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REGULATION (EEC) No 1259/72 OF THE COMMISSION

of 16 June 1972

on the disposal of butter at a reduced price to certain Community processing undertakings

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community;

Having regard to Council Regulation (EEC) No 804/68[1] of 27 June 1968 on the common organization of the market in milk and milk products, as last amended by Regulation (EEC) No 1411/71,[2] and in particular Article 6 (7) thereof;

Having regard to Council Regulation (EEC) No 985/68[3] of 15 July 1968 laying down general rules for intervention on the market in butter and cream, as last amended by Regulation (EEC) No 1075/71,[4] and in particular Article 7a thereof;

Having regard to Council Regulation (EEC) No 974/71[5] of 12 May 1971 on certain measures of conjunctural policy to be taken in agriculture following the temporary widening of the margins of fluctuation for the currencies of certain Member States, and in particular Article 6 thereof;

Whereas the situation on the Community butter market is marked by large stocks following intervention under Article 6 (1) of Regulation (EEC) No 804/68;

Whereas it will not be possible to dispose of these stocks of butter on normal terms during the present marketing year; whereas prolonged storage should be avoided because of the high cost involved; whereas measures should therefore be adopted to facilitate disposal of the butter;

Whereas the sale of butter at a reduced price to certain Community processing undertakings constitutes such a measure; whereas, to ensure that all purchasers have equal access to the butter and to keep a check on the quantities disposed of, the standard tendering procedure should be followed;

Whereas a system of supervision should be set up to ensure that the butter is not diverted from its destination; whereas this supervision must operate from the time the butter is removed from storage until it is processed; whereas in addition to the lodging of a deposit, stock records at all stages of marketing and the incorporation of an indicator in butter intended for processing may contribute to this end;

Whereas experience in the application of Commission Regulation (EEC) No 1390/69[6] of 18 July 1969 on the disposal of butter at a reduced price to certain Community processing undertakings, repealed by Regulation (EEC) No 2216/70,[7] has shown that betasitosterol and certain products derived from vanilla meet the requirements of the operation in question; whereas these products must be incorporated in establishments approved by the relevant Member State so that the operation may be supervised on the spot; whereas however, incorporation is not necessary when, because of the quantities used, the processor to whom the butter is sold is subject to on-the-spot supervision by the Member State;

Whereas, as regards the compensatory amounts fixed pursuant to Council Regulation (EEC) No 974/71 of 12 May 1971 on certain measures of conjunctural economic policy to be taken in agriculture following the temporary widening of the margins of fluctuation

[1] OJ No L 148, 28.6.1968, p. 13.
[2] OJ No L 148, 3.7.1971, p. 4.
[3] OJ No L 169, 18.7.1968, p. 1.
[4] OJ No L 116, 28.5.1971, p. 1.
[5] OJ No L 106, 12.5.1971, p. 1.
[6] OJ No L 178, 19.7.1969, p. 25.
[7] OJ No L 240, 31.10.1970, p. 69

for the currencies of certain Member States, account should be taken of the value of the products concerned;

Whereas the measures provided for in this Regulation are in accordance with the Opinion of the Management Committee for Milk and Milk Products;

HAS ADOPTED THIS REGULATION:

Article 1

Butter bought in under Article 6 (1) of Regulation (EEC) No 804/68 and taken into storage before 1 May 1972 shall be sold under the conditions described hereinafter.

Article 2

The butter shall be sold by means of a standing invitation to tender opened by each intervention agency for the quantities of butter in question held by it.

Article 3

1. The intervention agency shall issue a notice of invitation to tender indicating in particular:

(a) the location of the cold storage depot or depots where the butter is held;

(b) the quantities of butter for sale in each depot;

(c) the time limit and place for submission of tenders.

2. The notice of invitation to tender shall be published in the *Official Journal of the European Communities* at least eight days before the first time limit for the submission of tenders. In addition, the intervention agency may publish notices elsewhere.

Article 4

1. During the period of validity of the standing invitation to tender, the intervention agency shall issue individual invitations to tender. Each individual invitation to tender shall cover such part of the butter specified in Article 1 as is still available.

2. The time limit for the submission of tenders in response to the first individual invitation to tender shall expire at 1200 hours on 11 July 1972.

The time limit for the submission of tenders in response to subsequent individual invitations to tender shall expire at 1200 hours on the second and fourth Tuesday of the month. If the Tuesday is a public holiday, the time limit shall be extended to 1200 hours on the following working day.

Article 5

1. The intervention agency shall update and make available to interested parties on request the list provided for in Article 3 (1) (b) of the quantities of butter for sale by tender in each cold storage depot. The intervention agency shall also publish a regular up-to-date list in an appropriate form to be specified in the notice of invitation to tender provided for in Article 3.

2. The intervention agency shall take the measures necessary to enable interested parties to examine, at their own expense and before tendering, samples of the butter for sale.

Article 6

1. A tenderer may not take part in the invitation to tender unless he gives a written undertaking:

(a) to have all the butter awarded processed into concentrated butter of a fat content of not less than 99·8%, in an establishment approved by the Member State in whose territory the processing is carried out;

(b) in the course of this processing and in the same establishment, to have incorporated per metric ton of concentrated butter, to the exclusion of all other products and in such a way as to ensure uniform diffusion of the ingredients:

(aa) either:

— 250 g of 4 hydroxy-3 methoxybenzaldehyde obtained either from vanilla or from synthetic vanillin, and

— 600 g of a compound containing at least 60% of betasitosterol, the remaining part consisting mainly of betasitosterol isomers,

(bb) or:

— 250 kg of refined granulated or powdered sugar, and

— 600 g of a compound containing at least 60% of betasitosterol, the remaining part consisting mainly of betasitosterol isomers.

In the latter case the final product must have a minimum fat content of 79·8%.

Each Member State may decide that:

— only the product resulting from the incorporation specified under (aa), or

— only the product resulting from the incorporation specified under (bb),

shall be used in its territory.

Member States shall, at the time of entry into force of this Regulation, inform the Commission whether they intend to avail of this option and, if so, of the process chosen;

(c) to have the products referred to under (b) processed only into products falling within subheading No 19.08 of the Common Customs Tariff and to have such processing carried out in the Community within 120 days of the day of removal from storage referred to in Article 13 (2);

(d) to keep stock records showing, for each delivery, the names and addresses of purchasers of the product obtained as a result of the operations described under (a) and (b) and the corresponding quantities;

(e) to lay down that, for any subsequent resale of this product, the same requirements as those referred to under (c) and (d) shall form part of the contract of sale.

2. However, any processor giving a written undertaking to process all the butter awarded into products falling within subheading No 19.08 of the Common Customs Tariff within 120 days of the day of removal from storage referred to in Article 13 (2), and to use at least five metric tons of that butter for that purpose in one month, may take part in the invitation to tender without giving the undertakings provided for in paragraph 1 (a), (b) and (c).

In that case the Member State in whose territory the processing takes place shall carry out supervision on the premises throughout the operation in a manner which it shall determine. The costs of that supervision shall be borne by the undertaking concerned.

Article 7

1. Tenders shall be submitted either personally, in writing, against receipt, to the intervention agency, or by registered letter addressed to the intervention agency.

2. The tender shall state:

(a) the name and address of the tenderer;

(b) the quantity to which the tender relates,

(c) the price offered per metric ton, disregarding the price reduction provided for in the second subparagraph of Article 11 (2), exclusive of internal taxes, ex-cold storage depot in which the butter is held, expressed in the currency of the Member State in which the invitation to tender is opened;

(d) the cold storage depot in which the butter is held.

A tender relating to several storage depots shall be considered to comprise as many tenders as the cold storage depots mentioned.

3. A tender shall not be valid unless it relates to at least 5 metric tons.

However, if the quantity available in a storage depot is less than 5 metric tons, the available quantity shall constitute the minimum quantity for tender.

4. A tender shall not be valid unless:

(a) it is accompanied by the written undertakings referred to in Article 6 (1) and (2),

(b) the tenderer includes a declaration that he will forgo any claim regarding the quality and characteristics of any butter sold,

(c) proof is furnished, before the time limit for submission of tenders expires, that the tenderer has lodged a tendering deposit in respect of the relevant individual invitation to tender.

5. A tender may stipulate that it shall not be considered to have been submitted unless the contract is awarded in respect of the entire quantity indicated in the tender.

A tender may stipulate that it shall not be considered to have been submitted unless the contract is awarded in respect of a specific quantity indicated in the tender.

6. A tender may not be withdrawn.

Article 8

1. The tendering deposit shall be 10 units of account per metric ton.

2. It shall be paid, according to the preference of the Member State, either in the form of a cheque addressed to the intervention agency, or in the form of a guarantee meeting criteria laid down by the Member State concerned.

Article 9

1. In the light of the tenders received in response to each individual invitation to tender and in accordance with the procedure laid down in Article 30 of Regulation (EEC) No 804/68, a minimum selling price shall be fixed or a decision shall be taken not to proceed with the invitation to tender.

2. At the same time as the minimum selling price is fixed and by the same procedure, the amount of the processing deposit shall be fixed to cover the difference between the market price of butter and the minimum price.

Article 10

1. The tender shall be rejected if the price offered is lower than the minimum price valid for the individual invitation to tender in question.

2. Without prejudice to paragraph 1, the contract shall be awarded to the tenderer offering the highest price.

If the quantity available in the storage depot in question is not exhausted by this award, the contract for the remaining quantity shall be awarded to the other tenderers according to the price offered, starting with the highest.

3. Where acceptance of a tender would lead to the quantity of butter available at the cold storage depot in question being exceeded, the contract shall be awarded to the tenderer concerned only in respect of the quantity available.

4. Where acceptance of several tenders at the same price would lead to the quantity available being exceeded, the contract shall be awarded by lot.

5. Rights and obligations arising out of the invitation to tender shall not be transferable.

Article 11

1. Each tenderer shall immediately be informed by the intervention agency of the result of his participation in an individual invitation to tender.

2. The successful tenderer shall, before taking over the butter, pay the intervention agency the amount corresponding to his tender for each quantity which he intends to remove from storage.

However, in the case of successful tenderers who have undertaken to conform to the provisions of Article 6 (1) (a), (b) and (c), the price shall be reduced by 10 units of account per 100 kg.

Article 12

1. Before taking over each quantity, the successful tenderer shall lodge the processing deposit referred to in Article 9 (2).

2. The processing deposit shall be lodged in accordance with Article 8 (2).

Article 13

1. When the payment provided for in Article 11 (2) has been made and the processing deposit referred to in Article 12 has been lodged, the intervention agency shall issue a removal order indicating:

(a) the quantity for which the conditions specified at the beginning of this paragraph have been satisfied;

(b) the cold storage depot in which it is stored;

(c) the final date for taking over the butter.

2. The successful tenderer shall take over the butter awarded to him within thirty days of receiving the notification referred to in Article 11 (1). The butter may be taken over in stages.

Except in cases of *force majeure,* if the successful tenderer has not taken over the butter within the set time limit the sale shall be cancelled as regards the remaining quantities.

Article 14

The butter shall be delivered by the intervention agency in packings bearing one or more of the following markings in letters at least 2 cm high:

'Beurre destiné à la transformation (règlement (CEE) n° 1259/72)',

'Zur Verarbeitung bestimmte Butter (Verordnung (EWG) Nr. 1259/72',

'Burro destinato alla trasformazione (regolamento (CEE) n. 1259/72)',

'Boter voor verwerking (Verordening (EEG) nr. 1259/72)',

(Butter for processing (Regulation (EEC) No 1259/72)).

Article 15

From the time of its removal from store and until it is processed into products falling within heading No 19.08 of the Common Customs Tariff, the butter shall be subject to customs or equivalent administrative control.

Article 16

1. When products are processed and incorporated in accordance with Article 6 (1) (a) and (b), the Member State on whose territory the operations take place shall carry out an on-the-spot supervision throughout these operations.

2. If the operations referred to in Article 6 (1) (a) and (b) and the processing referred to in (c) of that paragraph are not carried out in the same place, the concentrated butter shall be put up in packages of not less than 10 kg.

The packages shall bear one or more of the following markings in letters at least 2 cm high:

'Beurre concentré destiné à la transformation en produits 19.08 TDC (règlement (CEE) n° 1259/72)',

'Zur Verarbeitung zu Erzeugnissen 19.08 GZT bestimmtes Butterfett (Verordnung (EWG) Nr. 1259/72)',

'Burro concentrato destinato alla trasformazione in prodotti 19.08 TDC (regolamento (CEE) n. 1259/72)',

'Boterconcentraat bestemd voor verwerking tot produkten 19.08 GDT (Verordening (EEG) nr. 1259/72)',

(Concentrated butter for processing into 19.08 CCT products (Regulation (EEC) No 1259/72)).

Article 17

Where either the incorporation of the products referred to in Article 6 (1) (b) or the processing of butter, concentrated butter or concentrated butter with added sugar takes place in a Member State other than the selling Member State, the following rules shall be applied:

Sections 101, 103 and 104 of the control copy provided for in Article 1 of Regulation (EEC) No 2315/69 shall be completed. Section 104 shall be completed by deleting what does not apply and by adding one of the following phrases under the second indent:

(a) if the butter is intended for processing after the incorporation referred to in Article 6 (1), or if the butter is concentrated or has added sugar and was obtained in accordance with that paragraph:

'destiné à la transformation au titre de l'article 6 paragraphe 1 du règlement (CEE) n° 1259/72',

'zur Verarbeitung gemäß Artikel 6 Absatz 1 der Verordnung (EWG) Nr. 1259/72 bestimmt',

'destinato alla trasformazione a norma dell'articolo 6 paragrafo 1 del regolamento (CEE) n. 1259/72',

'bestemd voor verwerking overeenkomstig artikel 6 lid 1 van Verordening (EEG) nr. 1259/72',

(for processing under Article 6 (1) of Regulation (EEC) No 1259/72);

(b) if the butter is intended for processing under the conditions referred to in Article 6 (2):

'destiné à la transformation au titre de l'Article 6 paragraphe 2 du règlement (CEE) n° 1259/72',

'zur Verarbeitung gemäß Artikel 6 Absatz 2 der Verordnung (EWG) Nr. 1259/72 bestimmt',

'destinato alla trasformazione a norma dell'articolo 6 paragrafo 2 del regolamento (CEE) n. 1259/72',

'bestemd voor verwerking overeenkomstig artikel 6 lid 2 van Verordening (EEG) nr. 1259/72',

(for processing under Article 6 (2) of Regulation (EEC) No 1259/72).

Article 18

1. Except in cases of *force majeure*, the tendering deposit shall be released only for the quantity:

(a) in respect of which the tenderer:
   — has not withdrawn the tender before the award of the contract, and
   — has, within the set time limit, paid the amount corresponding to the tender, provided for in Article 11 (2), and lodged the processing deposit provided for in Article 12;

(b) in respect of which the tender has not been accepted.

2. Except in cases of *force majeure* the processing deposit referred to in Article 12 shall be released only for quantities in respect of which the successful tenderer has furnished to the competent authority proof that the conditions referred to in Article 6 have been met. When the processing has been carried out in a Member State other than the selling Member State, such proof may be furnished only by production of the control copy referred to in Article 17.

3. The deposit shall be released immediately.

Article 19

In cases of *force majeure* the intervention agency shall determine the measures necessary in view of the circumstances invoked.

Article 20

The compensatory amounts applicable to butter, concentrated butter and concentrated butter with added sugar (subheading No 21.07 of the Common Customs Tariff), for the part consisting of butter, shall be equal to the compensatory amounts fixed pursuant to Regulation (EEC) No 974/71, multiplied by a coefficient of 0·3.

The Commission may, if necessary, alter this coefficient.

Article 21

This Regulation shall enter into force on the third day following its publication in the *Official Journal of the European Communities*.

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

Done at Brussels, 16 June 1972.

For the Commission

The President

S. L. MANSHOLT