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REGULATION (EEC) No 2815/72 OF THE COMMISSION

of 22 December 1972

amending Regulation (EEC) No 1259/72 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 organisation 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 7 (a) thereof;

Whereas several amendments must be made to Commission Regulation (EEC) No 1259/72[5] of 16 June 1972 on the disposal of butter at a reduced price to certain Community processing undertakings, as last amended by Regulation (EEC) No 2161/72[6]; whereas, since several amendments have already been made, the operative part of the Regulation should for the sake of clarity be redrafted;

Whereas Article 6 (1) (b) of that Regulation provides for the use of a compound containing at least 60% of beta sitosterol for denaturing; whereas the formula at present prescribed in respect of the compound has caused the provisions to be interpreted in a number of different ways and has led to the use of certain products which do not permit of adequate supervision; whereas the formula must therefore be made more precise, and use must be given a period of adjustment;

Whereas, moreover, the second indent of Article 6 (2) (c) provides, as one of the final destinations of the butter sold, for its processing into edible ices falling within subheadings ex 18.06 B, ex 21.07 C of the Common Customs Tariff, of a milkfat content of less than 15%; whereas it has been found that in certain Community industries this content may be higher; whereas this should be borne in mind when the products are defined;

Whereas Article 6 (2) should be amended in line with the list of products in Article 6 (1) (c); whereas, moreover, the Italian text needs rectifying as regards the reference to subheading ex 18.06, which must be replaced by ex 18.06 D, in Article 6 (2) (c), and as regards the endorsement on the control copy, provided for in Article 17;

Whereas, pursuant to Article 16 (2), concentrated butter containing an indicator must be packed in special packings if transported before being processed into one of the prescribed products; whereas certain processers may transport such butter in tanks or containers; whereas provisions must be adopted in respect of this form of transport;

Whereas, in order not to limit the scope of the operation, Member States should be free to make provision for less onerous proof of the use of butter sold, which proof is dealt with in Article 18 (2), in cases where users buy small quantities of butter containing an indicator;

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

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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 139, 17.6.1972, p. 18.
6 OJ No L 231, 11.10.1972, p. 12.

HAS ADOPTED THIS REGULATION:

Article 1

The Articles of Regulation (EEC) No 1259/72 are replaced by the following:

'*Article 1*

Butter purchased in accordance with Article 6 (1) of Regulation (EEC) No 804/68 and entered into stock before 1 May 1972 shall be sold under the conditions described hereinafter.

Article 2

The butter shall be sold by means of the standing tendering procedure held by each of the intervention agencies for the quantities of butter concerned which it is holding.

Article 3

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

(a) the location of the refrigerated warehouse or warehouses in which the butter is held;

(b) the quantities of butter put up for sale in each of the warehouses;

(c) the time limit and address for submission of offers.

2. The notice of tender shall be published in the *Official Journal of the European Communities* at least eight days before expiry of the first time limit for the submission of offers. In addition, the intervention agency may issue further notices.

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 concern the butter referred to in Article 1 which is still available.

2. As regards the first individual invitation to tender, the time limit for submission of tenders shall expire at 12 noon on 11 July 1972.

As regards following individual invitations to tender, the time limit for submission of offers shall expire at 12 noon each second and fourth Tuesday of the month. If the Tuesday is a holiday the time limit shall be extended to the next following working day at 12 noon.

Article 5

1. The intervention agency shall keep up to date and make available on request to the persons concerned the list of refrigerated warehouses holding butter put up for tender, together with the corresponding quantities, referred to in Article 3 (1) (b). In addition the intervention agency shall publish regularly an up-to-date version of the list in some appropriate form which it shall indicate in the notice of tender referred to in Article 3.

2. The intervention agency shall adopt the necessary provisions to enable the persons concerned to examine at their own expense, before tendering, samples of the butter put up for sale.

Article 6

1. The tenderer may not take part in the invitation to tender unless he gives an undertaking in writing:

(a) to have all the butter awarded processed into concentrated butter with a minimum fat content of 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 homogenous diffusion of the constituents:

(aa) either:

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

— 600 g of a compound containing at least 80% of sitosterol ($C_{29}H_{50}O$ = Δ-5-stigmastene-3-β-ol), the remaining part not to contain measurable quantities of stigmasterol;

(bb) or:

— 20 g of ethyl ester of beta-apo-8'-carotenic acid, in the form of a compound soluble in butyric fat,

and

— 600 g of a compound containing at least 80% of sitosterol ($C_{29}H_{50}O$ = Δ-5-stigmastene-3-β-ol), the remaining part not to

contain measurable quantities of stigmasterol;

(cc) or:

— 250 g of refined granulated or powdered sugar,

and

— 600 g of a compound containing at least 80% of betasitosterol, ($C_{29}H_{50}O$ = Δ-5-stigmastene-3-β-ol), the remaining part not to contain measurable quantities of stigmasterol.

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

The competent intervention agency shall make sure that the quality and characteristics, in particular the degree of purity, of the products to be incorporated in the butter have been observed.

Each Member State may decide that only one or two of the following products shall be used in its territory:

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

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

— the product resulting from the incorporation specified under (cc).

The Member States shall, as soon as they avail themselves of the option provided for in the preceding subparagraph, inform the Commission of the process they have chosen.

(c) to have the products referred to under (b) processed only into:

— products falling within heading No 19.08 of the Common Customs Tariff, or

— edible ices falling within subheadings Nos ex 18.06 B and ex 21.07 C of the Common Customs Tariff, of a milk-fat content of less than 20%, or

— powder for the preparation of edible ices falling within subheadings Nos ex 18.06 D or ex 21.07 F of the Common Customs Tariff, of a milk-fat content of less than 32% and suitable for consumption without any treatment other than the addition of water and refrigeration.

Processing into the products listed above shall take place in the Community within four months from the day of removal from storage referred to in Article 13 (2);

(d) to keep stock accounts 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 undertaking which gives a written undertaking to process within four months from the day of removal from storage referred to in Article 13 (2) all the butter awarded into products falling within any of the three indents in paragraph 1 (c) 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 such case the Member State on whose territory the processing takes place shall carry out supervision on the premises throughout the whole period of the operation in a manner to be determined by it. The costs of such supervision shall be borne by the undertaking concerned.

Article 7

1. The persons concerned shall take part in the individual invitation to tender either by making a tender in writing, against a receipt, with the intervention agency, or by registered letter addressed to the intervention agency. The intervention agency may authorise the use of telex.

2. The tender shall indicate:

(a) the name and address of the tenderer;

(b) the quantity to which the tender relates;

(c) the price offered per metric tons, without taking account of the price reduction referred to in the second subparagraph of Article 11 (2), exclusive of internal taxes; ex refrigerated warehouse in which the butter is held, expressed in the currency of the Member State in which the invitation to tender is held;

(d) the refrigerated warehouse in which the butter is held.

A tender relating to several warehouses shall be considered as comprising the same

number of tenders as refrigerated warehouses to which it relates.

3. A tender shall not be valid unless it concerns a quantity of at least five metric tons.

However, if the quantity available in a warehouse is less than five metric tons, the quantity available 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, where appropriate, in Article 6 (2);

(b) the tenderer shall include a declaration stating that he waives all claims relating to the quality and characteristics of any butter sold;

(c) proof is furnished that before expiry of the time limit for submission of tenders the tenderer has lodged tendering security in respect of the individual invitation to tender concerned.

5. A tender may state that it shall not be considered as having been submitted unless the award of tender relates to the entire quantity covered by the tender.

A tender may state that it shall not be considered as having been submitted unless the award of tender relates to a specific quantity covered by the tender.

6. A tender may not be withdrawn.

Article 8

1. The tendering security shall be for the amount of 10 u.a. per metric ton.

2. It shall be given, as the Member State shall decide, either in the form of a cheque drawn in favour of the intervention agency, or in the form of a guarantee meeting the criteria fixed by the Member State concerned.

Article 9

1. Taking into account the tenders received for 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 it shall be decided not to proceed with the invitation to tender.

2. At the same time as the minimum selling price is fixed and using the same procedure, the amount of security required under Article 12 shall be fixed in the light of the difference between the market price of butter and the minimum price.

Article 10

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

2. Subject to the provisions of paragraph 1, the successful tenderer shall be the one offering the highest price.

If the quantity available in the warehouse concerned is not exhausted by this award, the tender for the remaining quantity shall be awarded to the other tenderers according to the price offered, starting with the highest.

3. In cases where consideration of an offer would lead to the quantity of butter available at the warehouse concerned being exceeded, the tender shall be awarded to the tenderer concerned only in respect of that quantity.

4. In cases where consideration of several tenders of the same price would result in the quantity available being exceeded, the tender shall be awarded by drawing lots.

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. Before removing the butter from store, the successful tenderer shall pay the intervention agency the amount corresponding to his tender for each quantity which he intends to withdraw.

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

Article 12

1. Before removal from store of each quantity the successful tenderer shall give the processing security referred to in Article 9 (2).

2. The processing security shall be given in accordance with Article 8 (2).

Article 13

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

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

(b) the refrigerated warehouse in which it is warehoused;

(c) the final date for removing the butter from store.

2. Within 30 days of the receipt of the information referred to in Article 11 (1) the successful tenderer shall remove from store the butter awarded to him. The butter may be removed from store in several lots.

Save in cases of *force majeure*, if the successful tenderer has not removed the butter from store within the time laid down the sale shall be cancelled in respect of the remaining quantities.

Article 14

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

— "Beurre destiné à la transformation (règlement (CEE) No 1259/72)",

— "Zur Verarbeitung bestimmte Butter (Verordnung (EWG) Nr 1259/72)",

— "Burro destinato alla transformazione (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 a product falling within any of the three indents in Article 6 (1) (c), the butter shall be subject to customs control or to an administrative control providing equivalent guarantees.

Article 16

1. At the time of the processing and incorporation referred to in Article 6 (1) (a) and (b), the Member State on whose territory the operations are carried out shall carry out supervision on the premises throughout these operations.

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

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

— "Beurre concentré destiné à la transformation en un des produits visés à l'article 6 paragraph 1 sous (c) du règlement (CEE) nº 1259/72";

— "Butterfett zur Verarbeitung zu einem der in Artikel 6 Absatz 1 Buchstabe (c) der Verordnung (EWG) Nr 1259/72 genannten Erzeugnisse";

— "Burro concentrato destinato alla trasformazione in uno dei prodotti di cui all'articolo 6, paragrafo 1, lettera (c), del regolamento (CEE) n. 1259/72";

— "Boterconcentraat bestemd voor verwerking tot een van de bin artikel 6, lid 1, sub (c), van Verordening (EEG) nr. 1259/72 bedoelde produkten";

— (Concentrated butter for processing into one of the products listed in Article 6 (1) (c) of Regulation (EEC) No 1259/72).

Article 17

1. Where the operations specified in Article 6 (1) (a) and (b) or the processing specified in Article 6 (1) (c) take place in a Member State other than the selling Member State, the following rules shall be applied:

Sections 101, 103, 104 and 106 of the control copy provided for in Article 1 of Regulation (EEC) No 2315/69 shall be completed. Section 106 shall specify the date on which the party concerned took the butter over. Section 104 shall be completed by deleting what does not apply and by adding one of the following endorsements under the second indent:

(a) in the case of butter to which the operations referred to in Article 6 (1) (a)

and (b) are to be applied in some other Member State than the selling Member State:

"Beurre destiné:

1. à être concentré et à subir une incorporation,
2. puis à être transformé en un des produits visés à l'article 6 paragraphe 1 sous (c) du règlement (CEE) n° 1259/72";

"Butter bestimmt:

1. zur Verarbeitung zu Butterfett und zur Beimischung,
2. alsdann zur Verarbeitung zu einem der in Artikel 6 Absatz 1 Buchstabe (c) der Verordnung (EWG) Nr. 1259/72 genannten Erzeugnisse";

"Burro destinato:

1. ad essere concentrato ed essere oggetto di una incorporazione,
2. ad essere poi trasformato in uno dei prodotti di cui all'articolo 6, paragrafo 1, lettera (c) del regolamento (CEE) n. 1259/72";

"Boter bestemd:

1. voor verwerking tot boterconcentraat en ter bijmenging,
2. vervolgens voor verwerking tot een van de in artikel 6, lid 1, sub (c), van Verordening (EEG) nr. 1259/72 genoemde produkten";

(Butter intended:

1. for concentration and incorporation,
2. for processing thereafter into one of the products listed in Article 6 (1) (c) of Regulation (EEC) No 1259/72).

The processing referred to at 2 may be supervised by one or more customs offices other than that which supervised the processing referred to at 1.

In this case the customs office which controls the processing referred to at 1 shall send the control copy to the office of exit specifying that it has controlled only the processing referred to at 1 and shall issue one or, at the request of the parties concerned, several copies of the control copy provided for in Article 1 of Regulation (EEC) No 2315/69 of which sections 101, 103, 104 and 106 have been completed. Section 103 shall state the net weight resulting from the processing referred to at 1, for which the new control copy or each of the new copies is issued; section 104 shall contain one of the endorsements listed in (b) below; section 106 shall state:

— the weight of the butter used to produce the quantity of concentrated butter specified in section 103;

— the number of the control copy from the exit office, and the name of the office;

— the date on which the party concerned took the butter over.

The customs office which supervised the processing referred to at 2 shall endorse the control copy from the office which supervised the processing referred to at 1 and send it via the latter office to the office of exit from the selling Member State.

(b) in the case of butter treated in accordance with Article 6 (1) (a) and (b) in the selling Member State which is to be treated in accordance with Article 6 (1) (c) in another Member State:

"Beurre concentré destiné à être transformé en l'un des produits visés à l'article 6, paragraphe 1 sous (c) du règlement (CEE) n° 1259/72",

"Butterfett zur Verarbeitung zu einem der in Artikel 6 Absatz 1 Buchstabe (c) der Verordnung (EWG) Nr. 1259/72 genannten Erzeugnisse",

"Burro concentrato destinato alla trasformazione in uno dei prodotti di cui all'articolo 6 paragrafo 1 lettera (c) del regolamento (CEE) n. 1259/72",

"Boterconcentraat bestemd voor verwerking tot een van de in artikel 6, lid 1, sub (c), van Verordening (EEG) nr. 1259/72 genoemde produkten",

(Concentrated butter for processing into one of the products listed in Article 6 (1) (c) of Regulation (EEC) No 1259/72).

2. In the case of butter to be processed under the conditions laid down in Article 6 (2) 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 106 shall specify the date on which the party concerned took the butter over. Section 109 shall be completed by deleting what does not apply and by adding one of

the following endorsements under the second indent:

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

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

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

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

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

Article 18

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

(a) for which the tenderer:

— has not withdrawn the tender before the decision awarding the tender, and

— has, within the time laid down, paid the amount corresponding to the tender referred to in Article 11 (2) and lodged the processing deposit referred to in Article 12, or

(b) for which the tender has not been proceeded with.

2. (a) Save in cases of *force majeure* the processing security referred to in Article 12 shall be released only for quantities in respect of which the successful tenderer has supplied the competent authority with proof that the conditions referred to in Article 6 have been met.

(b) However, the Member States may prescribe that such proof shall be considered to have been furnished if the seller submits a declaration by the final user, in which the user:

— confirms his undertaking, contained in the contract of sale, to process the products specified in Article 6 (1) (b) into products listed in Article 6 (1) (c) within the set time limit, and

— declares that he knows the penalties imposed by the Member States in question in cases of breach of the obligations undertaken.

The Member States shall determine the maximum quantity in respect of which this declaration may be made.

(c) When the processing has been carried out in a Member State other than the selling Member State, such proof may be supplied only by production of the control copy referred to in Article 17.

3. The security shall be released immediately.

Article 19

In cases of *force majeure* the intervention agency shall decide what measures it considers necessary in view of the circumstance which has arisen.

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.

If necessary the Commission may alter this coefficient.'

Article 2

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

However the validity of control copies issued under Article 17 of Regulation (EEC) No 1259/72 before this Regulation enters into force shall not be affected by point 2 of the fourth subparagraph of Article 17 (1) (a).

2. The provisions of each second indent in Article 6 (1) (b) (aa), (bb) and (cc) shall apply from 10 January 1973.

3. As regards the provisions of Article 6 (1) (c), second indent, the increase to 20% in the fat content by weight shall apply from 13 December 1972.

However, on application from those concerned, the undertakings given in accordance with Article 6 of Regulation (EEC) No 1259/72 in

connection with invitations to tender before 13 December 1972 shall be adjusted to the provisions listed above. In such cases the provisions of this Regulation shall apply.

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

Done at Brussels, 22 December 1972.

For the Commission

The President

S. L. MANSHOLT