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(Acts whose publication is obligatory)

COMMISSION REGULATION (EEC) No 2730/79

of 29 November 1979

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 1254/78 (2), and in particular Articles 16 (6) and 24 thereof, and to the corresponding provisions of the other Regulations on the common organization of 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 subparagraph, 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 feedingstuffs) (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 Regulation No 129 on the value of the unit of account and the exchange rates to be applied for the purposes of the common agricultural policy (20), as last amended by Regulation (EEC) No 2543/73 (21), and in particular Article 3 thereof,

Whereas Commission Regulation (EEC) No 192/75 of 17 January 1975 (22), as last amended by Regulation (EEC) No 1469/77 (23), which superseded Regulation No 1041/67/EEC (24), lays down detailed rules for the application of export refunds on agricultural products; whereas the provisions of that Regulation have, however, been amended, in some cases substantially; whereas, therefore, in the interests of clarity and administrative efficiency it is advisable to consolidate the rules in question in a single text, at the same time making certain amendments which experience has shown to be desirable;

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;

(1) OJ No L 281, 1. 11. 1975, p. 1.
(2) OJ No L 156, 14. 6. 1978, p. 1.
(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 106, 30. 10. 1962, p. 2553/62.
(21) OJ No L 263, 19. 9. 1973, p. 1.
(22) OJ No L 25, 31. 1. 1975, p. 1.
(23) OJ No L 162, 1. 7. 1977, p. 9.
(24) OJ No 314, 23. 12. 1967, p. 9.

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 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 geographical territory of the Community ;

Whereas, in view of the special situation of the commune of Livigno in Italy, products dispatched to that commune should be regarded as having left the geographical territory of the Community ;

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 on those consumed after preparation on board ship ;

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 geographical 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 geographical territory of the Community or reaching a particular destination, use should be made of the control copy referred to in Article 10 of Commission Regulation (EEC) No 223/77 of 22 December 1976 on provisions for the implementation of the Community transit procedure and for certain simplifications of that procedure [1], as last amended by Regulation (EEC) No 1964/79 [2] ; 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, Section 1, of Regulation (EEC) No 223/77, 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 it may happen that by reason of circumstances beyond the control of the exporter the control copy as aforesaid cannot be produced although the product has left the geographical 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 the arrangements provided for in this Regulation may be accorded only to products which come within the terms of 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 come within the terms of the said 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 ;

(1) OJ No L 38, 9. 2. 1977, p. 20.
(2) OJ No L 227, 7. 9. 1979, p. 12.

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, similarly, it should be provided that where an export levy has been 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 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 a non-member country 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, provision 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 to be paid as soon as the exporter has furnished proof that the product has left the geographical 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 the customs export formalities are completed is lower than the rate of the refund applicable on the day of advance fixing, adjusted where appropriate to the day on which customs export formalities were completed;

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 customs export formalities are completed, 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 be paid;

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 be 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, since the date of exportation for the purpose of determining the rate of the refund is taken to be the day on which customs export formalities are completed, provision should be made for the refund to be paid by the Member State in whose territory such customs formalities were completed;

Whereas in the interests of sound administration 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 Monetary Committee will be consulted; whereas the urgency of the situation makes it necessary to adopt the proposed measures in the manner provided for in Article 3 (2) of Regulation No 129;

Whereas the measures provided for in this Regulation are in accordance with the opinions of all the relevant Management Committees,

HAS ADOPTED THIS REGULATION:

TITLE 1

SCOPE OF THE REGULATION

Article 1

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

— Articles 18 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),

— Article 30 of Regulation (EEC) No 1035/72 (fruit and vegetables),

— Article 19 of Regulation (EEC) No 3330/74 (sugar),

— Article 16 of Regulation (EEC) No 2727/75 (cereals),

— Article 15 of Regulation (EEC) No 2759/75 (pigmeat),

— Article 9 of Regulation (EEC) No 2771/75 (eggs),

— Article 9 of Regulation (EEC) No 2777/75 (poultrymeat),

— Article 21 of Regulation (EEC) No 100/76 (fishery products),

— Article 17 of Regulation (EEC) No 1418/76 (rice),

— Articles 5 and 6 of Regulation (EEC) No 516/77 (products processed from fruit and vegetables),

— Article 4 of Regulation (EEC) No 1111/77 (isoglucose),

— Article 20 of Regulation (EEC) No 337/79 (wine).

2. 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 and listed in Article 1 of Regulation (EEC) No 2682/72 [1] ;

(b) 'import duties' means customs duties and charges having equivalent effect, as well as agricultural levies and other import charges laid down within the framework of the common agricultural policy, or in that of specific arrangements applicable, pursuant to Article 235 of the Treaty, to certain goods resulting from the processing of agricultural products.

Article 2

This Regulation shall be applicable without prejudice to the Community provisions for the payment in advance of refunds laid down by Regulation (EEC) No 441/69.

[1] OJ No L 289, 27. 12. 1972, p. 13.

TITLE 2

EXPORTS AND SUPPLIES TREATED AS EXPORTS

Article 3

1. The date of export 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.

2. The date of export shall be the day of acceptance by the customs authority of the declaration by which the exporter states his intention to export the products in question and qualify for a refund, or the day on which occurs any other act having the same effect in law as such acceptance.

3. At the time of such acceptance, or of such act, the products shall be placed under customs control and shall so remain until they leave the Community or, in any of the cases mentioned in Article 5, until they reach their destination.

Article 4

1. For the purposes of this Regulation, the acceptance or other act referred to in Article 3 (2) shall be considered to mark the completion of customs export formalities.

2. The day on which customs export formalities are completed shall determine the quantity, nature and characteristics of the product exported.

3. The document used on the completion of customs export formalities in order for products to qualify for a refund must include :

(a) a description of the products in accordance with the nomenclature used for refunds ;

(b) the net weight 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.

Article 5

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

(a) supplies for victualling within the Community :

— 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 those uses are exempted from import duties in the Member State in question.

3. The provisions of Articles 3 and 4 shall apply.

Article 6

1. In the case of supplies for victualling as referred to in Article 5 (1) (a), Member States may, by way of derogation from Article 3, authorize the use of the following procedure for the payment of refunds. An exporter employing this procedure may not also employ the normal procedure for identical products.

The authorization may be limited to certain places of loading in the Member State in which customs export formalities are completed. The authorization may include loading in other Member States, in which case the provisions of Article 11 will apply.

2. For the products loaded each month under the conditions 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 4 (3) ;

(b) the name or registration number of each vessel or aircraft on board which the products have been loaded ;

(c) the date of loading.

The information referred to in the preceding subparagraph must be entered in the register not later than the first working day after the day of loading.

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.

Article 7

1. For the purposes of Article 5 (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 proof 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 26 may be applied to the preparation of meals as referred to in the preceding paragraphs.

Article 8

In the case of supplies to armed forces as referred to in Article 5 (1) (c), Member States may authorize the use of a similar procedure to that provided for in Article 6.

TITLE 3

ENTITLEMENT TO REFUNDS

Section 1

General provisions

Article 9

1. Without prejudice to the provisions of Articles 10, 20 and 26, the refund shall be paid only upon proof being furnished that the product in respect of which customs export formalities have been completed has, within 60 days from the day of completion of such formalities :

— in the cases specified in Article 5, reached its destination unaltered,

or

— in other cases, left the geographical territory of the Community unaltered.

Where an exporter is unable by reason of *force majeure* to comply with the time limit specified in the preceding subparagraph, such time limit may at his request be extended for such period as the competent agency of the Member State in which customs export formalities were completed considers necessary in view of the circumstances invoked.

2. For the purposes of this Regulation :

— products shall be considered to have left the geographical territory of the Community when they have left for territories which, although forming part of the geographical territory of a Member State, form part of the customs territory of a non-member country ; conversely, products shall not be considered to have left the geographical territory of the Community if sent to a destination which, although forming part of the geographical territory of a non-member country, is incorporated in the customs territory of the Community,

— the territory of the commune of Livigno shall be considered not to form part of the geographical territory of the Community.

Article 10

1. In the following circumstances payment of the refund shall be conditional not only on the product having left the geographical 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 :

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

(b) where by reason of the difference between the rate of the refund on the exported product and the import duties applicable to an identical product on the day when customs export formalities are completed it is possible that the product may be reintroduced into the Community.

In such cases the provisions of Article 20 (2), (3), (4), (5) and (6) shall apply. The competent authorities of the Member States may require satisfactory additional proof that the product has in fact been placed on the market in the non-member country of import.

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 a common organization of the market, shall determine the cases in which the provisions of paragraph 1 (b) are in practice to apply.

3. The Member States shall inform the Commission each 1 March and 1 September of the kinds of case in which paragraph 1 (a) has been applied. This information shall be examined by a management committee.

4. If the product, after leaving the geographical 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 21,

— in the case of a refund which does not so vary, the total amount thereof.

Article 11

If, before leaving the geographical territory of the Community or before reaching one of the destinations specified in Article 5, a product for which customs export formalities have been completed crosses Community territory other than that of the Member State in whose territory such formalities took place, proof that the product has left the geographical territory of the Community or reached the intended destination shall be furnished by production of the control copy referred to in Article 10 of Regulation (EEC) No 223/77.

Boxes 101, 103, 104, and where appropriate box 105, of the control copy shall be completed. Box 104 shall be completed by deletion as appropriate and, in respect of cases coming within Article 5 (1), indication of the intended destination by the addition of one of the following entries :

— 'Supply for victualling — Regulation (EEC) No 2730/79',

— 'Levering til proviantering — forordning (EØF) nr. 2730/79',

— 'Lieferung zur Bevorratung — Verordnung (EWG) Nr. 2730/79',

— 'Livraison pour l'avitaillement — règlement (CEE) n° 2730/79',

— 'Fornitura per approvvigionamento di bordo — regolamento (CEE) n. 2730/79',

— 'Levering voor bevoorrading — Verordening (EEG) nr. 2730/79',

or

— 'Supply to (name of international organization) — Regulation (EEC) No 2730/79',

— 'Levering til (navn på den internationale organisation) — forordning (EØF) nr. 2730/79',

— 'Lieferung an (Name der internationalen Organisation) — Verordnung (EWG) Nr. 2730/79',

— 'Livraison à (nom de l'organisation internationale) — règlement (CEE) n° 2730/79',

— 'fornitura a (denominazione dell'organizzazione internationale) — regolamento (CEE) n. 2730/79',

— 'Levering aan (naam van de betrokken internationale organisatie) — Verordening (EEG) nr. 2730/79',

or

— 'Supply to armed forces — Regulation (EEC) No 2730/79',

— 'Levering til væbnede styrker — forordning (EØF) nr. 2730/79',

— 'Belieferung von Streitkräften — Verordnung (EWG) Nr. 2730/79',

— 'Livraison aux forces armées — règlement (CEE) n° 2730/79',

— 'Fornitura alle forze armate — regolamento (CEE) n. 2730/79',

— 'Levering aan de strijdkrachten — Verordening (EEG) nr. 2730/79'.

Article 12

1. Where on completion of customs export formalities a product is placed under the procedure provided for in Section I of Title IV of Regulation (EEC) No 223/77 for carriage to a station of destination outside the geographical territory of the Community, payment of the refund shall not be subject to production of proof as provided in Article 11.

2. For purposes of paragraph 1, the office of departure where customs formalities are completed shall ensure that the following endorsement is entered on the document issued for the purposes of payment of the export refund :

'Departure from the geographical territory of the Community under the simplified Community rail transit procedure'.

3. The office of departure 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 geographical territory of the Community within the prescribed period, the office of departure 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.

Article 13

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 at present constituted, a refund shall be granted only if any accession compensatory amount applicable to those products in the Member State where customs export formalities were completed has been charged.

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

This provision shall also apply where the component or components 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 a component :

— 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 2682/72,

— refunds applicable to sucrose, glucose and glucose syrup, exported in the form of products covered by Annex II to Regulation (EEC) No 516/77,

— refunds applicable to products of the milk and milk products and sugar sectors, exported in the form of products of subheading 04.02 B of the Common Customs Tariff,

— refunds applicable to products of the cereals sector, exported in the form of products of subheading 23.07 B of the Common Customs Tariff 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 of subheading 23.07 B of the Common Customs Tariff and mentioned in Article 1 of Regulation (EEC) No 804/68.

Article 14

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

Article 15

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 16

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 components of the product, the preceding paragraph shall apply only to the component or components in question.

Article 17

No refund shall be granted on products sold or distributed on board ship which are liable to be reintroduced into the Community free of duties under Regulation (EEC) No 1818/75.

Article 18

A refund may be refused if the amount thereof in respect of any one application, which may cover one or more export declarations, does not exceed 12 ECU.

Article 19

The provisions relating to the advance fixing of refunds 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.

Section 2

Refunds varying according to destination

Article 20

1. Where the rate of refund varies according to destination, payment of the refund on exports to a non-member country shall, subject to the provisions of Article 21, be made only if the product has been imported into a non-member country for which the refund is prescribed.

2. A product shall be considered to have been imported when the customs entry formalities for home use in the non-member country concerned have been completed.

3. Proof that these formalities have been completed shall be furnished by the production of :

(a) the relevant customs document, or a copy or photocopy thereof certified as true 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 in one or more official languages of the Community and in a language used in the non-member country concerned.

4. If, however, owing to circumstances beyond the control of the exporter, none of the documents specified in paragraph 3 can be produced, or they are considered inadequate, proof that customs entry formalities for home use have been completed may 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 in the country of destination ;

(c) a certificate of unloading from an international control and surveillance agency approved by the Member State in which customs export formalities were completed ;

(d) in the case of the non-member countries set out in Annex III from which funds cannot be transferred until the goods have been imported, a bank document issued by approved intermediaries established in the Community certifying 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.

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

6. 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 3 and 4 may be furnished by production of a specific document or in any other way.

Article 21

1. By way of derogation from Article 20 and without prejudice to the provisions of Article 10, a part of the refund as specified below shall be paid on proof being furnished that the product has left the geographical territory of the Community :

(a) in the case of exports where the refund has not been fixed in advance, that part equal to the amount of the refund as calculated on the basis of the lowest rate of refund applicable on the day on which customs export formalities were completed ;

(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, that part equal to the amount of the refund as calculated on the basis of the lowest rate of refund applicable on the day on which advance fixing took place, adjusted where appropriate to the day on which customs export formalities were completed ;

(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, that part equal to whichever is the lower of :

— the amount specified in (a),

— the amount specified in (b).

2. The provisions of paragraph 1 shall apply only where for a given product a refund has been fixed in respect of all non-member countries :

— in the cases specified in (a), on the day on which customs export formalities were completed,

— in the cases specified in (b), on the day on which the application for an export licence or advance fixing certificate was lodged,

— in the cases specified in (c), on the day on which customs export formalities were completed and on the day on which the application for an export licence or advance fixing certificate was lodged.

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 day when the application for a licence or certificate was lodged or customs export formalities were completed — or the fact that on that day 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 22

1. Where a product exported under an export licence or advance fixing certificate specifying a compulsory destination does not reach that destination, only that part of the refund resulting from the application of Article 21 shall be paid.

2. However, where as a result of *force majeure* a product exported under an export licence or advance fixing certificate specifying a compulsory destination is delivered to a destination other than that in respect of which such licence or certificate was issued, then where the exporter is able to furnish proof of *force majeure* together with proof, which shall be assessed having regard to the provisions of Article 20, of delivery to such other destination, he shall be entitled to claim the refund applicable in respect of the said other destination.

3. Where paragraph 2 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 was possible on the date of the application for advance fixing of the refund for the compulsory destination,

and

— the advance fixing certificate assumed to have been issued for the actual destination would have been valid on the day on which the customs formalities referred to in Article 9 (3) (b) of Regulation (EEC) No 193/75 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 day of completion of customs formalities. However, where the refund as calculated in accordance with the present subparagraph is higher than that calculated in accordance with the previous subparagraph, the latter shall apply.

Article 23

1. Member States may exempt the exporter from furnishing the proof required under Article 20 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) 500 ECU in the case of products coming within Regulation (EEC) No 516/77 and of those specified in Article 1 (2) (c) of Regulation No 136/66/EEC ;

(b) 500 ECU in the case of products other than those referred to in (a), if the non-member country of destination lies within Europe ;

(c) 2 500 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 accession or monetary compensatory amounts shall not be taken into account.

Article 24

1. Where a single rate of refund applies in respect of all destinations on the day of advance fixing and a compulsory destination is prescribed, then the refund shall be treated as varying according to destination.

Refunds fixed under an invitation to tender shall be regarded as refunds fixed in advance.

2. Where a product is exported under a licence or certificate issued pursuant to Article 19 of Regulation (EEC) No 193/75, the exporter shall not qualify for the advance fixed rate unless he can show *inter alia* 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.

Section 3

Advance of refund

Article 25

1. Member States may advance to the exporter all or part of the amount of the refund as soon as customs export formalities are completed, on condition that he provides security to guarantee repayment of the amount advanced plus 15 %.

2. The amount advanced plus 15 %, as referred to in paragraph 1, shall be repaid by the exporter in proportion to the quantities in respect of which the proof required by this Regulation to qualify for the refund is not furnished within the period stipulated in Article 31.

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

— the proof referred to above cannot be furnished, the additional 15 % shall not be charged,

— the product is delivered to a destination other than that for which the advance was calculated, repayment of that advance shall be limited to the amount to which the exporter is not entitled.

3. If the amount is not repaid after being requested, the security shall be forfeited in proportion to the quantities concerned.

Article 26

1. In the case of supplies for the victualling within the Community of :

— seagoing vessels, or

— aircraft serving on international routes including intra-Community routes,

Member States may advance the net amount of the refund to the exporter subject to the special conditions hereinafter laid down, if proof is furnished that, within 30 days of the completion of customs export formalities, subject to *force majeure*, the products have been placed in premises under customs supervision.

Such premises, hereinafter called '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 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 unaltered or after packaging for the victualling within the Community of :

— seagoing vessels, or

— aircraft operating on international routes including intra-Community routes ;

(b) to keep a register enabling the competent authorities to carry out any checks they consider 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 4 (3),

— the date on which the products left the victualling warehouse,

— the names or registration numbers of all vessels or aircraft on board 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 28.

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 28, the net amount of the refund means the amount of the refund less any monetary or accession compensatory amount to be levied.

5. Member States which apply the arrangements provided for in this Article shall so inform the Commission.

Article 27

1. If the customs export formalities were completed in the Member States 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 26.

2. If the customs export formalities were completed 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 10 of Regulation (EEC) No 223/77.

Boxes 101, 103, 104, and where appropriate box 105, of the control copy shall be completed. Box 104 shall be completed by deletion as appropriate and indication of the intended destination by the addition one of the following entries :

— 'Deposit in warehouse, compulsory supply for victualling — Article 26 of Regulation (EEC) No 2730/79',

— 'Anbringelse på oplag med obligatorisk levering til proviant — anvendelse af artikel 26 i forordning (EØF) nr. 2730/79',

— 'Einlagerung ins Vorratslager mit Lieferplicht zur Bevorratung — Artikel 26 der Verordnung (EWG) Nr. 2730/79',

— 'Mise en entrepôt avec livraison obligatoire pour l'avitaillement — application de l'article 26 du règlement (CEE) n° 2730/79',

— 'Deposito con consegna obbligatoria per l'approvvigionamento — applicazione dell'articolo 26 del regolamento (CEE) n. 2730/79',

— 'Opslag in depot onder verplichting van levering voor de bevoorrading van zeeschepen of luchtvaartuigen — toepassing van artikel 26 van Verordening (EEG) nr. 2730/79'.

The competent customs office of the Member State of destination shall confirm on the control copy receipt into warehouse, after having checked that the products have been entered in the register referred to in Article 26 (2).

Article 28

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 day on which the product was diverted from or was no longer in a condition to be sent to the prescribed destination,

or

— if this date cannot be determined, the rate applying on the day on which it was found that the compulsory destination was not complied with.

3. Where the warehousekeeper can prove 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 29

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 shall not be obliged to undertake the physical check referred to in the preceding subparagraph.

2. The competent authorities of the Member State of storage may authorize the transfer of the products to another victualling warehouse if this is justified by circumstances.

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 28.

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 a control copy as referred to in Article 10 of Regulation (EEC) No 223/77 containing one of the entries indicated in Article 27 (2).

4. Where the products are removed from the victualling warehouse 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 11.

TITLE 4

PROCEDURE FOR PAYMENT OF THE REFUND

Article 30

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

2. Where the control copy referred to in Article 11 is not returned to the office of departure or relevant central 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, attaching supporting documents.

These must include, in addition to the transport document, a document showing that the product was presented to a customs office in a non-member country, or one or more of the documents specified in Article 20 (3), (4) and (6). The extension of time referred to in Article 31 (2) shall apply also in respect of the provision of equivalent proof.

3. Member States shall each 1 March and 1 September send returns to the Commission showing for each sector subject to common organization of the market the number of applications made under paragraph 2, the reasons, where known, for the failure to return the control copy, the quantities concerned, the amount of the refund involved and the nature of the documents accepted as equivalent.

Article 31

1. Except in cases of *force majeure*, entitlement to payment of the refund shall be lost unless the relevant documents are submitted within six months following the date on which customs export formalities were completed.

2. Where the documents required under Article 20 (3), (4) and (6) cannot be submitted within the prescribed periods although the exporter has acted with all due diligence to obtain them within such periods, he may be granted an extension of time for the submission of these documents.

3. Where Article 6 is applied, entitlement to payment of the refund shall be lost, except in cases of *force majeure*, unless the relevant documents are submitted within six months from the end of the month of loading.

4. 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.

TITLE 5

FINAL PROVISIONS

Article 32

1. Regulation (EEC) No 192/75 is hereby repealed. It shall however continue to apply to exports in respect of which customs formalities were completed before the entry into force of this Regulation.

2. In all Community instruments in which reference is made to Regulations No 1041/67/EEC and (EEC) No 192/75 or to Articles of those Regulations, such references shall be treated as references to this Regulation or to the corresponding Articles thereof. A table of equivalence in respect of those Articles is given in Annex I.

Article 33

This Regulation shall enter into force on 1 April 1980. However, Articles 6 and 26 to 29 shall apply with effect from 1 January 1980.

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

Done at Brussels, 29 November 1979.

For the Commission

Finn GUNDELACH

Vice-President

ANNEX I

TABLE OF EQUIVALENCE

This Regulation	Regulation (EEC) No 192/75	Regulation No 1041/67/EEC
Article 1 (1)	Article 1	—
Article 2	Article 14	Article 12
Article 3	Article 2 (1)	Article 1
Article 4	Article 2 (2), (3) and (4)	
Article 5	Article 3	Article 2
Article 6	—	—
Article 7	—	—
Article 8	—	—
Article 9	Article 4	Article 3
Article 10	Article 6	Article 4
Article 11	Article 7 (1) and (2)	Article 5
Article 12	Article 7 (3)	
Article 13	Article 8 (1)	Article 6 (1)
Article 14	Article 10	Article 7
Article 15	Article 8 (2)	Article 6 (2)
Article 16	Article 8 (3)	—
Article 17	Article 8 (4)	—
Article 18	Article 9	Article 6a
Article 19	Article 5	Article 3a
Article 20	Article 11 (1)	Article 8
Article 21	Article 11 (2)	
Article 22	Article 11 (3)	
Article 23	Article 11 (4)	
Article 24	—	—
Article 25	Article 12	Article 9
Article 26	—	—
Article 27	—	—
Article 28	—	—
Article 29	—	—
Article 30	Article 13 (1) and (2)	Article 10
Article 31	Article 13 (3)	
Article 32	Article 16	—
Article 33	Article 17	—

ANNEX II

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 weight (1) (translation)	Net weight, volume, etc. (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) Kg, hl, etc. (translation).

ANNEX III

Non-member countries to which the provisions of Article 20 (4) (d) refer

Algeria
Angola
Benin
Brazil
Burundi
Cameroon
Central African Republic
Chile
Congo
Cyprus
Gabon
Greece
Iran
Iraq
Ivory Coast
Jordan
Malawi
Mozambique
Rwanda
Yugoslavia
Zaire