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REGULATION (EEC) No 1519/72 OF THE COMMISSION

of 14 July 1972

on the sale by tender of butter at reduced prices for the exportation of certain fat compounds

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 Articles 6 (7) and 28 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 for the exportation of certain fat compounds 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, if there are several invitations to tender for the disposal of butter at reduced prices, the order in which they are held should be determined so that the quantities of butter to be considered available in a cold storage depot may be established for each sale;

Whereas a system of supervision should be set up to ensure that the butter is not diverted from its destination; whereas the supervision must operate from the time the butter is removed from storage until it is exported; whereas the lodging of a deposit, the denaturing of the butter and its processing into specific fat compounds, with on the spot inspection of the manufacture of those products and the use of distinctive packings, may contribute to this end;

Whereas provision should be made for manufacture of the fat compounds to take place in a single establishment approved by the relevant Member State so that diversion during manufacture can be avoided; whereas however, Member States should be free to make exceptions to this rule under certain conditions so that effect may be given to national regulations which prohibit the handling of butyric and non-butyric fats in the same establishment;

Whereas if the butter is processed in a Member State other than the selling Member State, provision should be made for checking the use or destination by means of the control copy provided for in the Commission Regulation (EEC) No 2315/69[6] of 19 November 1969 on the use of Community transit documents for the purpose of applying Community

[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 295, 24.11.1969, p. 14.

measures for verifying the use and/or destination of goods, as amended by Regulation (EEC) No 595/71[1];

Whereas provision should be made for proof of arrival in one of the destination countries to be furnished in accordance with Article 8 (1) of Commission Regulation No 1041/67/EEC[2] of 21 December 1967 on detailed rules for the application of export refunds on products subject to a single price system, as last amended by Regulation (EEC) No 1504/71[3];

Whereas, as regards the compensatory amounts fixed pursuant to Regulation (EEC) No 974/71, account should be taken of the value of the products concerned;

Whereas provision should now be made for measures which take account of the entry into force of the Treaty concerning the accession of the Kingdom of Denmark, Ireland, the Kingdom of Norway, and the United Kingdom of Great Britain and Northern Ireland to the European Economic Community and to the European Atomic Energy Community;

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.

Article 2

The butter shall be sold by means of a standing invitation to tender, opened by each intervention agency for the quantities of the 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 the 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. 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 12 September.**

The time limit for the submission of tenders in response to subsequent 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 until 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 (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

An undertaking may not take part in the invitation to tender unless:

— it carries out one of the processes provided for in Article 19 and is approved for that purpose by the Member State in whose territory the operations take place, and

— it undertakes to abide by the conditions laid down in Articles 19, 22 and 23.

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[1] OJ No L 69, 23.3.1971, p. 7.
[2] OJ No 314, 23.12.1967, p. 9.
[3] OJ No L 158, 15.7.1971, p. 17.

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. The intervention agency may also authorise the use of telex facilities.

2. The tender shall state:

(a) the name and address of the tenderer,

(b) the quantity to which the tender relates,

(c) the use to be made of that quantity, in accordance with Articles 19 (2) (a) or (b); a tender may relate to one of these uses only,

(d) the price offered per metric ton, excluding internal taxes, ex-cold storage depot where the butter is held, expressed in the currency of the Member State in which the invitation to tender is opened,

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

A tender relating to several cold 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 100 metric tons.

However, if the quantity available in a cold storage depot is less than 100 metric tons, the available quantity shall constitute the minimum quantity for the tender.

4. A tender shall not be valid unless:

(a) it is accompanied by the written undertakings referred to in the second indent of Article 6;

(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.

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 complying with criteria laid down by the Member State in question.

Article 9

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 for each of the uses referred to in Article 19 (2) (a) and (b), or a decision shall be taken not to proceed with the invitation to tender.

Article 10

At the same time as the minimum selling price is fixed and by the same procedure, the amount of the deposit provided for in Article 15 shall be fixed per 100 kilogrammes.

Article 11

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

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

If the quantity available in the cold storage depot is not used up 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 remaining available at the cold storage depot in question being exceeded, the contract shall be awarded to the tenderer in question 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. Where the acceptance of several tenders submitted for both of the uses referred to in Article 19 (2) would lead to the quantity available being exceeded, a tender indicating the use described under (a) shall be given priority.

Article 12

For the purposes of this Regulation, the quantity of butter considered to be available shall be the quantity of butter stored in the cold storage depot in question after the award of the individual invitation to tender currently open in pursuance of Commission Regulation (EEC) No 1259/72[1] on the disposal of butter at a reduced price to certain Community processing undertakings.

Article 13

The rights and obligations arising from the invitation to tender shall not be transferable.

Article 14

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

2. The successful tenderer shall, before taking over the goods as described in Article 16 (2), pay the intervention agency the amount corresponding to his tender for each quantity he intends to remove from storage.

Article 15

1. The successful tenderer shall, before taking over each quantity, lodge the processing and exportation deposit provided for in Article 10.

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

Article 16

1. When the payment provided for in Article 14 (2) has been made, and the processing and exportation deposit provided for in Article 15 has been lodged, the intervention agency shall issue a removal order, indicating:

(a) the quantity for which the conditions specified at the beginning of the 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 14 (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 17

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° 1519/72)';

'Zur Verarbeitung bestimmte Butter (Verordnung (EWG) Nr. 1519/72)';

'Burro destinato alla trasformazione (regolamento (CEE) n. 1519/72)';

'Boter voor verwerking (Verordening (EEG) nr. 1519/72)'.

(Butter for processing (Regulation (EEC) No 1519/72))

Article 18

From the time of its removal from storage and until it is exported, the butter or the processed products referred to in Article 19 shall be placed under customs or equivalent administrative control.

Article 19

1. All the butter allocated shall be processed into a product containing at least 99·8% of butyric fat in the undertakings referred to in Article 6 before one of the products referred to in paragraph 2 is manufactured.

2. According to the use specified in the tender, pursuant to Article 7 (2) (c), the product thus obtained shall be either

(a) directly processed into a product which, per metric ton of the finished product, and to the exclusion of all other products, contains:

— 10 kg of triglycerides of enanthic (n-heptanoic) acid, at least 95% pure, and

— 0·1 kg of ethylic ester of the butyric acid; or

(b) mixed, per 970 kg, with 30 kg of triglycerides of enanthic (n-heptanoic) acid, at least 95% pure, and thereafter

[1] OJ No L 139, 17.6.1972, p. 18.

— processed into a fat compound falling within subheading No 21.07 F VI of the Common Customs Tariff and containing not less than 26% but not more than 40% by weight of milkfat and of which the non-butyric part is composed of at least 98% of suet or lard, the remaining 2% not containing other fats;

The two operations referred to under (b) shall be carried out separately so that each may be supervised.

3. The various processing operations listed in paragraph 2 shall be carried out in the same establishment as that mentioned in paragraph 1.

However, Member States may authorise the successful tenderer, under the conditions laid down in Article 21, to have the processing specified in paragraph 2 (b) carried out in an establishment other than that in which the early stages of processing take place.

Article 20

The competent authority of the Member State in which the processing operations referred to in Article 19 take place shall be responsible for the supervision of those operations.

The costs of the supervision shall be borne by the successful tenderer.

Article 21

Recourse to the derogation in the second subparagraph of Article 19 (3) shall be subject to the following conditions:

(1) the two establishments must be situated in the same Member State;

(2) before processing takes place, the undertaking which has been awarded the tender must obtain authorisation from the body which gave the approval referred to in Article 6;

(3) an establishment responsible for one of the processing operations concerned must have received the approval referred to in Article 6;

(4) Member States shall take the measures necessary to ensure continuous supervision throughout transportation and processing.

Article 22

The finished product shall be put up in cans:

(a) hermetically sealed, of a net capacity of not more than 2·5 kg in the case of the product referred to in Article 19 (2) (a);

(b) of a net capacity of not more than 18·5 kg in the case of the product referred to in Article 19 (2) (b).

Article 23

The finished product shall be exported direct from the territory of the Member State in which the processing takes place to an African or Asian third country within 150 days from the time receiving the information referred to in Article 14 (1).

Article 24

1. Where the processing operations listed in Article 19 take place in a Member State other than the selling Member State, proof that the conditions referred to in Articles 19, 22 and 23 have been satisfied shall be furnished only by production of the control copy provided for in Regulation (EEC) No 2315/69.

2. Sections 101, 103 and 104 on the control copy shall be completed. Section 104 shall be completed by deleting what does not apply and adding one of the following statements at the second indent:

'— destiné à l'exportation au titre du règlement (CEE) n° 1519/72 après transformation et conditionnement en emballages métalliques, soit hermétiquement fermés d'un contenu de 2 500 kg au maximum, soit d'un contenu de 18 500 kg au maximum';

'— Gemäß Verordnung (EWG) Nr. 1519/72 nach Verarbeitung und Verpackung in luftdicht verschlossenen Metallverpackungen mit einem Nettoinhalt von höchstens 2 500 kg oder in Metallverpackungen mit einem Nettoinhalt von höchstens 18 500 kg, zur Ausfuhr bestimmt';

'— destinato all'esportazione a norma del regolamento (CEE) n. 1519/72 dopo trasformazione e condizionato in imballaggi metallici, ermeticamente chiusi di un contenuto massimo di 2 500 kg oppure di un contenuto massimo di 18 500 kg';

'— bestemd om overeenkomstig Verordening (EEG) nr. 1519/72 te worden uitgevoerd, na verwerking en verpakking in metalen verpakkingen, ofwel luchtdicht gesloten met een netto-inhoud van hoogstens 2 500 kg, ofwel met een netto-inhoud van hoogstens 18 500 kg'.

(for export pursuant to Regulation (EEC) No 1519/72 after processing and packaging in metal containers either hermetically sealed of a maximum capacity of 2·5 kg or of a maximum capacity of 18·5 kg).

Article 25

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

— within the set time limit, paid the amount corresponding to the tender, provided for in Article 14 (2), and lodged the processing and exportation deposit provided for in Article 15; or

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

2. Except in cases of *force majeure,* the processing and exportation deposit provided for in Article 15 shall be released only for the quantities in respect of which the buyer has furnished to the intervention agency:

(a) supporting documents from which it can be established that the conditions laid down in Articles 19, 22 and 23 have been satisfied, when the processing takes place in the selling Member States;

(b) proof that these conditions have been satisfied furnished by the control copy referred to in Article 24 when the processing takes place in another Member State;

(c) proof that the finished product has reached one of the countries of destination referred to in Article 23, furnished in accordance with the provisions of Article 8 (1) of Commission Regulation No 1041/67/EEC.

3. The deposit shall be released immediately.

Article 26

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

Article 27

The compensatory amounts applicable to butter and to butter processed into products referred to in Article 19 shall be equal to the compensatory amounts fixed in pursuance of Regulation (EEC) No 974/71, multiplied by the coefficient 0·2.

The Commission may, if necessary, alter this coefficient.

Article 28

Butter incorporated in products mentioned in Article 19 shall not qualify for export refunds.

Article 29

Member States shall

— keep an up-to-date record by processing undertaking of the quantities obtained at the time of the processing described in Article 19 (2) (a) and (b) respectively, and the corresponding quantities of butter used;

— send this information, before the tenth of each month, to the Commission, which shall inform the other Member States thereof.

Article 30

With effect from 1 February 1973, Articles 17 and 24 (2) shall be amended as follows:

1. The following shall be added to Article 17:

'— butter for processing (Regulation (EEC) No 1519/72)';

'— smør bestemt til forarbejdning (forordning (EØF) nr. 1519/72)';

'— smør bestemt til foredling (forordning (EØF) nr. 1519/72)'.

2. The following indents shall be added to Article 24 (2):

'— for export pursuant to Regulation (EEC) No 1519/72 after processing and packaging in metal containers either hermetically sealed of a maximum capacity of 2·5 kg or of a maximum capacity of 18·5 kg';

'— bestemt til eksport i henhold til forordning (EØF) nr. 1519/72 efter forarbejdning og pakning i metalemballager, enten hermetisk lukkede met et indhold of højst 2 500 kg, eller med et indhold af højst 18 500 kg';

'— bestemt til eksport i henhold til forordning (EØF) nr. 1519/72 etter foredling of salgsklargjøring i metallemballasje, enten hermetisk lukket med et innhold på høyst 2 500 kg eller med et innhold på høyst 18 500 kg'.

Article 31

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, 14 July 1972.

For the Commission

The President

S. L. MANSHOLT