contract under Regulation No 2267/84 may at the same time remain under either of those customs procedures. Article 6(2) does not, however, affect the starting point of the period for which, under Article 11(2), they may remain under a customs procedure, even where the operation of putting into storage for the purposes of private-storage aid is not yet complete when that period starts. It follows that, in such circumstances, the period for which products or goods covered by a private-storage contract may at the same time be covered by a customs-warehousing or free-zone procedure expires before the period which the exporter is obliged to observe for the purposes of the private-storage aid which was granted to him.

REPORT FOR THE HEARING
in Case C-231/91 *

I — Legal background to the proceedings

In order to reduce surplus supplies of beef and veal, the Community has adopted various measures including private-storage aid and export refunds which may be paid in advance.

1. The system of private-storage aid in respect of beef and veal

The grant of private-storage aid is conditional upon the conclusion of a contract between the storer and the person with storage facilities.

Article 8 of Commission Regulation (EEC) No 1091/80 of 2 May 1980 laying down detailed rules for granting private aid for beef and veal, [1] as amended by Article 7 of Commission Regulation (EEC) No 2826/82 of 22 October 1982 providing for the grant of private-storage aid fixed at a standard rate in advance in respect of hindquarters of beef and amending for the second time Regulation (EEC) No 1091/80, [2] provides:

'...

2. The first day of the storage period shall be the day following that on which the operation of putting into storage is completed.

1 — OJ 1980 L 114, p. 18.
2 — OJ 1982 L 297, p. 18.

* Language of the case: German.

3. Removal from storage may commence on the day following the last day of the period of storage under contract.'

Article 5 of Regulation No 2267/84 is as follows:

'1. The period of storage shall be either nine, 10, 11 or 12 months, at the storer's option; the storer shall state his preference at the time of submitting the application...

2. Entitlement to payment of the aid shall be established only if the meat has remained in storage throughout the storage period.'

However, Article 7 of Regulation No 2267/84 provides:

'1. On the expiry of a storage period of two months, the Contracting party may withdraw from store all or part of the quantity of meat under contract, subject to a minimum of 10 tonnes, provided that within 60 days following its removal from storage:

— the meat has left the Community's territory ... .

2. Where application has been made of paragraph 1, the amount of aid shall be reduced, in accordance with Article 1(2), ...'

2. The system of advance payments of export refunds

Article 5(1) of Council Regulation (EEC) No 565/80 of 4 March 1980 on the advance payment of export refunds in respect of agricultural products [3] provides:

'1. An amount equal to the export refund shall, at the request of the party concerned, be paid as soon as the products or goods have been brought under the customs-warehousing or free-zone procedure with a view to their being exported within a set time-limit.'

Article 3(1) of Regulation (EEC) No 798/80 provides:

'1. At the time of acceptance of the payment declaration, the products or goods shall be placed under customs control.'

3 — OJ 1980 L 62, p. 5.

Under Article 2(1) of Regulation No 798/80 the payment declaration is the declaration by which the exporter states his intention to place the products or goods under the customs-warehousing or free-zone procedure, to export them following storage and to receive a refund.

Article 11(2) of Regulation No 798/80 provides:

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

Pursuant to Article 11(3), products placed under customs control must be exported within 60 days from the date on which they are no longer subject to the customs-warehousing or free-zone procedure.

Article 10(4) of Regulation No 798/80 lays down detailed rules for the reimbursement by the trader of the refund paid in advance where the time-limits laid down in Article 11 thereof have not been respected.

The amount of that reimbursement has subsequently been reduced, in proportion in particular to the number of days by which the time-limit is exceeded, by Article 33(3)(a) of Commission Regulation (EEC) No 3665/87 of 27 November 1987 laying down common detailed rules for the application of the system of export refunds on agricultural products. [4] By the third paragraph of Article 51 of that regulation, that provision was made applicable to all exports the export declarations for which were accepted before the entry into force of that regulation where the relevant files were still open on that date.

3. Aggregation of private-storage aid and advance payment of export refunds

In principle, the same products may not at the same time qualify for private-storage aid and advance payment of export refunds. [5]

Article 6(1) of Regulation No 2267/84, however, provides for a derogation from that prohibition on the aggregation of the two benefits in the following terms:

'By way of derogation from Article 2(4) of Regulation (EEC) No 1091/80, products under a private-storage contract may simultaneously be placed under the system laid down in Article 5(1) of Regulation (EEC) No 565/80.'

4 — OJ 1987 L 351, p. 1.

5 — Cf. Article 2(4) of Regulation No 1091/80, as supplemented by Article 1 of Commission Regulation (EEC) No 2629/80 of 14 October 1980 amending Regulation (EEC) No 1091/80 (OJ 1980 L 270, p. 9).

Article 6(2) provides:

'In this case, by way of derogation from Article 11(2) of Regulation (EEC) No 798/80, the period referred to in that Article shall be 12 months.'

The first indent of Article 4(5) of Commission Regulation (EEC) No 3445/90 of 27 November 1990 laying down detailed rules for granting private-storage aid for beef and veal [6] subsequently increased, so as to cover the maximum contractual storage period, plus one month, the period during which goods may remain under the customs-warehousing or free-zone procedure with a view to advance payment of the export refunds.

II — Facts and procedure

1. The main proceedings

On the basis of an export certificate issued to it, Annuss placed in an export warehouse in the free port, with a view to exporting them, a number of cartons of beef and veal. It received advance payment of the export refund and also obtained private-storage aid on the basis of a storage contract for a period of 12 months.

The period during which the goods could remain under customs control began on 10 and 11 November 1984 and expired on 11 November 1985 pursuant to Article 6(2) of Regulation No 2267/84.

Since the private-storage contract related to consignments of meat for which the placing in store was not completed until 16 November 1984, the contractual storage period did not begin until 17 November 1984 pursuant to Article 8(2) of Regulation No 1091/80.

Some of the goods were withdrawn from store and exported to non-member countries before the expiry of the period during which the goods could remain under customs control. However, it was not until 14 November 1985 that some cartons were presented to the authorities of the free port for customs clearance on export. The defendant in the main proceedings therefore demanded from Annuss the repayment of the appropriate part of the export refunds paid in advance.

Because the time-limit for remaining under customs control had been exceeded, the defendant in the main proceedings applied Article 10(4) of Regulation No 798/80 and demanded repayment of the advance export refund, amounting to DM 72 614.52, this being reduced to DM 21 347.29 by an amending decision of 5 July 1988 based on Article 33(3)(a) of Regulation No 3665/87.

Annuss brought an action against that decision, claiming that the relevant provisions of Community law had to be interpreted as meaning that when goods are subject to

6 — OJ 1990 L 333, p. 30.

advance payment of the export refund and at the same time to private-storage aid, the storage period and the period for remaining under the customs procedure are not different and no longer have different starting dates, contrary to what the defendant claims. Where a transaction constitutes a single economic operation, the periods pertaining thereto must run uniformly. Nor may a trader be deprived of the possibility of making full use of the storage period. Moreover, in provisions adopted subsequently, the Community legislature itself has indicated that the time-limits must be calculated on uniform basis.

The defendant considers, on the contrary, that Annuss has failed to make a clear distinction between the different time-limits applicable and to act accordingly, when it was possible for it to do so without suffering the slightest legal disadvantage.

In so far as Annuss claims that the reimbursement of the export refund appears to be disproportionate in the event of the time-limit being exceeded to an insignificant extent, the defendant points out that that factor has been taken into consideration in the notice demanding repayment in accordance with the new provisions of Regulation No 3665/87.

According to the national court, the time-limit fixed for advance payment of the export refund does not coincide with the storage period for the grant of private-storage aid, when the individual lots of meat forming the subject matter of the contract for private-storage aid are placed in the warehouse on different dates.

According to the national court, this is often or even regularly the case, because the minimum quantity per storage contract, which is 20 tonnes, is greater than the daily quantity handled by the average exporter, who, for convenience, will conclude aid contracts for the foreseeable quantities to be placed in a warehouse over a period which is always longer than one day.

As a result, an exporter encounters difficulties where he wishes to make full use of the storage period granted to him by the rules on private-storage aid. Besides, it is clear that even an experienced undertaking which basically applies the rules conscientiously may easily fail to notice that the time-limits do not coincide. That problem is increased by the fact that Article 6(2) of Regulation No 2267/84 gives the impression of harmonizing the time-limits fixed for the purposes of private-storage aid and advance payment of export refunds.

The national court considers that no essential Community interest appears to require such a difference in the two periods. The provisions at issue seem to be due merely to the fact that the legislature had not appreciated the difficulties involved in implementing them, which it is now endeavouring to take account of in Article 4(3) and (5) of Regulation No 3445/90.

The national court therefore questions whether, notwithstanding their text, it is possible to rectify and complete the rules applicable to the time-limits set out above by interpreting them as meaning that, by way of derogation from Article 11(2) of Regulation

No 798/80, the period during which the goods may remain under customs control does not expire before the time-limit which the exporter must observe for the purposes of private-storage aid.

2. The national court's question

The national court therefore stayed the proceedings and requested the Court of Justice, by order of 27 May 1991, amended by order of 30 September 1991, to give a preliminary ruling on the following question:

'Is Article 6(2) of Regulation (EEC) No 2267/84 to be interpreted as meaning that, in derogation from Article 11(2) of Regulation (EEC) No 798/80, the storage period does not expire before the expiry of the period which the exporter has to observe in respect of the aid granted to him for private storage?'

3. Procedure before the Court

The order for reference from the Finanzgericht Hamburg was lodged at the Court Registry on 16 September 1991.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted by Annuss GmbH & Co, represented by Wolfgang Ziemer, Rechtsanwalt of Hamburg, and by the Commission of the European Communities, represented by Ulrich Wölker, of its Legal Service, acting as Agent.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry. Pursuant to Article 95(1) and (2) of the Rules of Procedure, the Court, by a decision of 3 June 1992, assigned the case to the Second Chamber.

III — Summary of the written observations submitted to the Court

Annuss states that the order of the Finanzgericht Hamburg adequately explains the facts and the subject matter of the main proceedings and that a fuller explanation of the facts is unnecessary.

According to Annuss, when goods are at the same time subject to advance payment of the export refund and to the grant of private-storage aid, the respective warehousing periods must not be different or have different starting dates. Otherwise, a trader is deprived of the opportunity of making full use of the storage period.

Article 4(5) of Regulation No 3445/90 provides that the time-limit provided for by Article 28(5) of Regulation No 3665/87, which succeeded Regulation No 798/80, is increased to cover the duration of the maximum storage period, plus one month.

That rule is in conformity with the principle of proportionality and avoids penalizing traders who wish to make full use of the

storage periods granted to them by the aid scheme.

A regulation is disproportionate when it is not conducive to the achievement of its purpose. That applies to the former rules, since the difference in time-limits adversely affects exports, while the rules are, on the contrary, intended to facilitate trade and to unify the market. In that respect, Annuss refers to Articles 38 and 39 of the EEC Treaty.

The Commission is of the opinion that the question submitted, after being redrafted, calls for a negative response.

It is indeed true that, where advance payment of the export refund and private-storage aid are claimed simultaneously, the two periods may end on different dates despite having been harmonized at 12 months.

That situation comes about as a result of the different rules which define the starting dates of the relevant periods for the purposes of advance payment of the export refund and the grant of private-storage aid.

It is thus possible that the utilization in full of the maximum storage period of 12 months authorized by the private-storage aid scheme involves exceeding the period during which the goods may remain under the customs-warehousing or free-zone procedure and that, as a result, the trader will have to make partial reimbursement of the export refund.

The Commission considers, however, that that situation is easily avoided. First, the storer is not required to agree to a maximum storage period of 12 months in the storage contract. Secondly, even if the maximum storage period was initially agreed upon, Article 7(1) of Regulation No 2267/84 derogates in such circumstances from the obligation to observe the entire storage period agreed upon in order to receive aid, by authorizing withdrawal from the warehouse on the expiry of a storage period of two months, with a corresponding reduction in the amount of aid in application of paragraph 2 of that provision.

The Commission observes that Annuss must in any event have resorted to the possibility of withdrawing goods in advance from the warehouse since the last withdrawal from the warehouse took place on 14 November 1985, that is to say, before the expiry on 17 November 1985 of the agreed 12-month storage period. It is thus difficult to understand why Annuss did not make full use of the possibilities offered by Article 7(1) of Regulation No 2267/84 to withdraw the whole of the goods from the warehouses within the maximum period laid down for the purposes of the export refund.

As the national court points out, it is true that an exporter encounters difficulties when he wishes to make full use of the storage period available under the private-storage aid scheme. But it was precisely not always possible to have the full benefit of every advantage offered by the Community rules prior to Regulation No 3445/90, which entered

into force on 1 December 1990. Either a trader took advantage of advance payment of the export refund and had to renounce part of the storage aid, or he took advantage of all the storage aid and was no longer able to benefit from advance payment of the entire refund.

In any event, the Commission takes the view that, having regard to the possibilities offered by Article 7 of Regulation No 2267/84, there should be no departure from the clear wording of the applicable provisions. A derogation such as that envisaged by Annuss and the national court is also ruled out because it would unjustly penalize exporters who observed the shorter periods and were thus obliged to renounce part of the private-storage aid.

Contrary to the opinion of the national court, the Commission takes the view that the principal elements of the legal situation are readily ascertainable from Articles 5, 6 and 7 of Regulation No 2267/84 and may be observed by the exporter without great difficulty: the maximum period for leaving goods under the customs-warehousing or free-zone procedure for the purposes of advance payment of the export refunds is 12 months; it must be observed in all circumstances, which allows flexibility in the storage period within the framework of the private-storage aid scheme.

Since then, Regulation No 3445/90 has, by the first indent of Article 4(5), extended the period for placing goods under the customs procedure to cover the maximum period of contractual storage, increased by one month. However, this is only a facility granted to exporters, who besides the possibility of reducing the period of contractual storage, now also have the possibility of making full use of the maximum contractual storage period without suffering financial loss.

However, that additional benefit and facility represent simply a policy decision and are definitely not necessary to resolve supposed difficulties. There can be no question of anticipating these new rules or of applying them by interpretation to the former rules.

J. L. Murray
Judge-Rapporteur