(2) The documents (Unterlagen) referred to in Article 10 of Regulation No 1041/67 must include, besides the application for a refund, all the documents enabling the competent authority to verify whether the conditions to which the grant of the refund is subject are fulfilled.

(3) Since the headings provided for in the control copy do not on their own make it possible to determine in every case that all these conditions are fulfilled, it is for the national authorities to determine in each case the probative value in this respect of the remarks on the control copy or the necessity for supplementary vouchers.

Lecourt Mertens de Wilmars Mackenzie Stuart Donner

Monaco Pescatore Kutscher

Delivered in open court in Luxembourg on 22 January 1975.

A. Van Houtte — Registrar

R. Lecourt — President

OPINION OF MR ADVOCATE-GENERAL WARNER DELIVERED ON 10 DECEMBER 1974

My Lords,

In order to get to grips with the questions at issue in this case one has first to wend one's way through a maze of Community Regulations, so bewildering that it is difficult for anyone to be, at any time, confident that he has not overlooked any relevant provision. I have the greatest sympathy with those who call for frequent consolidation of Community lesgislation in fields where it is intricate, particularly since such legislation often has to be understood and applied, not only by lawyers, but also by traders and by officials in the Member States under the pressures of everyday work. It is good to know that the Commission and the Council too are conscious of the need for such consolidation.

Your Lordships will remember that the common organization of the market in pigmeat was established by Council Regulation No 121/67/EEC of 13 June 1967 (OJ No 117 of 19. 6. 1967), and that that organization includes, among other things, a system of export refunds.

The essential question in the present case, which comes to this Court by way of a reference for a preliminary ruling by the Finanzgericht of Hamburg, is whether the Plaintiff in the proceedings before that Court, the Firma Robert Unkel, of Würzburg-Heidingsfeld, fulfilled within the prescribed time limit the formalities required for it to become entitled to refunds in respect of two exportations of lard that it effected in April 1972. These were exportations from the Federal Republic of Germany, via Rotterdam, to Great Britain, the latter country being of course, then, still outside the Community.

The Defendant is the Hauptzollamt Hamburg-Jonas, which is the authority responsible in the Federal Republic for the payment of export refunds.

I must now weary Your Lordships with a survey of what I think is the relevant Community legislation, though I shall try to abbreviate it as much as I can.

Article 15 (2) of Regulation No 121/67 provides that an export refund 'shall be granted on application by the party concerned.'

That Regulation was followed by Council Regulation No 177/67/EEC of 27 June 1967 (OJ No 130, 28. 6. 1967), which is expressed to lay down, among other things, 'general rules for granting export refunds on pigmeat'. Article 6 (1) of this Regulation provides that a refund 'shall be paid upon proof:

— that the products have been exported from the Community, and

— that the products are of Community origin, except where Article 7 applies.'

(Article 7 relates to re-exports of goods imported under levy and does not apply in this case).

There followed Commission Regulation No 1041/67/EEC of 21 December 1967, prescribing 'detailed rules for the application of export refunds on products subject to a single price system' (OJ No 314 of 23. 12. 1967). This formula covers a wide range of products for which there are common market organizations, among them oils and fats, cereals, eggs, poultrymeat, rice, and of course pigmeat. The Regulation has been amended many times.

Article 1 (1) of it provides that, for the purposes of determining the rate of any refund on products covered by any of those market organizations, 'the date of exportation shall be the day on which the customs authority accepts the document by which the declarant states his intention to export the products in question and qualify for a refund'. It adds, so far as material:

'At the time of such acceptance the products shall be placed under customs control until they leave the Community.'

Article 1 (2) provides:

'For the purposes of this Regulation, acceptance of the document referred to in paragraph 1 shall be considered to be the completion of the customs export formalities.'

Article 3 (1) provides, again so far as material:

'The refund shall be paid only upon proof that the product in respect of which customs formalities have been completed ... has left the geographical territory of the Community unaltered.'

Article 5, in its original form, provided, among other things, as follows:

'If, before leaving the geographical territory of the Community ... 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 ... shall, pending the introduction of a Community transit system, be furnished in the form of an exit certificate, the model of which is shown in the Annex.

This certificate ... shall be issued ... by the customs office where the customs export formalities are completed.'

My Lords, I propose, for short, to refer to this customs office, as 'the customs

office of departure', as some subsequent Regulations do. In the present case, the customs office of departure was that of Würzburg.

Article 5 went on to provide that the original of the certificate should be issued to the exporter and should accompany the goods. It continued, referring to that original:

'It shall be endorsed by the intermediate customs offices where the goods have to be presented and by the customs office of exit from the Community ... It shall then, within eight days following the last endorsement, be returned by the office concerned to the national authority shown in the certificate heading.'

Your Lordships observe that the 'exit certificates' there provided for were to be used 'pending the introduction of a Community transit system'.

Such a system was introduced by Council Regulation (EEC) No 542/69 of 18 March 1969 (OJ L 77 of 29. 3. 1969). This prescribes two distinct procedures: one, 'internal Community transit', applicable, broadly speaking, to the movement of goods in free circulation in Member States and the other, 'external Community transit', applicable to the movement of other goods. The Regulation provides that goods to be carried under the latter procedure shall be covered by a declaration on form T1 and that those to be carried under the former procedure shall be covered by a declaration on form T2. These two forms are prescribed by means of Annexes to the Regulation and it is envisaged by the Regulation that they shall be completed in quadruplicate.

The adoption of Regulation No 542/69 was followed by that of Commission Regulation (EEC) No 2315/69 of 19 November 1969 (OJ L 295 of 24. 11. 1969). The object of this was to substitute the use of Community transit documents for the different procedures previously in use to provide proof, in 'the application of the provisions of Community measures concerning the movement of goods', that 'the goods in question are intended for a specific use and/or destination'. The Regulation achieves that object by providing (by Article 1):

'When the application of a Community measure adopted in respect of imports or exports of goods, or of movement of goods within the Community, is conditional upon proof that such goods are intended for the use and/or destination provided for or prescribed by that measure, proof shall be furnished by producing a special copy of the Community transit document, hereinafter referred to as "the control copy", bearing the number 5.'

A specimen of such a control copy, headed 'T1/T2 — External/Internal Community Transit — Control Copy — 5', is annexed to the Regulation.

Article 4 of the Regulation, lays down that 'the control copy shall be made out by the person concerned' — meaning, in circumstances such as those of this case, by the exporter. Article 5, lays down that the control copy shall be 'issued' by the customs office of departure and it enacts detailed provisions as to the routing and treatment of that copy. These provisions do not materially differ from what was laid down, in Article 5 of Regulation No 1041/67, as to the routing and treatment of the original of an exit certificate.

Regulation No 2315/69 having been adopted, the stage was set for the amendment of Article 5 of Regulation No 1041/67 by the substitution for the use of exit certificates, in the circumstances in which that Article envisaged it, of the use of control copies. That substitution was effected by Article 1 of Commission Regulation (EEC) No 2586/69 of 22 December 1969 (OJ L 322 of 24. 12. 1969), which goes on to prescribe how, in certain respects, the control copy is to be completed in a case where an export refund is sought.

Articles 6, 7 and 10 of Regulation No 1041/67 are also relevant.

Article 6 (1) as amended by Article 2 of Commission Regulation (EEC) No

499/69 of 17 March 1969 (OJ L 69 of 20. 3. 1969), provides that 'a refund shall be granted only on products which disregarding the packaging are in free circulation within the Community'; and it makes detailed provision for the application of this principle in the case of 'compound products' and of goods consisting of 'components'.

Article 6 (2), as so amended, provides:

'No refund shall be granted for products or goods which are not of sound and fair marketable quality in the form in which they are exported or for products or goods intended for human consumption, if their characteristics or conditions exclude or substantially impair their use for that purpose.'

In the case of certain pigmeat products, including lard, Commission Regulation (EEC) No 2403/69 of 1 December 1969 (OJ L 303 of 3. 12. 1969), as amended by Commission Regulation (EEC) No 1438/70 of 20 July 1970 (OJ L 160 of 22. 7. 1970), lays down additional and more detailed conditions as to the standards of quality that those products must attain in order to qualify for export refunds. It requires the exporter 'at the time of the conclusion of customs export formalities within the meaning of Article 1 (2) of Regulation No 1041/67' to declare in writing that the products in question fulfil those conditions. It also envisages control of the observance of those conditions by sampling.

Article 7 of Regulation No 1041/67, as amended by Article 3 of Commission Regulation (EEC) No 1056/68 of 23 July 1968 (OJ L 179 of 25. 7. 1968), provides that, for the purposes of the second indent of, among others, Article 6 (1) of Regulation No 177/67 (which, Your Lordships remember, provides that an export refund shall be paid upon proof that the products exported are of Community origin) 'the exporter must declare the origin of the product in question in terms of Community rules in force' and that such declaration 'shall be verified in the same way as the other items in the export declaration'.

There do not appear to be in fact any 'Community rules in force' prescribing the form of declaration of origin to be made by an exporter. Council Regulation (EEC) No 802/68 of 27 June 1968 (OJ L 148 of 28. 6. 1968), does not do so. It defines the concept of the origin of goods for, among other purposes 'the uniform application of all measures adopted, in relation to the exportation of goods, by the Community', and contains provisions about 'certificates of origin', but, as the preamble to that Regulation makes clear, such a certificate is a document 'prepared and issued by an authority or agency duly authorized for this purpose' and not a document emanating from the exporter himself.

Lastly I come to Article 10 of Regulation No 1041/67, about which three things need to be said at once: first, that it is of central importance in this case; second, that it has been substantially amended since the facts of the case occurred; and third that, until that amendment, the English text of that Article (authentic after 1 January 1973, by virtue of Article 155 of the Act of Accession) differed, in an important respect, from the texts in other Community languages, notably the French and the German.

The English text of the original Article 10, as amended by Article 7 of Regulation No 499/69, was as follows:

'1. The refund shall be paid by the Member State in whose territory the customs export formalities were concluded.

2. The time limit for claiming payment of the refund shall be 6 months following the day on which the customs export formalities were completed except in cases of force majeure.'

The French text of paragraph (2) read:

'Le dossier de paiement de la restitution doit être déposé, sauf cas de force majeure, dans les 6 mois suivant la date d'accomplissement des formalités doua-

nières d'exportation, sous peine de forclusion.'

The German text was similar to the French, using the words 'Die Unterlagen für die Zahlung der Erstattung' where the French had 'Le dossier de paiement de la restitution'.

Article 10 was rewritten by Article 8 of Commission Regulation (EEC) No 2110/74 of 26 July 1974 (OJ L 220 of 10. 8. 1974). Succinctly, the modifications introduced by that provision are these:

(i) it expressly provides that an application for a refund shall be made in writing;

(ii) it empowers Member States to prescribe a special form to be used for the purpose;

(iii) it affords a special remedy to an exporter where, in circumstances beyond his control, the control copy is not returned to the customs office of departure or relevant central office within three months of its date of issue;

and

(iv) it introduces into the English text of the Article the ambiguity latent in other texts by providing that (except in cases of force majeure) no claim for payment of a refund shall be entertained unless 'the relevant documents' are submitted within the six-month period.

The expression 'relevant documents' in the new English text corresponds to the expression 'dossier' in the French text and to the expression 'Unterlagen' in the German, Nowhere, however, is it stated what the 'relevant documents' or the 'dossier' or the 'Unterlagen' are to consist of.

The power conferred on Member States by this last Regulation to prescribe a special form of application for an export refund, if it had existed when the exportations in the present case were effected, might have afforded an answer to this case, because the legislation of the Federal Republic of Germany has always prescribed such a form and it was not until after the expiry of the relevant six-month period that the Plaintiff submitted applications on that form for refunds in respect of those exportations.

Essentially, the significance of Regulation No 2110/74 in this case is that Your Lordships' decision will relate only to the law as it was up to 1 October 1974 (the date when that Regulation came into force) save that, in any Member State that has not availed itself of the power to prescribe a special form of application, the decision will still be relevant to the question what constitutes such an application.

The provisions of Regulation No 1041/67 have fallen to be considered by the Court in two previous cases.

The first was Case 31/69 *Commission v Italy* (Rec. 1970 p. 25). The only relevance of that case, which is relied upon by the Defendant, is that the Court there recognized that the Regulation left to Member States some discretion to decide what documents should be required in support of a claim for a refund. The Court did not however define the scope of that discretion.

Of greater importance is Case 94/71 *Schlüter & Maack v Hauptzollamt Hamburg-Jonas,* the same Defendant as in the present case (Rec. 1972 p. 307).

That case was about an exportation, in February 1969, from the Federal Republic, through Genoa, of sugar as ships' stores. It was contended by the Defendant that no application for export refund, in the form required by German law, had been lodged before the expiration of the six-month period prescribed by Article 10 (2) of Regulation No 1041/67 and that, accordingly, the exporter was entitled to no refund in respect of that exportation. But the exporter had completed and lodged the exit certificate required in the circumstances by Article 5 of the Regulation as it then stood, and the original of that certificate, duly endorsed

by the customs office of exit at Genoa, had been returned to the Defendant in April 1969. The Court held that, whilst it was implicit in the relevant Community legislation that an application for refund should be in writing, that legislation should not be interpreted as requiring more formality than was necessary, and that accordingly any document by which, in the words of Article 1 (1) of Regulation No 1041/67, 'the declarant states his intention to export the products in question and qualify for a refund' was sufficient to constitute an application for a refund. The Court found that the exit certificate did constitute such a document. It recognized that, where national authorities in Member States were called upon to implement Community legislation, they must in general do so according to their national rules, but held that this was subject to the need for uniform application of Community law, without which there would be uneven treatment of exporters in different Member States. Thus, whilst it was open to a Member State to prescribe a special form of application for refunds, it was not open to that State to penalize failure to complete such a form within the six-month period by refusal to pay the refund.

In the present case, the exportations occurred, as I have said, in April 1972.

This was after the subsitution of control copies for exit certificates, and the Plaintiff made use of control copies when completing the 'customs export formalities'. The originals of those control copies, bearing the certificate of the customs office at Rotterdam that the goods in question had left the territory of the Community, were sent by that office to the Defendant in April 1972.

The first question asked by the Finanzgericht of Hamburg is, quite naturally, whether 'the control copy completed pursuant to Article 5 of Regulation (EEC) No 1041/67' amounts to 'a statement of intention to export the products in question and qualify for the refund ... and thus to an application for the grant of the refund ... pursuant to Article 15 (2) of Regulation No 121/67/EEC'. The Finanzgericht thus asks in effect whether the decision of the Court in the *Schlüter & Maack* case applies to a duly completed control copy as much as to an exit certificate.

Much of the argument put forward by the Defendant in its observations (and supported by the Commission) amounts to a submission that the decision of the Court in the *Schlüter & Maack* case was erroneous and that the Court should now depart from it. My Lords, I would, without hesitation, reject this submission. It seems to me, with respect, that the reasoning and conclusion of the Court in the *Schlüter & Maack* case were plainly right.

It was also argued on behalf of the Defendant (and of the Commission) that there were such differences between exit certificates and control copies that the reasoning of the Court in relation to the former could not be applied to the latter. It was in particular pointed out that exit certificates were prescribed for use only in connexion with claims for export refunds and, indeed, contained in their printed form a certificate, to be signed by the exporter, that the goods qualified for an export refund, whereas control copies, as was made clear by Regulation No 2315/69, were to be used in support of applications for the benefit of any Community measure where the grant of the benefit of that measure was conditional upon proof that the goods concerned were intended for a particular use and/or destination. So, ran the argument, it was impossible to tell, from the mere fact that a control copy had been used, which was the Community measure of which the exporter intended to claim the benefit. It might be any one or more of at least a dozen.

To this the Plaintiff retorted that Regulation No 2586/69 lays down in detail how the control copy is to be completed in a case where the benefit sought is an export refund and that no

one familiar with the relevant legislation can mistake a control copy completed for that purpose with one completed for another purpose.

My Lords, the argument entered here into minutiae about the appropriate manner in which to complete particular sections of the form. I would of course follow Counsel into these minutiae, if I thought it necessary for the decision of the case.

But, in fact, the control copies submitted by the Plaintiff and received by the Defendant, in respect of the exportations here in question, were made out on forms which had been specially printed so that, in the section showing to whom they should be sent after endorsement by the customs office of exit, the defendant was described as 'Hauptzollamt Jonas — Ausfuhrerstattung — 2 Hamburg 11', 'Ausfuhrerstattung' being the German for 'export refund'.

Not content with this, the Plaintiff, intent on having both belt and braces, had caused to be typed, at the head of the forms, 'Ausfuhrerstattung und Ausgleichsbetrag' ("Export Refund and Compensatory Amount").

How, in those circumstances, could anyone be in doubt as to which were the Community measures of which the Plaintiff was claiming the benefit?

The Defendant does not indeed claim that anyone could. It confines itself to making two observations. The first is that the form of control copy prescribed by the Community legislation, being designed for a different purpose, does not expressly provide for such indications. The second is that the question asked by the Finanzgericht of Hamburg does not refer to those indications. My Lords, it seems to me that the first of those observations springs from that very devotion to excessive formality that the Court said, in the *Schlüter & Maack* case, should be avoided. The question is not what the form was designed for but whether in the particular case, it evinces the requisite intention on the part of the exporter. The second observation seems to me to interpret too narrowly the role of the Court under Article 177 of the EEC Treaty. The fact that those indications were given is expressly mentioned by the Finanzgericht in its Order for Reference.

I would accordingly answer the first question asked by the Finanzgericht of Hamburg by saying that the use by an exporter of the control copy is a sufficient indication of his intention to export the products in question and qualify for an export refund to constitute an 'application' for such refund, at all events if such control copy contains an express indication that the benefit he thereby seeks is an export refund.

Turning to the second question, Your Lordships will have it in mind, from my recital of the relevant legislation, that, so far as material in this case, an exporter, in order to qualify for a refund, must show —

(i) that the goods exported are of 'sound and fair marketable quality' and, if they are intended for human consumption, that their 'characteristics or condition' do not 'exclude or substantially impair their use for that purpose' (Regulation No 1041/67, Article 6 (2) as amended);

(ii) in the case of certain pigmeat products, including lard, that they attain the detailed standards of quality prescribed by Regulation No 2403/69 as amended;

(iii) that the goods are of Community origin (Regulation No 177/67, Article 6 (1), and Regulation No 1041/67, Article 7 as amended);

(iv) that the goods, before exportation, were in free circulation within the Community (Regulation No 1041/67, Article 6 (1) as amended); and

(v) that the goods have left the geographical territory of the Community unaltered (Regulation

No 177/67, Article 6 (1), and Regulation No 1041/67, Article 3 (1).

It appears from the observations of the Defendant, in which the whole procedure is helpfully explained, that, as one would expect, the fulfilment of requirements (i) and (ii) is in practice checked by the customs office of departure before the despatch of the goods. This is done by physical examination of the goods on the basis of their description in the control copy. If thought necessary, samples of the goods are taken for expert analysis.

Nor is there any difficulty about requirement (v). This is met when the control copy, duly endorsed by the customs office of exit, is received by the national authority concerned — in this case the Defendant.

As regards requirement (iii), Your Lordships remember that Article 7 of Regulation No 1041/67, as amended, specifies that the exporter must make a declaration as to the origin of the goods 'in terms of Community rules in force' and 'verified in the same way as the other items in the export declaration', but that no Community legislation elucidates quite what this means. As I understand the observations of the Defendant, it has been interpreted in the Federal Republic as authorizing Member States to prescribe an appropriate form of declaration; and such a form of declaration is in fact incorporated in the form of application for refund prescribed by German law: it is item 2 in that form, where the exporter has to state whether the goods originate from the Community, from a third country, or from the DDR.

The Community legislation appears to be totally silent on the question whether any and, if so, what document is required to evidence the fulfilment of requirement (iv) — that is, the requirement that the goods shall have been in free circulation within the Community. Of course at first sight this requirement is otiose, because the very fact that goods are of Community origin means that they are in free circulation in the Community (see Article 9 (2) of the EEC Treaty). But, as the preamble to Regulation No 499/69 points out, difficulties can arise in the case of compound or composite goods; and it is to these (apart from the point about packaging) that Article 2 of that Regulation is essentially directed. The Defendant submits, here again, that the Community legislation implicitly authorizes Member States to prescribe an appropriate form of declaration and that, so far as regards the Federal Republic, that form of declaration is also incorporated in section 2 of the prescribed form of application for refund, inasmuch as in that section of the form, the exporter has to declare that 'the goods fulfil the requirements for the application of the Community legislation' ('Die Waren erfüllen die Bedingungen für die Anwendung der Gemeinschaftsregelung').

Such is the background against which the second question referred to the Court by the Finanzgericht of Hamburg must be understood.

That question is whether (i) the 'application' (for refund) mentioned in Article 15 (2) of Regulation No 121/67, (ii) the 'proof of origin of the goods' mentioned in Article 6 (1) of Regulation No 177/67 and (iii) the 'declaration' envisaged by Article 6 (1) of Regulation No 1041/67 that the goods are in free circulation in the Community are included among the 'Unterlagen', within the meaning of that expression in Article 10 (2) of Regulation No 1041/67, which must be lodged within the six-month period.

My Lords, I would say at once that the way in which that question is formulated leads me to think that the Finanzgericht did not have the benefit of as full an argument from Counsel as did this Court. For of course, as I have pointed out, no 'declaration' is envisaged by Article 6 (1) of Regulation No 1041/67.

On the other hand, Article 7 of that

Regulation, as amended, specifies the mode of 'proof' of the origin of the goods that is required: it is a declaration 'in terms of Community rules in force', although no Community legislation yet lays down the precise form that such declaration is to take.

So the situation as regards the three 'documents' referred to by the Finanzgericht is this:

(i) The 'application' for refund certainly has to be lodged within the six-month period, but, in circumstances such as those of this case, that requirement is fulfilled when the control copy is received by the competent national authority — in this case the Defendant.

(ii) The 'proof' of origin of the goods should involve the signature of a 'declaration' in a form prescribed by Community law. But, up till now, no such form has been so prescribed. There is no objection, from the point of view of Community law, to Member States prescribing a form for this purpose in the meantime, but they may not make a trader's failure to lodge such a nationally prescribed form within the six-month period a ground for declining to pay the refund. That follows from the decision of the Court in the *Schlüter & Maack* case.

(iii) No 'declaration' is prescribed by Community law that the goods were, before their exportation, in free circulation in the Community. Here again there is no objection to Member States prescribing a form of declaration to that effect, so long as they do not make a trader's failure to lodge it within the six-month period a ground for denying him the export refund to which he would otherwise be entitled.

Thus it seems to me that the English text of Article 10 (2) of Regulation No 1041/67, as it stood before its amendment by Regulation No 2110/74, attributed to that provision the only meaning it could bear, and that the references to 'le dossier de paiement de la restitution' and to 'Die Unterlagen für die Zahlung der Erstattung' in the French and German texts were really meaningless.

It may be asked: but what then is to be the law after 1 October 1974 when the English text has been brought into line with the others? Of course, that question does not have to be answered in the present case. But I conceive it to be axiomatic that a legislative provision that imposes a penalty — and loss of the right to a refund is a penalty — must state in clear terms what the person to whom it applies is required to do in order to avoid incurring the penalty (consider for instance the Judgments in the Queen's Bench Divisional Court in *Nash v Finlay* (1901) 85 L. T. 682, the Opinion of the Judicial Committee of the Privy Council in R. *v Broad* [1915] A.C. 1110, the Opinions expressed in the House of Lords in *McEldowney v Forde* [1971] A.C. 632 and the Judgment of the Bundesverfassungsgericht of 7 July 1971 (BVerfGE 31, 255 [264])). I would therefore think it a tenable view that Article 8 of Regulation No 2110/74, in so far as it requires 'the relevant documents' to be submitted within the six-month period, is incapable of having any effect in changing the law until the Commission adopts a further Regulation either specifying what 'the relevant documents' are in each type of case where the requirement applies or delegating to Member States the power to specify them.

I would accordingly answer the second question asked by the Finanzgericht of Hamburg by saying that the only document that must be lodged within the six-month period is the application for refund itself.

On that view, the third question asked by the Finanzgericht loses much of its pertinence.

That question is whether the full

completion of the control copy amounts to a sufficient declaration or proof of the origin of the goods and of the fact that they are in free circulation in the Community. The Plaintiff contends that it does.

That contention rests on the circumstance that the exporter is required, in section 3 of the form of control copy, to state whether the goods have been subject to any previous customs procedure and on the further circumstance that, if he is claiming a refund, he is required to complete other sections of the form by reference to the nomenclature used for refund purposes. The Plaintiff's argument is first that, where, as in the present case, the exporter puts in section 3 the word 'inapplicable' ('entfällt') thereby stating that the goods have been subject to no previous customs procedure, he in effect states that they are of Community origin and therefore also that they are in free circulation in the Community; and secondly that, by completing other sections of the form by reference to that nomenclature, and signing it, the exporter certifies that the goods qualify for refund and thereby necessarily confirms that they are of Community origin and in free circulation within the Community.

My Lords, that argument seems to me ingenious, but a little too far-fetched. I therefore think that the third question asked by the Finanzgericht should be answered in the negative.