

Commission Regulation (EC) No 612/2009 of 7 July 2009
on laying down common detailed rules for the application of
the system of export refunds on agricultural products (Recast)

TITLE III

OTHER TYPES OF EXPORT AND SPECIAL CASES

CHAPTER 1

Destinations treated as exports from the Community, and victualling

Article 33

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

- a supplies within the Community for victualling to:
 - seagoing vessels,
 - aircraft on international flights, including intra-Community flights;
- b supplies to international organisations established in the Community;
- c supplies to armed forces stationed in the territory of a Member State, but not serving under its command.

2 Paragraph 1 shall apply only where imports of products of the same type from third countries and intended for such uses are exempt from import duties in the Member State in question.

3 Deliveries of products to warehouses situated within the Community and belonging to international organisations specialising in humanitarian aid with a view to food-aid operations in third countries shall rank as exports from the customs territory of the Community.

Authorisation to apply the first subparagraph shall be granted by the competent authorities of the Member State of storage, who shall determine the customs status of the warehouse and shall take the measures necessary to ensure that the products concerned reach their destination.

4 The provisions of Article 5(7) shall not apply to deliveries covered by this Article. However, the Member States may take appropriate action to allow checks on the products.

Article 34

1 In the case of the supplies referred to in Articles 33 and 41, Member States may, notwithstanding Article 5, authorise the following procedure to be followed for payment of refunds. Exporters authorised to follow this procedure may not at the same time follow the normal procedure in respect of the same products.

Authorisation may be restricted to certain places of loading in the Member State of export. Authorisation may cover loading in other Member States, in which case Article 8 shall apply.

2 For products loaded each month as provided for in this Article, the last day of the month shall be used to determine the rate of refund applicable.

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The operative event for the exchange rate applicable to the refund shall be that referred to in Article 1(1) of Regulation (EC) No 1913/2006.

3 Where the refund is determined by invitation to tender, the licence must be valid on the last day of the month.

4 Exporters must keep a register containing the following information:

- a the particulars needed to identify the products in accordance with Article 5(4);
- b the name or registration number of the vessels(s) or aircraft onto which the products are loaded;
- c the date of loading.

The particulars referred to in the first subparagraph shall be entered in the register not later than the first working day following that of loading. However, where loading is carried out in another Member State, these particulars shall be entered in the register not later than the first working day following that on which the exporter must have been notified that the products have been loaded.

Exporters shall also cooperate in any checks which Member States may deem necessary and shall keep the registers for at least three years from the end of the current calendar year.

5 Member States may decide that registers may be replaced by the documents used for deliveries, on which the customs authorities have certified the date of loading.

6 Paragraphs 2 to 5 shall apply *mutatis mutandis* to deliveries as referred to in Article 33(1)(b) and (c).

Article 35

1 For the purposes of Article 33(1)(a), products intended for consumption on board aircraft or passenger vessels, including ferryboats, and prepared before loading shall be deemed to have been prepared on board such craft.

2 Paragraph 1 shall apply only on condition that, prior to their preparation, the exporter furnishes sufficient evidence of the quantity, nature and characteristics of the basic products in respect of which the refund is claimed.

3 The victualling warehouse arrangements provided for in Article 37 may apply to prepared products as referred to in paragraphs 1 and 2 of this Article.

Article 36

1 Refunds shall not be paid unless the products for which the export declarations have been accepted have arrived at a destination covered by Article 33 in the unaltered state within 60 days of such acceptance.

2 Article 7(3) and (4) shall apply in the cases provided for in paragraph 1 of this Article.

3 If, before they arrive at a destination covered by Article 33, a product covered by an export declaration which 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 arrived at the specified destination shall be furnished by means of the T5 control copy.

Boxes 33, 103, 104 and, where appropriate, 105 of the T5 control copy shall be completed. Box 104 shall be endorsed accordingly.

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4 Form 302, which accompanies products delivered to the armed forces under Article 33(1)(c), shall rank as the T5 control copy referred to in paragraph 3 of this Article, provided that the receipt of the products is certified on the form by the competent military authorities.

Article 37

1 Member States may pay exporters the refund in advance under the special conditions set out below where evidence is furnished that the products have been placed, within 30 days of acceptance of the export declaration and except in cases of *force majeure*, in premises subject to customs control with a view to victualling within the Community of:

- a seagoing vessels; or
- b aircraft on international flights, including intra-Community flights; or
- c drilling or extraction rigs as referred to in Article 41.

Premises subject to customs control, hereinafter referred to as ‘victualling warehouses’, and warehousekeepers shall be specially approved for the purposes of this Article.

2 Member States on whose territory victualling warehouses are located 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 place the products in the unaltered state or frozen and/or after packaging for victualling within the Community on board:
 - seagoing vessels, or
 - aircraft on international flights, including intra-Community flights, or
 - drilling or extraction rigs as referred to in Article 41;
- b to keep a register enabling the competent authorities to carry out any checks necessary and stating in particular:
 - the date of entry into the victualling warehouse,
 - the serial numbers of the customs documents accompanying the products and the particulars of the customs office concerned,
 - the information required to identify the products pursuant to Article 5(4),
 - the date on which the products leave the victualling warehouse,
 - the registration numbers and names (if any) of the vessels or aircraft onto which the products are loaded or the name of any warehouse to which they are transferred,
 - the date on which they are placed on board;
- c to keep the register for at least three years from the end of the current calendar year;
- d to cooperate in any checks, and in particular periodical checks, which the competent authorities consider appropriate to verify compliance with this paragraph;
- e to pay any sums claimed by way of reimbursement of the refund where Article 39 is applied.

3 Amounts paid to exporters pursuant to paragraph 1 shall be entered as payments in the accounts of the body making the advance.

Article 38

1 Where an export declaration is accepted in the Member State in which the victualling warehouse is located, the competent customs authorities shall, on the entry of the goods into the victualling warehouse, endorse the national document used to obtain advance payment of the refund with a statement to the effect that the products comply with Article 37.

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2 Where export declarations are accepted in Member States other than that in which the victualling warehouse is located, proof that the products have been placed in a victualling warehouse shall be furnished by means of the T5 control copy.

Boxes 33, 103 and 104 and, where appropriate, 105 of the T5 control copy shall be completed. Box 104 of the T5 control copy shall be completed, under the heading 'Other', with one of the entries listed in Annex XVI.

The competent customs office of the Member State of destination shall endorse the control copy with a statement to the effect that the products have been placed in the warehouse after checking that the products have been entered in the register provided for in Article 37(2).

Article 39

1 Where a product placed in a victualling warehouse is found not to have arrived at, or not to be in a condition to be sent to, the destination specified, the warehousekeeper shall pay a fixed sum to the competent authority in the Member State of storage.

2 The fixed sum referred to in paragraph 1 shall be calculated as follows:

- a the total import duties applicable to an identical product on release for free circulation in the Member State of storage shall be determined;
- b the amount obtained pursuant to point (a) shall then be increased by 20 %.

The rate to be used to calculate the import duties shall be:

- a that applying on the day on which the product arrived at a destination other than that specified or the day from which it was no longer in a condition to be sent to the specified destination; or
- b where that day cannot be determined, the rate applying on the day on which it was found that the compulsory destination was not observed.

3 Where the warehousekeeper can show that the amount paid in advance on the product in question is lower than the fixed sum calculated pursuant to paragraph 2, he shall pay that amount only, plus 20 %.

However, where the amount is paid in advance in another Member State, it shall be increased by 40 %. In such cases, as far as the Member States of storage which do not belong to the European Monetary Union are concerned, the amount shall be converted into the national currency of the Member State of storage using the euro exchange rate prevailing on the day used to calculate the duties referred to in point (a) of the first subparagraph of paragraph 2.

4 The payment provided for in this Article shall not cover losses occurring during storage in a victualling warehouse due to natural decrease or to packaging.

Article 40

1 At least once every 12 months the competent authorities of the Member States in which victualling warehouses are located shall conduct a physical check of the quantity of products stored therein.

However, if the entry of products into, and their removal from, the victualling warehouses are subject to permanent physical checks by the customs authorities, the competent authorities may confine verification to documentary checks of products stored.

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

In such cases, the particulars of the second victualling warehouse shall be entered in the register of the first. The second victualling warehouse and warehousekeeper shall 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 liable for any sums payable pursuant to Article 39.

3 Where the second victualling warehouse is not located in the same Member State as the first, proof that the products have been placed in the second warehouse shall be furnished by means of the original of the T5 control copy, which shall bear one of the entries set out in Article 38(2).

The competent customs office of the Member State of destination shall endorse the T5 control copy with a statement to the effect that the products have entered the warehouse after checking that they are entered in the register provided for in Article 37(2).

4 Where the products are removed from the victualling warehouse and placed on board craft in a Member State other than the Member State of storage, proof that they have been so placed shall be furnished in accordance with Article 36(3).

5 Proof of placing under supervision in another victualling warehouse, proof of delivery on board a craft in the Community and proof of delivery as referred to in Articles 41 and 42(3) (a) shall be furnished, except in cases of *force majeure*, within 12 months of the date of removal of the products from the victualling warehouse, Article 46(3), (4) and (5) applying *mutatis mutandis*.

CHAPTER 2

Special cases

Article 41

1 Deliveries of catering supplies shall, for the purpose of establishing the rate of refund payable, rank as deliveries of supplies within the meaning of Article 33(1)(a):

- a to drilling or extraction rigs, including ancillary facilities providing support services for such operations, located within the European continental shelf or the continental shelf of the non-European part of the Community but outside a three-mile zone from the base line used to determine a Member State's territorial sea; and
- b on the high seas, to naval and auxiliary vessels flying the flag of a Member State.

'Catering supplies' means products intended solely for consumption on board.

2 Paragraph 1 shall apply only where the rate of refund is higher than the lowest rate. 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 takes place under supply operations recognised as normal by the competent authorities of the Member State from which shipment to the rig takes place. In this connection, the ports or places of loading, the type of

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- vessel — where supply is by sea — and the type of packaging and 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 keeps records in the Community which are available for consultation and which provide sufficient details of the voyage or flight.

3 Certificates of delivery on board as provided for in point (a) of paragraph 2 shall give full details of the products and the name and/or other details identifying the rig or naval or auxiliary vessel to which they were delivered and the date of delivery. Member States may require further information to be given.

Such certificates shall be signed:

- a in the case of rigs: by a person whom the operators of the rig consider responsible for catering supplies. The competent authorities shall take the measures necessary to ensure that the transactions are genuine. Member States shall notify the Commission of the measures taken;
- b in the case of naval or auxiliary vessels: by the naval authorities.

By way of derogation from paragraph 2, in the case of supplies to rigs Member States may release exporters from the obligation to present certificates of delivery on board in the case of deliveries:

- a qualifying for a refund not exceeding EUR 3 000 per export;
- b providing adequate guarantees to the satisfaction of the Member State regarding the arrival at destination of the products; and
- c where the transport document and proof of payment are presented.

4 The competent authorities of the Member State granting the refund shall carry out checks of quantities declared as delivered to rigs by verifying the records of the exporter and of the operator of the supply vessel or helicopter. They shall also ensure that the quantities of supplies for victualling delivered pursuant to this Article do not exceed the requirements of the crew.

For the purposes of the first subparagraph, the assistance of the competent authorities of other Member States may, where necessary, be requested.

5 Where Article 8 applies to deliveries to a rig, one of the entries listed in Annex XVII shall be entered under 'Other' in box 104 of the T5 control copy.

6 Where Article 37 is applied, the warehousekeeper shall undertake to record details of the rig to which each consignment is sent, the name/number of the supply vessel/helicopter and the date of delivery on board, in the register provided for in point (b) of Article 37(2). Certificates of delivery on board as provided for in point (a) of the second subparagraph of paragraph 3 of this Article shall be deemed to form part of such registers.

7 Member States shall arrange for a record to be kept of the quantities of products, broken down by sector, delivered to rigs and qualifying under this Article.

Article 42

1 With a view to determining the level of refund to be granted, supplies for victualling outside the Community shall be regarded as supplies under point (a) of Article 33(1).

2 Where the rate of refund varies according to destination, paragraph 1 shall apply on condition that proof is furnished that the products actually placed on board are the same as these leaving the customs territory of the Community to that end.

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3 For the purposes of this Article ‘Direct delivery’ means the delivery of a container or an undivided consignment of products placed on board a vessel.

4 The proof referred to in paragraph 2 shall be provided in the following manner:

- a Proof of direct delivery on board for victualling shall be furnished by a customs document or a document countersigned by the customs authorities of the third country of delivery on board; such documents may be drawn up in accordance with the model set out in Annex XVIII.

They must be completed in one or more official languages of the Community and a language used in the third country concerned.

- b Where the exported products do not constitute a direct delivery and are placed under customs supervision in the third 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 a document countersigned by the customs authorities of the third country certifying that the contents of a container or an undivided consignment of products has been placed in a victualling warehouse and that the products making up the latter are to be used solely for victualling; such documents may be drawn up in accordance with the model set out in Annex XVIII, and

— a customs document or a document countersigned by the customs authorities of the third country of delivery on board certifying that all the products in a container or an undivided consignment have definitively left the victualling warehouse and been delivered on board and specifying the number of partial deliveries; such documents may be drawn up in accordance with the model set out in Annex XVIII.

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

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

- d Documents as referred to in point (a) and the second indent of point (b) shall not be accepted by Member States unless they provide full details of the products delivered on board and state the date of delivery and the registration number and name (if any) of the vessel(s) or aircraft. To ascertain whether the quantities of supplies delivered for victualling correspond to the normal requirements of the crew and passengers of the vessel or aircraft in question, Member States may require additional information or documents to be provided.

5 In all cases, a copy or photocopy of the transport document and the document providing evidence of payment for the supplies for victualling must be presented in support of applications for payment.

6 Products placed under the arrangements referred to in Article 37 may not be used for deliveries in accordance with point (b) of paragraph 4 of this Article.

7 Article 24 shall apply *mutatis mutandis*.

8 Article 34 shall not apply to cases covered by this Article.

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Article 43

1 By way of derogation from Article 161(3) of Regulation (EEC) No 2913/92, agricultural products consigned to the Island of Heligoland shall be deemed to be exported for the purposes of the provisions on the payment of refunds.

2 Products consigned to San Marino shall not be deemed to be exported for the purposes of the provisions on the payment of refunds.

Article 44

1 Refunds may not be granted on products re-exported pursuant to Article 883 of Regulation (EEC) No 2454/93 except where applications for repayment or remission of the import duties are subsequently rejected and where the other conditions on the granting of refunds are fulfilled.

2 Where products are re-exported under the procedure referred to in paragraph 1, a reference to that procedure shall be made on documents as referred to in Article 5(4).

Article 45

In the case of exports consigned to:

- armed forces stationed in a third country, under the command of a Member State or of an international organisation of which at least one Member State is a member,
- international organisations established in a third country, of which at least one Member State is a member,
- diplomatic bodies established in a third country,

in respect of which the exporter cannot furnish the proof provided for in Article 17(1) or (2), the products shall be deemed to have been imported into the third country where such armed forces are stationed or such international organisations or diplomatic bodies are established, upon presentation of proof of payment for the products, and an acknowledgment of delivery issued by the armed forces, international organisation or diplomatic body in the third country in question.

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