of import in the unaltered state.

2. Where the import duties are determined wholly or partly on an *ad valorem* basis, the Commission, acting in accordance with the procedure laid down in Article 38 of Regulation No 136/66/EEC and in the corresponding Articles of the other Regulations establishing common organizations of the markets, shall determine the cases in which the provisions of paragraph 1 (b) are in practice to apply.

Where there are serious doubts as to the real destination of products, the Commission may request Member States to apply the provisions of paragraph 1.

3. If the product, after leaving the customs territory of the Community, has perished in transit as a result of *force majeure*, the amount paid shall be:

- in the case of a refund which varies according to destination, the part thereof specified in Article 20,
- in the case of a refund which does not so vary, the total amount thereof.

Article 6

If, before leaving the customs territory of the Community, a product for which the customs declaration has been accepted crosses Community territory other than that of the Member State where that declaration was accepted, proof that the product has left the customs territory of the Community shall be furnished by production of the original of the T 5 control copy referred to in Article 1 of Regulation (EEC) No 2823/87.

Boxes 33, 103 and 104, and where appropriate box 105, of the control copy shall be completed. The appropriate entry shall be made in box 104.

Article 7

1. Where the product is placed, in the Member State in which the customs declaration has been accepted, under

one of the procedures provided for in Title IV, Chapter I of Regulation (EEC) No 1062/87 for carriage to a station of destination or delivery to a consignee outside the customs territory of the Community, payment of the refund shall not be subject to production of proof as provided for in Article 6.

2. For the purposes of paragraph 1, the competent customs office shall ensure that the following endorsement is entered on the document issued for the purposes of payment of the export refund: 'Departure from the Customs territory of the Community under the simplified Community transit procedure for carriage by rail or large containers'.

3. The customs office where the products are placed under one of the procedures referred to in paragraph 1 may permit the contract of carriage to be varied so that carriage ends within the Community only if it is established:

- that, if the export refund has already been paid, such refund has been repaid, or
- that the necessary steps have been taken by the authorities concerned to ensure that the refund is not paid.

However, if the refund has been paid pursuant to paragraph 1 and the product has not left the customs territory of the Community within the prescribed period, the competent customs office shall so inform the agency responsible for payment of the export refund and shall provide it as soon as possible with all the necessary particulars. In such cases the refund shall be regarded as having been wrongly paid.

4. Where the export declaration for a product has been accepted in one Member State and, circulating under the external Community transit procedure, that product is placed in another Member State under one of the procedures provided for in title IV, Chapter 1 of Regulation (EEC) No 1062/87 for carriage to a station of destination or delivery to a consignee outside the customs territory of the Community, the customs office at which the product has been placed under one of the procedures referred to above shall fill in the section 'Control of use and/or destination' on the back of the original of the T 5 control copy referred to in Article 6 by making one of the following entries under 'Remarks':

- Salida del territorio aduanero de la Comunidad bajo el régimen de tránsito comunitario simplificado por ferrocarril o en contenedores grandes:
 - Documento de transporte:
 - tipo:
 - número:
 - Fecha de aceptación para el transporte por parte de la administración ferroviaria o de la empresa de transportes de que se trate:

— Udgang af Fællesskabets toldområde i henhold til ordningen for den forenklede procedure for fællesskabsforsendelse med jernbane/store containere:

- Transportdokument:
 - type:
 - nummer:

— Dato for overtagelse ved jernbane eller ved det pågældende transportfirma:

— Ausgang aus dem Zollgebiet der Gemeinschaft im Rahmen des vereinfachten gemeinschaftlichen Versandverfahrens mit der Eisenbahn oder in Großbehältern:

- Beförderungspapier:
 - Art:
 - Nummer:

— Zeitpunkt der Annahme zur Beförderung durch die Eisenbahnverwaltung oder das betreffende Beförderungsunternehmen:

— Έξοδος από το τελωνειακό έδαφος της Κοινότητας υπό το απλοποιημένο καθεστώς της κοινοτικής διαμετακόμισης με σιδηρόδρομο ή μεγάλα εμπορευματοκιβώτια:

- Έγγραφο μεταφοράς:
 - τύπος:
 - αριθ.:

— Ημερομηνία αποδοχής για μεταφορά από τη σιδηροδρομική αρχή ή την ενδιαφερόμενη εταιρεία μεταφοράς:

— Exit from the customs territory of the Community under the simplified Community transit procedure for carriage by rail or large containers:

- Transport document:
 - type:
 - number:

— Date of acceptance for carriage by the railway authorities or the transport undertaking concerned:

— Sortie du territoire douanier de la Communauté sous le régime du transit communautaire simplifié par fer ou par grands conteneurs:

- Document de transport:
 - espèce:
 - numéro:

— Date d'acceptation pour le transport par l'administration des chemins de fer ou par l'entreprise de transports concernée:

— Uscita dal territorio doganale della Comunità in regime di transito comunitario semplificato per ferrovia o grandi contenitori:

- Documento di trasporto:
 - tipo:
 - numero:

— Data di accettazione per il trasporto da parte delle ferrovie o dell'impresa di trasporto interessata:

- Uitgang uit het douanegebied van de Gemeenschap de regeling vereenvoudigd communautair douanevervoer per spoor of in grote containers:
 - Vervoerdocument:
 - type:
 - nummer:
 - Datum van aanneming ten vervoer door de betrokken spoorwegadministratie of de betrokken vervoeronderneming:
- Saída do território aduaneiro da Comunidade ao abrigo do regime do trânsito comunitário simplificado por caminho-de-ferro ou em grandes contentores:
 - Documento de transporte:
 - tipo:
 - número:
 - Data de aceitação para o transporte pela administração dos caminhos-de-ferro ou pela empresa de transporte interessada:

Where the transport contract is amended in such a way that the transport operation is terminated within the Community, the provisions of paragraph 3 shall apply *mutatis mutandis*.

Article 8

1. A refund shall be granted only in respect of products which come within the terms of Article 9 (2) of the Treaty, even if the packaging does not come within those terms.

However, with regard to products traded between a new Member State and the Community as constituted before the accession of that new Member State, a refund shall be granted only if any accession compensatory amount applicable to those products in the exporting Member State has been collected.

2. When compound products qualifying for a refund fixed on the basis of one or more of their ingredients are exported, that refund shall be paid in so far as the ingredient or ingredients in respect of which the refund is claimed come within the terms of Article 9 (2) of the Treaty.

The refund shall also be paid where the ingredient or ingredients in respect of which the refund is claimed came originally within the terms of the said Article 9 (2) and no longer do so by reason solely of their incorporation in other products.

3. For the purposes of paragraph 2, the following refunds are considered as refunds fixed on the basis of an ingredient:

- refunds applicable to products of the cereals, eggs, rice, sugar, isoglucose and milk and milk products sectors, exported in the form of goods referred to in Article 1 of Regulation (EEC) No 3035/80;
- refunds applicable to white sugar and raw sugar falling within heading No 1701 of the Combined Nomenclature, glucose and glucose syrup falling within subheadings 1702 30 51, 1702 30 59, 1702 30 91, 1702 30 99, 1702 40 90 and 1702 90 50 of the Combined Nomenclature, isoglucose falling within subheadings 1702 30 10, 1702 40 10, 1702 60 10 and 1702 90 30 of the Combined Nomenclature and beet and cane syrups falling within subheadings 1702 60 90 and 1702 90 90 of the Combined Nomenclature used in products listed in Article 1 (1) (b) of Regulation (EEC) No 426/86;
- refunds applicable to products of the milk and milk products and sugar sectors, exported in the form of products falling within subheadings 0402 10 91 to 99, 0402 29, 0402 99, 0403 10 31 to 39, 0403 90 31 to 39, 0403 90 61 to 69, 0404 10 19 and 99 and 0404 90 51 to 99 of the Combined Nomenclature;
- refunds applicable to products of the cereals sector, exported in the form of products falling within subheadings 2309 10 11 to 70 and 2309 90 31 to 70 of the Combined Nomenclature and mentioned in Annex A to Regulation (EEC) No 2727/75;
- refunds applicable to products of the milk and milk products sector, exported in the form of products falling within subheading 2309 10 11 to 70 and 2309 90 31 to 70 of the Combined Nomenclature and mentioned in Article 1 of Regulation (EEC) No 804/68.

Article 9

1. The rate of refund applicable to mixtures falling within Chapters 2, 10 or 11 of the Combined Nomenclature shall be:

- (a) for mixtures in which one ingredient accounts for at least 90 % by weight, the rate for that ingredient;
- (b) for other mixtures, the rate for the ingredient for which the lowest refund rate applies. In cases where one or more of the ingredients of these mixtures is not eligible for a refund, no refund shall be paid in respect of such mixtures.

2. The provisions of paragraph 1 shall not apply to mixtures for which special rules of calculation are laid down.

Article 10

1. Where the grant of the refund is conditional upon the product being of Community origin, the exporter shall be

required to declare that origin in accordance with the Community rules in force.

2. For the purposes of Article 15 (1) of Regulation (EEC) No 766/68, the exporter shall be required to declare that the sugar fulfills one of the conditions laid down in that Regulation and to specify the condition in question.

For the purposes of Article 5 (1) (b) of Regulation (EEC) No 326/71, the exporter shall be required to declare that the tobacco was obtained from the crop in respect of which the refund is claimed.

3. The declarations provided for in paragraphs 1 and 2 shall be verified in the same way as the other items in the export declaration.

Article 11

A refund may be withheld if the amount thereof in respect of any one application, which may cover one or more export declarations, does not exceed 25 ECU.

Article 12

The provisions relating to the advance fixing of the rate of the refund and to the adjustments to be made in the rate of the refund shall apply only to products for which a rate of refund equal to or greater than zero has been fixed.

Article 13

No refund shall be granted on products which are not of sound and fair marketable quality, or on products intended for human consumption whose characteristics or condition exclude or substantially impair their use for that purpose.

Article 14

1. No refund shall be granted on exports subject to an export levy or other export charge fixed in advance or determined by tender.

2. Where, in the case of a compound product, an export levy or other export charge is fixed in advance on the basis of one or more of the ingredients of the product, no refund shall be granted for that ingredient or those ingredients.

Article 15

No refund shall be granted on products sold or distributed on board ship which are liable to be reintroduced subsequently into the Community free of duties under Council Regulation (EEC) No 918/83 ⁽¹⁾.

Section 2

Differentiated refunds

Article 16

1. Where the rate of refund varies according to destination, payment of the refund shall be dependant upon the additional conditions laid down under Articles 17 and 18.

2. Where a single rate of refund applies in respect of all destinations on the day of advance fixing and a compulsory destination is prescribed, the refund shall be treated as varying according to destination if the rate of refund applying on the day of acceptance of the export declaration is lower than the rate fixed in advance, as adjusted, where appropriate, on the date of acceptance of the export declaration.

Article 17

1. The product must have been imported in the unaltered state into the non-member country or one of the non-member countries for which the refund is prescribed within 12 months following the date of acceptance of the export declaration. However, that period may be extended under the conditions laid down in Article 47.

2. Products shall be regarded as having been imported in the unaltered state if there is no evidence whatsoever of processing.

However:

— operations designed to ensure that the products remain in the unaltered state, mentioned in Article 28 (4), may be carried out if, on the list of refunds, the product imported into the non-member country does not come under another subheading of the nomenclature used for the refunds for which a refund rate other than that for the exported product has been fixed;

— a product which was processed before being imported shall be regarded as having been imported in the

⁽¹⁾ OJ No L 105, 23. 4. 1983, p. 1.

unaltered state if the processing took place in the non-member country into which all the products resulting from such processing were imported.

3. A product shall be considered to have been imported when it has been cleared through customs for release for consumption in the non-member country concerned.

Article 18

1. Proof that the product has been cleared through customs for release for consumption shall be furnished by production of:

- (a) the relevant customs document or a copy or photocopy thereof; such copy or photocopy must be certified as being a true copy by either the body which endorsed the original document, an official agency of the non-member country concerned, or an official agency of a Member State; or
- (b) the customs entry certificate made out in accordance with the specimen in Annex II; this certificate must be completed in one or more official languages of the Community and in a language in current use in the non-member country concerned; or
- (c) any other document endorsed by the customs authorities of the non-member country concerned which identifies the products and shows that they have been released for consumption in that country.

2. If, however, owing to circumstances beyond the control of the exporter, none of the documents specified in paragraph 1 can be produced, or they are considered inadequate, proof of clearance through customs for release for consumption may be deemed to be furnished by production of one or more of the following documents:

- (a) a copy of the unloading document issued or endorsed in a non-member country for which the refund is prescribed;
- (b) a certificate of unloading issued by an official agency of one of the Member States established in or competent for the country of destination, certifying also that the product has left the port zone or at least that, to its knowledge, the product has not subsequently been loaded for re-export;
- (c) a certificate of unloading drawn up by an international control and supervisory agency approved by the Member State in which the export declaration was accepted, certifying also that the product has left the port zone or at least that, to its knowledge, the product has not subsequently been loaded for re-export;

(d) a bank document issued by approved intermediaries established in the Community certifying, in the case of the non-member countries listed in Annex III, that payment for the export in question has been credited to the exporter's account with them;

(e) a statement of acceptance of delivery issued by an official agency of the non-member country, if the goods have been bought by that country or by an official agency of that country or form part of a food aid programme;

(f) a statement of acceptance of delivery issued by an international organization if the goods form part of a food aid programme;

(g) a statement of acceptance of delivery issued by a body in a non-member country in respect of which tendering procedures can be accepted for the purposes of Article 43 of Commission Regulation (EEC) No 3183/80 ⁽¹⁾ if the goods have been purchased by that body.

3. In addition, the exporter shall in all cases where this Article applies produce a copy or photocopy of the transport document.

4. The Commission may, in accordance with the procedure laid down in Article 38 of Regulation No 136/66/EEC and in the corresponding Articles of the other Regulations on the common organization of markets, provide in certain specific cases to be determined that the proof of importation referred to in paragraphs 1 and 2 may be deemed to be furnished by production of a specific document or in any other way.

Article 19

1. Member States may exempt the exporter from furnishing the proof required under Article 18 other than the transport document, where the transaction concerned offers adequate assurances that the products in question will reach their destination and is the subject of an export declaration giving entitlement to a refund not exceeding:

- (a) 1 000 ECU in the case of products specified in Article 1 (2) (c) of Regulation No 136/66/EEC;
- (b) 1 000 ECU in the case of products other than those referred to in (a) if the non-member country of destination lies within Europe;
- (c) 5 000 ECU in the case of products other than those referred to in (a), if the non-member country of destination lies outside Europe.

2. For the purposes of paragraph 1, any monetary compensatory amounts, including the monetary coefficient, or accession compensatory amounts shall not be taken into account.

⁽¹⁾ OJ No L 338, 13. 12. 1980, p. 1.

Article 20

1. By way of derogation from Article 16 and without prejudice to the provisions of Article 5, a part of the refund shall be paid upon proof being furnished that the product has left the customs territory of the Community.

Where the amount to be paid does not exceed 1 000 ECU, Member States may defer payment of such an amount until payment of the total amount of the refund concerned, other than in cases where the exporter states that he will not apply for payment of a further amount for the operation concerned.

2. The part of the refund referred to in paragraph 1 shall be calculated:

(a) in the case of exports where the refund has not been fixed in advance:

at the lowest rate applicable on the date of acceptance of the export declaration, on condition that the rate is applicable for all non-member countries for the products concerned;

(b) in the case of exports where the refund has been fixed in advance and in respect of which no compulsory destination has been specified:

at the lowest rate of refund applicable on the date of deposit of the application for the export licence or advance-fixing certificate, on condition that the rate is applicable for all non-member countries for the products concerned; this rate shall be adjusted, where appropriate, at the date of acceptance of the export declaration;

(c) in the case of exports where the refund has been fixed in advance and in respect of which a compulsory destination has been specified:

— on the basis of the rate of refund calculated in accordance with the provisions laid down under (b), where that rate is less than that calculated under the provisions laid down under (a),

— on the basis of the rate of refund calculated in accordance with the provisions laid down under (a), where that rate is less than that calculated under the provisions laid down under (b)

on condition that, for those products, those rates are applicable for all non-member countries on the date of acceptance of the export declaration and on the date of deposit of the application for the export licence or advance fixing certificate.

3. Where a rate of refund has been determined under an invitation to tender and the relevant contract contains a compulsory destination clause, any periodic refund fixed for the compulsory destination on the date of deposit of the application for a licence or certificate and on the date of acceptance of the export declaration — or the fact that on that date no such refund has been fixed — shall not be

taken into account in determining the lowest rate of the refund within the meaning of paragraph 1.

Article 21

1. The provisions of this Article shall apply where a product is exported on submission of an export licence or advance-fixing certificate specifying a compulsory destination.

2. Where the product does not reach the compulsory destination, only that part of the refund resulting from the application of Article 20 shall be paid.

3. Where, as a result of *force majeure*, the product is delivered to a destination other than that in respect of which such licence or certificate was issued, a refund shall be paid at the request of the exporter if he furnishes proof of *force majeure* and proof of the actual destination of the product; proof of the actual destination shall be furnished in accordance with the provisions of Articles 17 and 18.

4. Where paragraph 3 applies and the refund was fixed in advance, the refund shall be calculated on the assumption that the exporter fixed in advance the refund for the actual destination, provided that:

— an application for advance-fixing of the refund for the actual destination would have been possible on the date of the application for advance-fixing of the refund for the compulsory destination, and

— the advance-fixing certificate which would have been issued for the actual destination would have been valid on the date on which the customs formalities referred to in Article 22 (1) (b) of Regulation (EEC) No 3183/80 were completed.

If the conditions specified in the previous subparagraph are not fulfilled, the refund shall be calculated on the basis of the rate applicable for the actual destination on the date on which the export declaration was accepted. However, where the refund as calculated in accordance with this subparagraph is higher than that calculated in accordance with the first subparagraph, the latter shall apply.

5. To qualify for the refund fixed in advance, where a product is exported under a licence or certificate issued pursuant to Article 43 of Regulation (EEC) No 3183/80 and the refund varies according to destination, the exporter must show, in addition to the proof required under Article 18, that the product has been delivered in the non-member country of import to the agency specified under the invitation to tender to which the licence refers.

CHAPTER 2

CHAPTER 3

ADVANCES ON REFUNDS FOR DIRECT EXPORTS

ADVANCES ON REFUNDS WHERE GOODS ARE
PROCESSED OR STORED PRIOR TO EXPORT —
APPLICATION OF REGULATION (EEC) No 565/80

Article 22

1. On application by the exporter, Member States shall advance all or part of the amount of the refund as soon as the export declaration has been accepted, on condition that a security is lodged of which the amount is equal to the amount advanced plus 15 %.

Member States may lay down the conditions under which it shall be possible to apply for an advance of part of the refund.

2. The amount advanced shall be calculated taking account of the rate of refund applicable for the declared destination, corrected, as necessary, by the monetary compensatory amounts, accession compensatory amounts and any other amounts provided for by Community rules.

Article 23

1. Where the amount advanced is greater than the amount actually due in respect of the relevant export operation or an equivalent export operation, the exporter shall repay the difference between the two amounts plus 15 % of such difference.

Where, however, by reason of *force majeure*:

- the proof to be furnished under this Regulation in order to qualify for the refund cannot be produced, or
- the product reaches a destination other than that for which the advance was calculated

the additional 15 % shall not be charged.

2. 'Export of equivalent products' shall mean the export, after reimportation under return arrangements, of equivalent products falling within the same subheading of the combined Nomenclature, provided that the conditions referred to in Article 39 (2) (a) and (b) of Regulation (EEC) No 3183/80 are fulfilled.

This provision shall apply only where the return arrangements have been used in the Member State in which the export declaration was accepted.

Article 24

1. For the application of Article 3 of Regulation (EEC) No 565/80, negative monetary compensatory amounts shall not be taken into consideration when determining whether or not a refund equal to or greater than zero has been fixed.

2. The provisions of Regulation (EEC) No 565/80 shall apply to positive monetary compensatory amounts where they are granted in addition to a refund.

Article 25

1. Where the exporter states his intention to export the products or goods after processing or storage, and to qualify for a refund, in accordance with the provisions of Articles 4 or 5 of Regulation (EEC) No 565/80, admission under those provisions shall be subject to the lodging with the customs authorities of a declaration, hereinafter referred to as the 'payment declaration'.

Member States may give the payment declaration another title.

2. The payment declaration shall include all such particulars as are necessary for determining the refund and, where applicable, the monetary compensatory amount in respect of the products or goods to be exported, in particular:

- (a) a description of the products or goods in accordance with the nomenclatures used for refunds and monetary compensatory amounts;
- (b) the net mass of the product or goods, or, where applicable, the quantity expressed in the unit of measurement to be taken into account in calculating the refund or the monetary compensatory amount;
- (c) in so far as is necessary for determining the refund or the monetary compensatory amount, particulars of the composition of the products or goods or the relevant reference.

Furthermore, in cases where basic products are to be processed, the payment declaration shall include:

- a description of the basic products,
- the quantity of basic products,
- the rate of yield or similar information.

3. Notwithstanding the provisions of paragraph 2, provisional particulars of the goods to be obtained from basic products may, where circumstances so warrant and at the request of the exporter, be included in the payment declaration. In such cases the exporter shall declare to the competent authorities the final particulars when the processing is completed.

4. The payment declaration shall also include an indication of the use or destination of the products or goods:

- (a) where the exporter requests payment of an amount equal to the refund applicable for the use or destination to which the product or goods are intended;
- (b) where the use or destination is necessary for determining the period during which the products or goods may remain under customs control for processing or a customs warehousing or free zone procedure.

5. The use or destination shall be indicated as:

- a specific use or a specific country of destination, or
- a group of countries of destination for which the same rate of refund is applicable.

Article 26

1. At the time of acceptance of the payment declaration, the products or goods shall be placed under customs control until they leave the customs territory of the Community or until they have reached their destination.

2. The date of acceptance of the payment declaration shall determine:

- (a) the rates of the refund and the monetary compensatory amount applicable where the rates are not fixed in advance;
- (b) any adjustments to be made to the rates of refund and the monetary compensatory amount where they are so fixed.

Article 27

1. In respect of processed products or goods obtained from basic products, the result of a scrutiny of the payment declaration, whether or not combined with inspection of the basic products, shall be used for determining the refund and monetary compensatory amount.

2. Paragraph 1 shall not preclude any subsequent verification by the competent authorities of the Member

State concerned or any consequences of such verification under existing provisions.

3. Basic products must form all or part of the processed products or goods which are exported. However, the basic products may, provided the competent authorities agree, be replaced by equivalent products, falling within the same subheading of the Combined Nomenclature, of the same commercial quality, having the same technical characteristics and meeting the requirements for the granting of an export refund.

4. Replacement by equivalent products shall not be allowed for intervention products purchased for export which are under the control system set out in Article 2 of Regulation (EEC) No 1687/76.

5. The period during which the basic products may remain under customs control with a view to their being processed shall be six months from the date of acceptance of the payment declaration.

However, where the export is subject to submission of an export licence or where an advance fixing certificate is submitted, the period shall be equal to the remainder of the period of validity of the licence or certificate.

Where the operation is performed upon submission of a certificate, the outstanding period of validity of which is:

- less than three months, the period shall be increased to three months,
- more than one year, the period shall be limited to one year.

Article 28

1. In respect of products or goods to be exported after having been under a customs warehousing or free zone procedure, the result of the scrutiny of the payment declaration and of the products or goods themselves shall be used for determining the refund and the monetary compensatory amount.

2. Paragraph 1 shall not preclude any subsequent verification by the competent authorities of the Member State concerned or any consequences of such verification under existing provisions.

3. Loss of mass of products or goods occurring through natural shrinkage during their storage in customs warehouses or free zones shall not give rise to forfeiture of the security mentioned in Article 33. Damage to products or goods is not deemed to constitute natural shrinkage.

4. Products or goods under a customs warehousing or free zone procedure may be subjected there, as provided by the competent authorities, to the following operations:

- (a) stocktaking;
- (b) the affixing to the goods or products themselves, or to their packings, of marks, seals, labels or other similar distinguishing signs, provided there is no risk of there being conferred upon the goods an apparent origin different from their real one;
- (c) altering the marks and numbers on the packages, provided there is no risk of there being conferred upon the goods or products an apparent origin different from their real one;
- (d) packing, unpacking, change of packings or repair of packings;
- (e) airing;
- (f) chilling;
- (g) freezing.

Any refund or monetary compensatory amount applicable to goods or products which have been subjected to the forms of handling referred to above shall be determined in accordance with the quantity, nature and characteristics of the goods or products on the date laid down for the calculation of the refund, in accordance with the provisions of Article 26.

5. The period during which the products or goods may remain under a customs warehousing or free zone procedure shall be six months from the date of acceptance of the payment declaration.

6. The products or goods may be placed under the customs warehousing or free zone procedure in a Member State other than the Member State of acceptance of the payment declaration.

In that case proof that the products have left the customs territory of the Community or reached their intended destination shall be furnished by production of the T5 control copy referred to in Article 1 of Regulation (EEC) No 2823/87.

(a) Box 104 of the control copy shall be filled out under the heading 'Other' with one of the following entries:

- Pago anticipado de la restitución — Reglamento (CEE) n° 3665/87, apartado 6 del artículo 28. Declaración de exportación que debe ser presentada, a más tardar, el (fecha límite establecida para el plazo contemplado en el apartado 5)
- Forudbetaling af restitutionen — Artikel 28, stk. 6, i forordning (EØF) nr. 3665/87. Udførselsangivelsen skal indgives senest den (dato fastsat efter den i stk. 5 omhandlede frist)

— Vorfinanzierung der Erstattung — Artikel 28 Absatz 6 der Verordnung (EWG) Nr. 3665/87. Die Ausfuhranmeldung ist bis spätestens vorzulegen (durch die Frist gemäß Absatz 5 festgelegter Schlußtermin)

— Εκ των προτέρων πληρωμή της επιστροφής — κανονισμός (ΕΟΚ) αριθ. 3665/87, άρθρο 28 παράγραφος 6. Η διασάφηση εξαγωγής πρέπει να κατατεθεί το αργότερο μέχρι (ημερομηνία λήξεως της προθεσμίας που αναφέρεται στην παράγραφο 5)

— Payment in advance of the refund — Regulation (EEC) No 3665/87, Article 28 (6). Export declaration to be lodged by (deadline set by the time limit referred to in paragraph 5)

— Paiement à l'avance de la restitution — Règlement (CEE) n° 3665/87 article 28 paragraphe 6. Déclaration d'exportation à déposer au plus tard le (date limite fixée par le délai visé au paragraphe 5)

— Pagamento anticipato della restituzione — regolamento (CEE) n. 3665/87, articolo 28, paragrafo 6. Dichiarazione d'esportazione da presentare entro il (data limite fissata in base ai termini indicati al paragrafo 5)

— Betaling vooraf van de restitutie — Verordening (EEG) nr. 3665/87, artikel 28, lid 6. Aangifte ten uitvoer moet uiterlijk worden ingediend op (uiterste datum vastgesteld op basis van de in lid 5 bedoelde termijn)

— Pagamento antecipado da restituição — Regulamento (CEE) n° 3665/87, artigo 28º, nº 6. Apresentação da declaração de exportação o mais tardar em (data limite fixada pelo prazo referido no nº 5).

(b) The Member State of storage shall retain control copy T5 and endorse the box 'Control of use and/or destination' on the back of that control copy by entering under the heading 'Remarks' one of the following items:

— La fecha de aceptación de la declaración de exportación:

— La fecha de salida del territorio aduanero o la de llegada al destino correspondiente

— (datoen for antagelsen af udførselsangivelsen:)

— (datoen for udgangen af toldområdet eller ankomsten til destinationen:)

— Zeitpunkt der Annahme der Ausfuhranmeldung:

— Zeitpunkt des Verlassens des Zollgebiets oder des Erreichens der Bestimmung:

— την ημερομηνία αποδοχής της διασάφησης εξαγωγής,

— την ημερομηνία εξόδου από το τελωνειακό έδαφος ή αφίξεως στον προορισμό

- the date of acceptance of the export declaration:
- the date of removal from the customs territory or arrival at destination:
- (la date d'acceptation de la déclaration d'exportation:)
- (la date de sortie du territoire douanier ou de l'arrivée à destination:)
- (la data di accettazione della dichiarazione d'esportazione)
- (la data di uscita dal territorio doganale o dell'arrivo a destinazione)
- de datum van aanvaarding van de aangifte ten uitvoer:
- de datum waarop de produkten of goederen het douanegebied hebben verlaten of ter bestemming zijn aangekomen:
- Data de aceitação da declaração de exportação
- Data de saída do território aduaneiro ou da chegada ao destino

(c) Where, on removal from storage, the products or goods cross the territory of another Member State to be exported or to reach the specified destination, the first customs office of destination shall act as customs office of departure and shall establish or have established under its responsibility one or more new control copies.

Box 104 of the new control copy or copies shall be marked accordingly. Also, the number of the original control copy shall be entered, with the name of the customs office issuing that copy, in Box 106, and the date of issue.

Where the endorsement to be entered in the box headed 'Control of use and/or destination' of the control copy depends on information deriving from control copies received from the customs authorities of other Member States or national documents received by other national authorities, the customs office of destination referred to in the preceding subparagraph shall enter under the heading 'Remarks' the number or numbers of the relevant control copies or national documents.

Where not all the products mentioned on the control copy meet the prescribed conditions, the customs office of destination shall enter in the box 'Control of use and/or destination' of the control copy an indication of that quantity of products which has met those conditions.

Article 29

1. The amount to be paid in advance of export shall be paid by the Member State in which the payment declaration was accepted.

2. The amount shall be paid only on written application by the exporter. Member States may prescribe a special form to be used for that purpose.

3. The amount shall be calculated by using the rate of refund applicable for the use or destination if that is indicated. In other cases the lowest rate of refund shall be used.

The rate used, reduced or increased, as the case may be, by any accession compensatory amounts, shall be multiplied by the coefficient fixed pursuant to Article 6 (3) of Commission Regulation (EEC) No 3153/85 ⁽¹⁾.

4. The amount established pursuant to paragraph 3 shall be reduced or increased, as the case may be, by any monetary compensatory amounts applicable in the Member State in which the payment declaration is accepted.

Where Article 25 (3) is applied the reduction or the increase shall be made by using:

- the highest monetary compensatory amount concerned when a reduction is involved, and
- the lowest one when an increase is involved.

These provisional amounts shall be adjusted accordingly when the final amounts are known.

Article 30

1. The export declaration shall be lodged by the last day of the periods referred to in Articles 27 (5) and 28 (5) in the Member State in which the payment declaration has been accepted or, where Article 28 (6) is applied, in the Member State of storage.

2. Within the meaning of this Article, Belgium, Luxembourg and the Netherlands shall rank as a single Member State for the application of Article 5 of Regulation (EEC) No 565/80.

Article 31

1. A security equal to the amount calculated in accordance with Article 29 (3) plus any positive monetary compensatory amount, plus 20 % of those amounts, shall be lodged prior to acceptance of the payment declaration. The increase shall not be less than 3 ECU per 100 kilograms of net mass.

⁽¹⁾ OJ No L 310, 21. 11. 1985, p. 4.

2. Member States applying negative monetary compensatory amounts may calculate the securities provided for in paragraph 1 on the basis of the refund calculated pursuant to Article 29 (3), minus any negative monetary compensatory amount, provided that a national administrative procedure ensures the collection of the monetary compensatory amounts falling due if there is no entitlement to a refund or an entitlement to a refund smaller than the monetary compensatory amount.

3. Member States may allow the security referred to in paragraph 1 to be lodged after the acceptance of the payment declaration provided that national provisions:

- require the exporter to lodge the security within a maximum period of 30 days after this acceptance and before the advance payment is made,
- ensure the payment of an amount equal to the increase referred to in paragraph 1 if the security is not lodged in time, save in cases of *force majeure*; however, an extended time limit may be granted to the exporter if he has taken all necessary precautions.

Article 32

1. Within 60 days from the date on which the products or goods are no longer subject to the customs control or procedure provided for in Articles 4 or 5 of Regulation (EEC) No 565/80 they shall:

- leave the customs territory of the Community, in the unaltered state, or
- in the cases specified in Article 34 (1) of this Regulation, reach their destination, in the unaltered state.

2. The provisions of Article 4 (3) and (4) and of Article 7 shall be applicable in the cases referred to in paragraph 1.

Article 33

1. When the entitlement to a refund and/or a monetary compensatory amount has been proved in respect of products or goods admitted under the provisions of this chapter the sum due shall be set off against the amount paid in advance. In cases where the entitlement for the quantity exported is for an amount higher than that paid in advance, the difference shall be paid to the person concerned.

2. The release in full of the security shall be subject to the production of proof that:

- (a) the time limits laid down in Articles 27 (5), 28 (5) and 32 (1) have been complied with;

(b) the products concerned give entitlement to a refund equal to or higher than the amount determined in accordance with Article 29 (3).

3. Except in cases of *force majeure* the following provisions shall apply:

- (a) Where a time limit laid down in Articles 27 (5), 28 (5) and 32 (1) has not been complied with:

- (i) the refund shall first be reduced by 15 %. The remaining refund, hereinafter called the 'reduced refund', shall be further reduced as follows:
- (ii) 2 % of the reduced refund shall be lost for each day by which the time limit referred to in Articles 27 (5), and 28 (5) is exceeded, and
- (iii) 5 % of the reduced refund shall be lost for each day by which the time limit referred to in Article 32 (1) is exceeded.

The security forfeited shall be equal to:

- the reduction of the refund in accordance with the foregoing plus 20 %.

The balance of the security shall be released.

- (b) Where the documents referred to in Article 47 (2) are produced within six months of the time limit set for their production and where all other conditions have been observed, the amount reimbursed shall be equal to 85 % of the amount secured.

- (c) Where the documents referred to in Article 47 (2) are produced within six months of the time limit set for their production and where, in addition, there has been failure to observe a time limit laid down in Articles 27 (5), 28 (5) and 32 (1)

- an amount equal to the amount which would have been reimbursed in the event of point (b) only being applied,
- less the security which would have been forfeited in the event of point (a) only being applied.

- (d) Where

- the time limits laid down in Articles 27 (5), 28 (5) and 32 (1) have been complied with,
- the amount of the refund is smaller than the amount paid in advance,

the security forfeited shall be equal to the difference between the amount paid in advance and the amount of the actual refund, such difference being increased by 20 %.

- (e) Where

- the time limits laid down in Articles 27 (5), 28 (5) and 32 (1) have not been complied with,

- the amount of the refund is smaller than the amount paid in advance,

the security forfeited shall be equal to:

- the difference between the amount paid in advance and the amount of the actual refund, such difference being increased by 20 %
- this amount being increased by the security which would have been forfeited in the event of point (a) only being applied to the actual refund.

(f) Where

- the time limits laid down in Articles 27 (5), 28 (5) and 32 (1) have been complied with,
- the amount of the refund is smaller than the amount paid in advance,
- the documents referred to in Article 47 (2) are produced within six months of the time limit set for their production,

the amount to be reimbursed shall be equal to:

- an amount equal to the amount which would have been reimbursed in the event of point (b) only being applied,
- minus the difference between the amount paid in advance and the amount of the actual refund, such difference being increased by 20 %.

(g) Where

- the time limits laid down in Articles 27 (5) and 28 (5) and 32 (1) have not been complied with,
- the amount of the refund is smaller than the amount paid in advance,
- the documents referred to in Article 47 (2) are produced within six months of the time limit set for their production,

the amount to be reimbursed shall be equal to:

- an amount equal to the amount which would have been reimbursed in the event of point (b) only being applied,
- minus the difference between the amount paid in

advance and the amount of the actual refund, such difference being increased by 20 %,

- minus the security which would have been forfeited in the event of point (a) only being applied to the actual refund.

4. In the case of application of the minimum increase provided for in the second sentence of Article 31 (1), any reference to the 20 % referred to in paragraph 3 should be replaced by the percentage corresponding to the ratio of the amount of the minimum increase to the amount paid in advance.

5. Where, as a result of a case of *force majeure*, the amount of the refund is smaller than the amount paid in advance, the security forfeited shall be equal to the difference between:

- the amount of the refund advanced,
- and,
- the amount of the refund actually due.

This provision shall apply also in cases where entitlement to the refund concerns a refund amount smaller than the amount paid in advance, and where the time limits laid down in Articles 27 (5), 28 (5) and 32 (1) have not been complied with as a result of a case of *force majeure*.

6. Where it is shown that the products or goods:

- have not left the territory of the Member State in which the payment declaration was accepted, the security forfeited shall be reduced by the negative monetary compensatory amount plus 20 %, unless the Member State applies the provisions of Article 31 (2),
- have left the territory of the Member State in which the payment declaration was accepted, the security forfeited shall be reduced by the positive monetary compensatory amount plus 20 %.

TITLE 3

OTHER TYPES OF EXPORTATION AND SPECIAL CASES

CHAPTER 1

DESTINATIONS TREATED AS EXPORTS OUTSIDE THE COMMUNITY, AND VICTUALLING

Article 34

1. For the purposes of this Regulation the following shall be treated as exports from the Community:

(a) supplies within the Community for victualling:

- seagoing vessels, or
- aircraft serving on international routes, including intra-Community routes;

(b) supplies to international organizations established in the Community;

- (c) supplies to armed forces stationed in the territory of a Member State but not coming under its flag.

2. However, paragraph 1 shall apply only where identical products imported from non-member countries for these uses are exempted from import duties in the Member State in question.

3. The provisions of Article 3 shall apply.

Article 35

1. In the case of the supplies referred to in Articles 34 and 42, Member States may, by way of derogation from Article 3, authorize the use of the following procedure for the payment of refunds. An exporter following this procedure may not at the same time use the normal procedure for identical products.

The authorization may be limited to certain places of loading in the Member State in which the export declaration has been accepted. The authorization may include loading in other Member States, in which case the provisions of Article 6 shall apply.

2. For products loaded each month as provided for in this Article, the last day of the month shall be taken as the effective date for determining either the rate of refund or, where the refund has been fixed in advance, any adjustments thereto.

3. Where the refund has been fixed in advance or determined by tender, the certificate must be valid on the last day of the month.

4. The exporter must keep a register containing the following information:

- (a) particulars permitting the identification of the products in accordance with Article 3 (5);
- (b) the name or registration number of each vessel or aircraft onto which the products have been loaded;
- (c) the date of loading.

The information referred to in the first subparagraph must be entered in the register not later than the first working day after the day of loading. However, when loading is carried out in another Member State, the abovementioned information must be entered in the register not later than the first working day following that on which the exporter has been informed that the products have been loaded.

The exporter must also afford all facilities for any checks which the Member State may consider necessary and keep the register for at least three years from the end of the current calendar year.

5. Member States may decide that the register may be replaced by the documents used for each delivery on which the customs authorities have certified the date of loading.

Article 36

1. For the purposes of Article 34 (1) (a), products which are intended to be consumed on board aircraft but which are prepared before being placed on board shall be deemed to have been prepared on board the aircraft.

2. The provisions of this Article shall apply only:

- for the preparation of tray-type aircraft meals, and
- on condition that the exporter furnishes sufficient evidence of the quantity, nature and characteristics of the basic products before preparation for which the refund is claimed.

3. The victualling warehouse arrangements provided for in Article 38 may be applied to the preparation of meals as referred to in paragraphs 1 and 2.

Article 37

1. The refund shall not be paid unless the products for which the export declaration has been accepted have reached one of the destinations laid down in Article 34 within 60 days of such acceptance.

2. The provisions of Article 4 (3) and (4) shall apply in the case referred to in paragraph 1.

3. If, before reaching one of the destinations specified in Article 34, a product for which the export declaration has been accepted crosses Community territory other than that of the Member State in whose territory such acceptance took place, proof that the product has reached the intended destination shall be furnished by production of the control copy referred to in Article 1 of Regulation (EEC) No 2823/27.

Boxes 33, 103, 104 and, where appropriate, 105 of the control copy shall be completed. Box 104 shall be endorsed accordingly.

Article 38

1. Member States may advance the net amount of the refund to exporters under the special conditions specified below, when evidence has been furnished that the products have been placed, within 30 days following acceptance of the export declaration except in case of *force majeure*, in premises subject to customs control, for victualling within the Community of:

- seagoing vessels, or
- aircraft serving on international routes including intra-Community routes, or
- drilling or extraction rigs as referred to at Article 42.

The premises subject to customs supervision, hereinafter referred to as 'victualling warehouses', and the warehousekeeper, must be specially approved for the purposes of this Article.

2. The Member State on whose territory the victualling warehouse is situated shall grant approval only to warehousekeepers and victualling warehouses offering the necessary guarantees. Approval may be withdrawn.

Approval shall be granted only to warehousekeepers who undertake in writing:

- (a) to load the products on board in the unaltered state or frozen and/or after packaging for the victualling within the Community of:
 - sea-going vessels, or
 - aircraft serving on international routes, including intra-Community routes, or
 - drilling or extraction rigs as referred to at Article 42;
- (b) to keep a register enabling the competent authorities to carry out any checks necessary and giving, in particular:
 - the date of entry to the victualling warehouse,
 - the numbers of the customs documents accompanying the products and particulars of the customs office concerned,
 - the information required to identify the products pursuant to Article 3 (5),
 - the date on which the products left the victualling warehouse,

- the registration numbers and names (if any) of all vessels or aircraft onto which the products were loaded or the name of any warehouse to which they have been transferred,
- the date on which they were loaded on board;

- (c) to keep this register for at least three years from the end of the current calendar year;
- (d) to afford all facilities for regular and any other checks which the competent authorities may consider desirable in order to verify that the provisions of this paragraph have been complied with;
- (e) to pay any sums required by way of reimbursement of the refund under Article 40.

3. The amount paid to the exporter by virtue of paragraph 1 shall be entered as a payment in the accounts of the body having made the advance.

4. For the purposes of this Article and of Article 40, the net amount of the refund means the amount of the refund adjusted for any monetary or accession compensatory amount to be levied.

Article 39

1. Where the export declaration has been accepted in the Member State in which the victualling warehouse is situated, the competent customs authority shall, on entry of the goods into such warehouse, indicate on the national document required to obtain advance payment of the refund that the products comply with the provisions of Article 38.

2. Where the export declaration has been accepted in a Member State other than that in which the victualling warehouse is situated, proof that the products have been placed in a victualling warehouse shall be furnished by production of the control copy referred to in Article 1 of Regulation (EEC) No 2823/87.

Boxes 33, 103, 104 and, where appropriate, 105 of the control copy shall be completed. Box 104 of the original T 5 control copy shall be completed under the heading 'Other' by one of the following entries:

- Depositado con entrega obligatoria para el abastecimiento — aplicación del artículo 38 del Reglamento (CEE) nº 3665/87
- Anbringelse på oplag med obligatorisk levering til proviantering — anvendelse af artikel 38 i forordning (EØF) nr. 3665/87
- Einlagerung ins Vorratslager mit Lieferpflicht zur Bevorratung — Artikel 38 der Verordnung (EWG) Nr. 3665/87

- Εναποθήκευση με υποχρεωτική παράδοση για τον ανεφοδιασμό — εφαρμογή του άρθρου 38 του κανονισμού (ΕΟΚ) αριθ. 3665/87
- Deposit in warehouse, compulsory supply for victualling — Article 38 of Regulation (EEC) No 3665/87
- Mise en entrepôt avec livraison obligatoire pour l'avitaillement — application de l'article 38 du règlement (CEE) n° 3665/87
- Deposito to con consegna obbligatoria per l'approvvigionamento — applicazione dell'articolo 38 del regolamento (CEE) n. 3665/87
- Opslag in depot onder verplichting van levering voor de bevoorrading van zeeschepen of luchtvaartuigen — toepassing van artikel 38 van Verordening (EEG) nr. 3665/87
- Colocado em entreposto com destino obrigatório para abastecimento — aplicação do artigo 38º do Regulamento (CEE) n° 3665/87.

The competent customs office of the Member State of destination shall confirm receipt into warehouse on the control copy, after having checked that the products have been entered in the register referred to in Article 38 (2).

Article 40

1. If it is found that a product placed in a victualling warehouse has not reached or is no longer in a condition to be sent to the prescribed destination, the warehousekeeper shall pay to the competent authority in the Member State of storage a fixed sum.
2. The sum referred to in paragraph 1 shall be calculated as follows:
 - (a) the total amount of the import duties applicable to an identical product when it is placed in free circulation in the Member State of storage shall be determined;
 - (b) the amount obtained in accordance with (a) shall then be increased by 20 %.

The rate applicable for calculating the import duties shall be:

- that applying on the date on which the product was diverted or was no longer in a condition to be sent to the prescribed destination,
- or
- if that date cannot be determined, that applying on the date on which it was found that the compulsory destination was not complied with.

3. Where the warehousekeeper can show that the net amount advanced in respect of the product in question

is less than the sum calculated in accordance with paragraph 2, he shall pay only that amount plus 20 %.

However, if the amount was advanced in another Member State the amount of the increase shall be 40 %. In this case the conversion into the national currency of the Member State of storage shall be made at the market rate at the date taken for the calculation of the duties referred to in paragraph 2 (a).

4. The payment referred to in this Article shall not apply to losses during storage in a victualling warehouse caused by natural wastage or as a result of packaging.

Article 41

1. The competent authorities of the Member State where the victualling warehouse is situated shall physically check the quantity of products stored therein at least once every 12 months.

However, if entry and exit of products to and from the victualling warehouse are subject to permanent physical control by the customs authority, the competent authorities may confine control to documentary verification of products stored.

2. The competent authorities of the Member State of storage may authorize the transfer of the products to another victualling warehouse.

In this case, particulars of the second victualling warehouse shall be entered in the register of the first one. The second victualling warehouse and warehousekeeper must also be specially approved for the purposes of the victualling warehouse procedure.

Once the products have been placed under supervision in the second victualling warehouse, the second warehousekeeper shall be responsible for payment of any sums due under Article 40.

3. Where the second victualling warehouse is not situated in the same Member State as the first one, proof that the products have been placed in the second warehouse shall be furnished by means of the original T 5 control copy as referred to in Article 1 of Regulation (EEC) No 2823/87 containing one of the entries indicated in Article 39 (2).

The competent customs office of the Member State of destination shall confirm the entry into store, on the control copy, after checking that the products have been entered in the register referred to in Article 38 (2).

4. Where the products are removed from the victualling warehouse following storage and loaded on board in a Member State other than the Member State of storage, proof that they have been so loaded shall be furnished in accordance with the procedure laid down in Article 37 (3).

CHAPTER 2

SPECIAL CASES

Article 42

1. Deliveries of catering supplies:

- (a) to drilling or extraction rigs, including workpoints providing support services for such operations, situated within the area of the European continental shelf, or within the area of the continental shelf of the non-European part of the Community, but beyond a three mile zone starting from the base line used to determine the width of a Member State's territorial sea;

and

- (b) on the high seas, to naval and auxiliary vessels flying the flag of a Member State,

shall, for the purpose of establishing the rate of refund payable, be considered as supplies under Article 34 (1) (a).

'Catering supplies' shall mean any products intended solely for consumption on board.

2. The provisions of paragraph 1 shall apply only where the rate of refund is in this case higher than the lowest rate specified in Article 20.

Member States may apply these provisions to all deliveries of catering supplies, provided that:

- (a) a certificate of delivery on board is furnished;
- and
- (b) in the case of rigs:
 - the delivery forms part of the supply arrangements for the rig, as recognized as normal by the competent authority of the Member State from which shipment to the rig takes place. In this respect the ports or places of shipment, the types of vessel — where supply is by sea — and the types of packaging or containers shall, except in cases of *force majeure*, be those normally used;
 - the supply vessel or helicopter is operated by a natural or legal person who maintains within the Community records which are available for inspection and which are sufficient for checking the details of the voyage or flight.

3. The certificate of delivery on board, referred to in paragraph 2 (a), shall give full details of the products and the name and/or other identification details of the rig or

naval or auxiliary vessel to which they were delivered, together with the date of delivery. Member States may require further information to be given.

The certificate shall be signed:

- (a) in the case of rigs: by a person whom the operators of the rig consider to have responsibility for the maintenance of catering supplies. The competent authorities shall take appropriate action to ensure that the transaction is genuine. Member States shall advise the Commission of the measures adopted;
- (b) in the case of naval or auxiliary vessels: by the military authorities.

By way of derogation from paragraph 2, in the case of supplies to rigs, Member States may exempt exporters from the requirement to produce a certificate of delivery on board in the case of a delivery:

- conferring entitlement to a refund not exceeding 2 500 ECU per exporter,
- providing, to the satisfaction of the Member State, proper assurances that the products reach their destination, and
- where the transport document and proof of payment are submitted.

The provisions of Article 19 (2) shall apply in this case.

4. The competent authorities of the Member State which pays the refund shall undertake checks of quantities claimed to have been delivered to rigs by inspection of the records of the exporter and of the person operating the supply vessel or helicopter. They shall also satisfy themselves that the quantities of victualling supplies delivered under the provisions of this Article have not exceeded the needs of the personnel on board.

For the application of the preceding subparagraph the assistance of the competent authorities of other Member States shall, as necessary, be requested.

5. Where, in respect of supplies to a rig, Article 6 applies, Box 104 of the control copy shall be completed, under 'Other', by one of the following entries:

- Suministro para el abastecimiento de las plataformas — Reglamento (CEE) n° 3665/87
- Proviant til platforme — forordning (EØF) nr. 3665/87
- Bevorrungslieferung für Plattformen — Verordnung (EWG) Nr. 3665/87
- Προμήθειες τροφοδοσίας για εξέδρες — κανονισμός (ΕΟΚ) αριθ. 3665/87

- Catering supplied for rig — Regulation (EEC) No 3665/87
- Livraison pour l'avitaillement des plates-formes — Règlement (CEE) n° 3665/87
- Provviste di bordo per piattaforma — Regolamento (CEE) n. 3665/87
- Leverantie van boordproviand aan platform — Verordening (EEG) nr. 3665/87
- Fornecimentos para abastecimento de plataformas — Regulamento (CEE) n° 3665/87.

6. Where the Article 38 is applied, the warehousekeeper shall undertake to record in the register referred to in Article 38 (2) (b) details relating to the rig to which each consignment is sent, the name/number of the supply vessel/helicopter and the date of placing on board. The certificates of delivery on board specified in paragraph 3 (a) shall be deemed to form part of the register.

7. Member States shall arrange for a record to be kept of the quantities of products, within each sector, which are delivered to platforms and which benefit from the provisions of this Article.

Article 43

1. For the purposes of establishing the level of refund to be granted, supplies for victualling outside the Community shall be considered as supplies under Article 34 (1) (a).
2. The provisions of paragraph 1 shall apply where proof is furnished that the goods actually delivered on board are the same as those that left the customs territory of the Community for that purpose.
3. (a) Proof of direct delivery on board for victualling shall be furnished by a customs document or a document certified by the customs authorities of the non-member country where delivery on board took place. The document may be drawn up in accordance with the model set out in Annex IV.

It must be completed in one or more official languages of the Community and one language in current use in the non-member country concerned.

Direct delivery shall be deemed to be the delivery of a container or an undivided lot of products taken on board a vessel.

- b) Where the exported products are not delivered direct and are placed under customs supervision in

the non-member country of destination before delivery on board for victualling, proof of such delivery on board shall be furnished by the following documents:

- a customs document, or document certified by the customs authorities of the non-member country, showing that the products have entered a victualling warehouse and that they will be used solely for victualling. The document may be drawn up in accordance with the model set out in Annex IV; and
- a customs document, or document certified by the customs authorities of the non-member country where delivery took place, showing that the goods have been delivered on board. The document may be drawn up in accordance with the model set out in Annex IV.

- (c) Where the documents referred to in (a) or the second indent of (b) cannot be produced, the Member State may accept evidence furnished in the form of an acceptance certificate, signed by the master of the vessel or by another officer on duty and bearing the vessel's stamp.

Where the documents referred to in the second indent of (b) cannot be produced, the Member State may accept evidence furnished in the form of an acceptance certificate, signed by an employee of the airline and bearing the airline's stamp.

- (d) The abovementioned documents may not be accepted by the Member States unless they provide full details of the products delivered on board, and state the date of delivery, the registration number and the name (if any) of the vessel or aircraft. In order to ensure that the quantities delivered for victualling correspond to the normal needs of the crew members and passengers of the vessel or aircraft in question, Member States may require additional information or documents to be provided.

4. In all cases, a copy or photocopy of the transport document and the document providing evidence of payment for the products intended for victualling must be submitted in support of the request for payment.

5. Products or goods placed under the arrangements laid down in Article 38 may not be used for deliveries pursuant to paragraph 3 (b).

6. Article 19 shall apply *mutatis mutandis*.

7. The provisions of Article 35 shall not apply in the case of application of this Article.

Article 44

By way of derogation from the second subparagraph of Article 1 (1) of Directive 81/177/EEC, agricultural products intended for the Island of Helgoland shall be deemed to be exported for the purposes of the provisions relating to the payment of export refunds and monetary compensatory amounts.

Article 45

1. A refund may be granted for products re-exported under the provisions of the second subparagraph of Article 6 (2) or the second subparagraph of Article 11 (3) of Council Regulation (EEC) No 1430/79 ⁽¹⁾ only:

- if the application for repayment or remission of the import duties is subsequently refused, and
- provided that the other conditions for the granting of a refund are complied with.

2. Where goods are re-exported under the procedure referred to in paragraph 1, a reference to that procedure shall be made on the document referred to in Article 3 (5).

Article 46

In the case of exports intended for:

- armed forces stationed in a non-member country, under the command either of a Member State or of an international organization of which at least one of the Member States is a member,
- international organizations established in a non-member country, of which at least one of the Member States is a member,
- diplomatic bodies established in a non-member country,

in respect of which the exporter cannot furnish the proof referred to in Article 18 (1) or (2) the product shall be deemed to have been imported into the non-member country where such armed forces are stationed or such international organizations or diplomatic bodies are established, upon presentation:

- (a) of proof of payment for the products; and
- (b) of an acknowledgement of delivery issued by the armed forces, international organization or diplomatic body to which the products have been consigned in the non-member country in question.

TITLE 4

PROCEDURE FOR PAYMENT OF THE REFUND

Article 47

1. The refund shall be paid only on written application by the exporter and shall be paid by the Member State in whose territory the export declaration was accepted. Member States may prescribe a special form to be used for this purpose.

2. Except in cases of *force majeure*, the documents relating to payment of the refund or release of the security must be submitted within 12 months following the date on which the goods were cleared through customs for export declaration was accepted.

3. Where the control copy T 5 referred to in Article 6 is not returned to the office of departure or relevant centralizing body within three months of its issue owing to circumstances beyond the control of the exporter, the latter

may submit to the competent agency a reasoned request that other documents be regarded as equivalent.

The supporting documents to be submitted with the request must include:

- (a) where a control copy has been issued to furnish proof that the products have left the customs territory of the Community:
 - the transport document, and
 - a document which shows that the product has been presented at a customs office in a non-member country or one or more of the documents referred to in Article 18 (1), (2) and (4);
- (b) where Articles 34, 42 or 38 are applied: confirmation by the customs office responsible for checking the destination in question that the conditions for endorsement of the control copy concerned by the said office have been fulfilled.

The provisions of paragraph 4 shall apply for the production of equivalent proof.

⁽¹⁾ OJ No L 175, 12. 7. 1979, p. 1.

4. Where the documents required under Article 18 cannot be submitted within the period referred to in paragraph 2, although the exporter has acted with all due diligence to obtain them and communicate them within such period, he may be granted further time for the production of these documents.

5. Requests for the treatment of other documents as equivalent, as referred to in paragraph 3, whether or not supporting documents are attached, and requests for extension of time referred to in paragraph 4 must be submitted within the period referred to in paragraph 2.

6. Where Article 35 is applied, the documents relating to payment of the refund must be submitted, except in cases of *force majeure*, within 12 months from the end of the month of loading. However, the authorization referred to in Article 35 (1) may require the exporter to lodge a request for payment within a shorter period.

7. The competent authorities of a Member State may require translation of all the documents supporting the claim for payment of the refund into the official language or one of the official languages of that Member State.

Article 48

1. In circumstances where all the requirements laid down by Community rules for showing entitlement to a refund have been met, other than a requirement to comply with one of the periods set in Articles 4 (1) and 38 (1), the following rules shall apply:

- (a) the refund shall first be reduced by 15 %. The remaining refund, hereinafter referred to as the 'reduced refund', shall further be reduced as follows:
- (b) (i) 5 % of the reduced refund shall be lost for each day by which the period set in Article 4 (1) has been exceeded, or
- (ii) 10 % of the reduced refund is lost for each day by which the period set in Article 38 (1) has been exceeded.

2. (a) Where proof that all the requirements laid down by Community rules have been complied with is produced within six months of expiry of the periods set in Article 47 (2), (4) and (5), the refund paid shall be 85 % of the sum which would have been paid if all the requirements had been complied with.

(b) Where proof is produced within six months of expiry of the periods set in Article 47 (2), (4) and (5) but the period set in Article 4 (1) or Article 38 (1) has not been complied with, the refund paid shall first be reduced in accordance with paragraph 1; it shall then be further reduced by 15 % of the amount which would have been paid if all the time limits had been complied with.

3. (a) Where a refund has been paid in advance in accordance with Article 22 and the period set in Article 4 (1) has not been complied with, the security forfeited shall be equal to the sum of

- the amount of the reduction calculated in accordance with paragraph 1,
- the amount of such reduction being increased by 15 %.

The balance of the security shall be released.

(b) Where a refund has been paid in advance in accordance with Article 22 and proof that all the requirements laid down by Community rules have been complied with is furnished within six months of expiry of the periods set in Article 47 (2), (4) and (5), the amount to be reimbursed shall be 85 % of the security.

(c) Where, in the case referred to at (b), the period set in Article 4 (1) has also not been complied with, the following amount shall be reimbursed:

- an amount equal to the amount reimbursed in accordance with (b),
- minus the security forfeited pursuant to the requirements of (a).

4. The total refund lost may not exceed the full amount of refund that would have been paid if all requirements had been fulfilled.

TITLE 5

FINAL PROVISIONS

Article 49

Member States shall notify the Commission:

- without delay, of all cases of application of Article 5 (1) (a); the Commission shall inform the other Member States of such cases;

— on 1 March and 1 September of each year, of all quantities of products to which Article 43 has been applied during the preceding six months, and of the amounts paid in the case referred to in paragraph 3 (b) of that Article.

The Commission shall inform the other Member States of such quantities and amounts.

- on 1 March and 1 September of each year, a report established by the market organization product sector showing the number of cases of application of Article 47 (3), the reason for non-return of the control copy, where known, the quantities concerned, the amount of the refund involved and the nature of the documents accepted as equivalent.

Article 50

1. Regulation (EEC) No 2730/79, Commission Regulations (EEC) No 798/80 ⁽¹⁾, (EEC) No 2570/84 ⁽²⁾ and (EEC) No 2158/87 ⁽³⁾ are hereby repealed. However, they shall continue to apply

- to exports, the export declarations for which were accepted before the entry into force of this Regulation, and
- in case of application of Regulation (EEC) No 565/80 to exports of which the payment declaration accepted before the entry into force of this Regulation.

2. In all Community instruments in which reference is made to Regulations (EEC) No 2730/79, (EEC) No 798/80, (EEC) No 2570/84 or (EEC) No 2158/87 or to given Articles of these Regulations, such reference shall be deemed to relate to this Regulation or to the corresponding Articles thereof.

A table of equivalence of such Articles is given in Annex I.

Article 51

This Regulation shall enter into force on 1 January 1988.

However, Article 28 (6) shall apply only from 1 March 1988.

Articles 33 and 48 shall also apply to all exports falling under the second sentence of Article 50 (1) where the relevant files are still open when this Regulation enters into force.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 27 November 1987.

For the Commission

Frans ANDRIESEN

Vice-President

⁽¹⁾ OJ No L 87, 1. 4. 1980, p. 42.

⁽²⁾ OJ No L 241, 11. 9. 1984, p. 5.

⁽³⁾ OJ No L 202, 23. 7. 1987, p. 28.

ANNEX I

TABLE OF EQUIVALENCE

Present Regulation

Article 1
 Article 2 (1)
 Article 2 (2)
 Article 3 (2)
 Article 3 (4)
 Article 3 (5)
 Article 3 (6)
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 Article 13
 Article 14
 Article 15
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 Article 21
 Article 22
 Article 23

Regulation (EEC) No 2730/79

Article 1 (1)
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 Article 24 (2)
 Article 3 (1)
 Article 4 (2)
 Article 4 (3)
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 Article 10 (1), (2) and (4)
 Article 11
 Article 12
 Article 13
 Article 13a
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 Article 23
 Article 21 (1) and (4)
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 Article 21 (3)
 Article 22 (2) and (3) and Article 24 (3)
 Article 25 (1)
 Article 25 (2) and (4)

Regulation (EEC) No 798/80

Article 24
 Article 25
 Article 26
 Article 27 (1) and (2)
 Article 27 (3) and (4)
 Article 27 (5)
 Article 28 (1) and (2)
 Article 28 (3) and (4)
 Article 28 (5)
 Article 29
 Article 30
 Article 31
 Article 32
 Article 33

Article 1
 Article 2
 Article 3
 Article 4 (1) and (3)
 Article 3a (1) and (2)
 Article 11 (1)
 Article 4 (2) and (3)
 Article 4 (4) and (5)
 Article 11 (2)
 Article 6
 Article 5
 Article 7 (1), (3) and (4)
 Article 11 (3)
 Articles 9 and 10

Regulation (EEC) No 2730/79

Article 34
 Article 35
 Article 36
 Article 37 (3)
 Article 38
 Article 39
 Article 40
 Article 41
 Article 42
 Article 43

Article 5
 Article 6
 Article 7
 Article 11 (1)
 Article 26
 Article 27
 Article 28
 Article 29
 Article 19b
 Article 19c

Present Regulation

Article 44

Article 45

Article 46

Article 47 (1)

Article 47 (2)

Article 47 (3)

Article 47 (4)

Article 47 (6)

Article 47 (7)

Article 48

Article 49

Article 50

Article 51

Annex I

Annex II

Annex III

Annex IV

Regulation (EEC) No 2158/87

Article 19a

Regulation (EEC) No 2570/84

Regulation (EEC) No 2730/79

Article 30 (1)

Article 31 (1)

Article 30 (2)

Article 31 (2)

Article 31 (3)

Article 31 (4)

—

Articles 10 (3), 26 (5), 19c
(7), 30 (3)

Article 40

Article 41

Annex I

Annex II

Annex III

Annex IV

Exporter (translation)	CUSTOMS ENTRY CERTIFICATE (translation)		
	Type, No and date of export document (translation)		
Consignee (translation)	Type and date of transport document (translation)		
	Country of exportation (translation)	Country of destination (translation)	
Marks, numbers, number and kind of packages; description of goods (translation)	Gross Mass (kg) (translation)	Net Quantity ⁽¹⁾ (translation)	
CUSTOMS ENDORSEMENT This is to certify that the abovementioned goods have been cleared by Customs for home use (translation)			
Remarks of Customs (translation)	Place (translation):		
	Date (translation):		
		Signature and stamp of Customs (translation)	

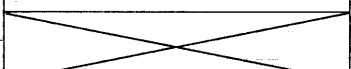
⁽¹⁾ Kilogram, or other unit of measure (translation).

ANNEX III

**LIST OF NON-MEMBER COUNTRIES FROM WHICH FUNDS CANNOT BE TRANSFERRED UNTIL
THE GOODS HAVE BEEN IMPORTED, AS REFERRED TO IN ARTICLE 18 (2) (d)**

Algeria
Burundi
Chile
Equatorial Guinea
Guatemala
Hungary
Iceland

Kenya
Lesotho
Malawi
Malta
St Lucia
Senegal
Tanzania

1 Exporter (Name, full address, Member State) (translation)		CERTIFICATE OF DELIVERY OF SUPPLIES TO SHIPS AND AIRCRAFT IN NOM-MEMBER COUNTRIES (translation)	
2 Victualling warehouse (Name, full address, third country) (translation)		Note (translation): This form must be completed legibly and indelibly by hand or using a typewriter (translation)	
		3 Member State of export (translation)	
5 Name and country of registration of ship (translation) or registration number of aircraft (translation)			4 Country of destination (translation)
		6 Type, No and date of export document (translation) issued by the Customs office at (translation)	
7 Type and date of transport document (translation)			
8 Marks and numbers — Number and kind of packages — Description of goods (translation)		9 Gross mass (kg) (translation)	10 Net quantity ⁽¹⁾ (translation)
11 ENDORSEMENT BY CUSTOMS AUTHORITIES OF COUNTRY IN WHICH VICTUALLING TAKES PLACE (translation) This is to certify that the abovementioned goods (translation) A have been delivered on board the ship or aircraft shown in box 5 ⁽²⁾ (translation) B are in the warehouse shown in box 2 and will be used solely for victualling ⁽²⁾ (translation) Remarks: (translation)			
Place and date (translation):		Signature and stamp of Customs authorities (translation)	

⁽¹⁾ Kilogram, or other unit of measurement (translation).

⁽²⁾ Delete as appropriate (translation).