REGULATION (EEC) No 3178/75 OF THE COMMISSION

of 4 December 1975

on the sale by tender of skimmed-milk powder at a reduced price for export in the form of compound feedingstuffs

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 740/75 (2), and in particular Articles 7 (5) and 28 thereof;

Whereas, under Council Regulation (EEC) No 2808/75 (3) of 29 October 1975 laying down special measures for the disposal, with a view to its incorporation in compound feedingstuffs, of skimmed-milk powder held in public storage, skimmed-milk powder held by intervention agencies and put into storage before 1 April 1974 may be sold at a reduced price; whereas approximately 50 % of the quantity in question is to be sold for export in the form of compound feedingstuffs; whereas in view of the magnitude of public stocks this provision should be applied; whereas, in order to ensure equal access to all exporters, the skimmed-milk powder should be sold by tender;

Whereas a system of supervision should be set up to ensure that the skimmed-milk powder is not diverted from its destination; whereas such supervision should operate from the time of removal from storage until export of the product in the form of compound feedingstuffs; whereas, moreover, the provision of security, on-the-spot supervision during processing of the said products and the use of distinctive packaging will assist in achieving this aim;

Whereas, in order to ensure that the skimmed-milk powder is not diverted from its destination during processing, provision should be made for the compound feedingstuffs to be manufactured in an undertaking approved by the Member State concerned;

Whereas, where processing and/or exportation take place in a Member State other than the Member State of sale, provision should be made, for the purpose of verifying that the powder is in fact processed and exported, for the use of the control copy provided for by Commission Regulation (EEC) No 2315/69 (4) of 19 November 1969 on the use of Community transit documents for the purpose of applying Community measures for verifying the use and/or destination of goods, as last amended by Regulation (EEC) No 690/73 (5);

Whereas, in order to facilitate control, the aid provided for in Article 10 of Regulation (EEC) No 804/68 should not be granted in the case of compound feedingstuffs manufactured from skimmed-milk powder sold under this measure, and whereas Commission Regulation (EEC) No 532/75 (6) of 28 February 1975 concerning the recovery on exportation of aids granted in respect of skimmed-milk powder for use as feed and in respect of skimmed milk processed into compound feedingstuffs should therefore not be applied to exports of these compound feedingstuffs;

Whereas, for purposes of the compensatory amounts fixed pursuant to Council Regulation (EEC) No 974/71 (7) 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, as last amended by Regulation (EEC) No 475/75 (8), the value of the products concerned should be taken into account;

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

1. There shall be put for sale, on the terms hereinafter set out, skimmed-milk powder bought in pursuant to Article 7 (1) of Regulation (EEC) No 804/68 and taken into storage after 31 May and before 1 October 1973.

(1) OJ No L 148, 28. 6. 1968, p. 13.
(2) OJ No L 74, 22. 3. 1975, p. 1.
(3) OJ No L 280, 31. 10. 1975, p. 2.
(4) OJ No L 295, 24. 11. 1969, p. 14.
(5) OJ No L 66, 13. 3. 1973, p. 23.
(6) OJ No L 56, 3. 3. 1975, p. 20.
(7) OJ No L 106, 12. 5. 1971, p. 1.
(8) OJ No L 52, 28. 2. 1975, p. 28.

2. The skimmed-milk powder in question shall be exported in the form of compound feedingstuffs.

3. For the purpose of this Regulation, 'compound feedingstuffs' means products containing at least :

— 50 % skimmed-milk powder sold pursuant to this Regulation,

— 2·5 % lucerne meal or grass meal containing at least 70 % particles not exceeding 0·3 mm,

— 2 % starch as such or in the form of meal.

No skimmed milk or skimmed-milk powder other than as above may be used in the manufacture of such products.

Article 2

The skimmed-milk powder shall be sold by tender, to be arranged by each intervention agency for the relevant quantities held by it.

Article 3

1. The intervention agency shall issue an invitation to tender indicating in particular :

(a) the quantities of skimmed-milk powder for sale pursuant to this Regulation ;

(b) the location of the depot or depots in which these quantities are stored ;

(c) the closing date and address for the submission of tenders.

2. The notice of invitation to tender shall be published in the *Official Journal of the European Communities* at least 20 days before the closing date for the submission of tenders. The intervention agency may also publish such notice elsewhere.

3. The first closing date for the submission of tenders shall be 6 January 1976 at 12 noon.

4. As regards the quantities not awarded on the first invitation to tender, a new closing date for the submission of tenders shall be fixed subsequently.

Article 4

The intervention agency shall take the necessary measures to enable prospective tenderers to examine at their own expense, before submitting a tender, samples of the skimmed-milk powder for sale.

Article 5

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

(a) to have all the skimmed-milk powder awarded to him processed into compound feedingstuffs as defined in Article 1 (3) in an undertaking approved by the Member State in whose territory the processing is carried out ;

(b) to export to a non-member country within two months from the day on which he takes delivery in accordance with Article 14 (2) the entire quantity of compound feedingstuffs thus produced.

Approval for the purposes of (a) may be granted only in respect of undertakings capable of processing at least 15 metric tons of skimmed-milk powder per day.

Article 6

1. Tenders, which shall be in writing, shall be sent to the intervention agency either by hand against acknowledgement of receipt or by registered letter addressed to the intervention agency. Intervention agencies may also authorize the use of telex.

2. Every tenderer shall indicate :

(a) the name and address of the tenderer ;

(b) the quantity to which the tender relates ;

(c) the price offered per metric ton, exclusive of internal taxes, ex storage depot, expressed in the currency of the Member State in which the invitation to tender is held ;

(d) the depot in which the skimmed-milk powder is stored.

A tender relating to two or more storage depots shall be regarded as comprising a number of separate tenders equal to the number of depots mentioned.

3. A tender shall not be valid unless it relates to a quantity of at least 300 metric tons.

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

4. A tender shall not be valid unless accompanied by :

(a) the written undertaking referred to in Article 5 specifying the undertaking in which processing is to be carried out ;

(b) a declaration whereby the tenderer agrees to forego any claim as to the quality and characteristics of any skimmed-milk powder sold to him ;

(c) proof that before expiry of the period set for the submission of tenders, the tenderer has lodged the security for tender referred to in Article 7.

5. A tender may stipulate that it is not to be regarded as having been submitted unless a contract is awarded in respect of the entire quantity indicated in the tender.

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

6. No tender may be withdrawn.

Article 7

1. The security for tender shall be 10 units of account per metric ton.

2. It shall take the form, at the option of the Member State concerned, either of a cheque made out in favour of the intervention agency, or of a guarantee satisfying criteria laid down by that Member State.

3. Except in the event of *force majeure,* the security for tender shall be released only in respect of that quantity :

(a) in respect of which the tenderer :

— has not withdrawn his tender before the award of contracts and

— has, within the time prescribed, paid the amount corresponding to his tender and lodged the processing and export security provided for in Article 13 ;

or

(b) in respect of which the tender has been refused.

Article 8

In the light of the tenders received 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 alternatively a decision shall be taken to make no award.

Article 9

At the same time as the minimum selling price is fixed and under the same procedure, the processing and export security required under Article 13 shall be fixed per 100 kg by reference to the difference between the market price of skimmed-milk powder and the minimum price fixed.

Article 10

1. A tender shall be refused if the price offered is lower than the minimum price fixed.

2. Subject as provided in 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, contracts shall be awarded to other tenderers in descending order of tender until the quantity outstanding has been accounted for.

3. Where acceptance of a tender would result in a contract being awarded for more skimmed-milk powder than is available at the storage depot in question, then a contract shall be awarded to the tenderer concerned only in respect of the quantity available.

4. Where acceptance of two or more tenders offering the same price would result in contracts being awarded in excess of the quantity still available, the award shall be made by drawing lots.

Article 11

Rights and obligations arising in connection with the invitation to tender shall not be transferable.

Article 12

1. Every tenderer shall immediately be notified by the intervention agency of the result of his tender.

2. Every successful tenderer shall, before taking delivery of any quantity in accordance with Article 14 (2), pay to the intervention agency an amount corresponding to his tender in respect of that quantity.

Article 13

1. Before taking delivery of any quantity of skimmed-milk powder the competent authority shall in accordance with Article 7 (2) lodge with the intervention agency of the Member State in whose territory the processing referred to in Article 5 (a) takes place the processing and export security fixed in accordance with Article 9.

2. Where the security is lodged in a Member State other than that of sale, the competent authority which receives the security shall forward without delay to the intervention agency of the Member State of sale a declaration stating the amount of the security provided and the quantities of skimmed-milk powder involved and confirming approval of the undertaking in which the processing referred to in Article 5 (a) is to be carried out.

Article 14

1. When payment has been made in accordance with Article 12 (2) and the security required under Article 13 has been lodged and, in the case specified in Article 13 (2), after receipt of the declaration referred to in that paragraph, the intervention agency shall issue a removal voucher showing :

(a) the quantity in respect of which these conditions have been fulfilled;

(b) the depot in which that quantity is stored;

(c) the final date for taking delivery of the skimmed-milk powder concerned.

2. Every successful tenderer shall take delivery of the skimmed-milk powder awarded to him within 30 days of receiving the notification provided for in Article 12 (1). He may take delivery in instalments of not less than 10 metric tons each.

Except in the event of *force majeure,* if a successful tenderer has not taken delivery within the time prescribed of all the skimmed-milk powder awarded to him, the contract shall be cancelled in respect of that quantity still outstanding.

Article 15

The skimmed-milk powder shall be delivered by the intervention agency in packages marked in letters at least 1 cm high as follows:

'Skimmed-milk powder for export in the form of compound feedingstuffs (Regulation (EEC) No 3178/75)',

'Lait écrémé en poudre destiné à l'exportation sous forme d'aliments composés pour animaux (règlement (CEE) nº 3178/75)',

'Zur Ausfuhr als Mischfutter bestimmtes Magermilchpulver (Verordnung (EWG) Nr. 3178/75)',

'Latte scremato in polvere destinato all'esportazione sotto forma di alimenti composti per animali (regolamento (CEE) n. 3178/75)',

'Magere-melkpoeder bestemd voor uitvoer in de vorm van mengvoeder (Verordening (EEG) nr. 3178/75)',

'Skummetmælkspulver bestemt til eksport i form af foderblandinger (forordning (EØF) nr. 3178/75)'.

Article 16

1. From the time of its removal from store until its export, the skimmed-milk powder and the compound feedingstuffs in which it is incorporated shall be placed and remain under customs or equivalent administrative control.

2. The competent authority of the Member State on whose territory the processing into compound feedingstuffs takes place shall exercise physical supervision of this operation.

The extra costs involved by such supervision shall be borne by the successful tenderer. They shall be calculated at a flat rate of two units of account per metric ton of skimmed-milk powder, subject to a minimum of 50 units of account per day of supervision.

Article 17

1. Proof of processing and export shall be furnished as follows:

(a) if the processing into compound feedingstuffs and the dispatch of the goods from the geographical territory of the Community both take place in the Member State of sale: by documents showing that these conditions have been fulfilled;

(b) if processing of the skimmed-milk powder and/or dispatch from the geographical territory of the Community of the compound feedingstuffs take place in a Member State other than the Member State of sale: by the production of the control copy specified in Article 1 of Regulation (EEC) No 2315/69.

Sections 101, 103, 104 and 106 on the control copy shall be completed.

(aa) If the skimmed-milk powder is to be processed in a Member State other than the Member State of sale, Section 104 shall be completed by deletion of the items not applicable and by insertion against the second indent of one of the following endorsements:

'Skimmed-milk powder:

(i) to be processed into compound feedingstuffs as defined in Regulation (EEC) No 3178/75,

(ii) and then to be exported';

'Lait écrémé en poudre destiné:

(i) à être transformé en aliments composés au sens du règlement (CEE) nº 3178/75,

(ii) puis à être exporté';

'Magermilchpulver bestimmt:

(i) zur Verarbeitung zu Mischfutter, gemäß Verordnung (EWG) Nr. 3178/75,

(ii) alsdann zur Ausfuhr';

'Latte scremato in polvere destinato:

(i) ad essere trasformato in alimenti composti ai sensi del regolamento (CEE) n. 3178/75,

(ii) ad essere esportato';

'Magere-melkpoeder bestemd:

(i) om te worden verwerkt tot mengvoeder in de zin van Verordening (EEG) nr. 3178/75,

(ii) om nadien te worden uitgevoerd';

'Skummetmælkspulver bestemt til:

(i) fremstilling af foderblandinger i henhold til forordning (EØF) nr. 3178/75,

(ii) herefter til eksport'.

Section 106 shall indicate the date on which the successful tenderer took delivery of the skimmed-milk powder.

Where verification of exportation as specified in (ii) is carried out in a Member State other than the State in which processing as referred to in (i) was carried out, the customs office which verified the said processing shall return the control copy to the customs office of departure, indicating that it has verified only such processing, and shall issue to the person concerned, in respect of the compound feedingstuffs produced, one or more control copies as referred to in Article 1 of Regulation (EEC) No 2315/69 in which Sections 101, 103, 104 and 106 shall be completed.

Section 104 shall contain one of the endorsements set out in (bb) hereunder;

Section 106 shall indicate:

— the number of the control copy issued by the customs office of departure and the name of that office,

— the date on which the successful tenderer took delivery of the skimmed-milk powder,

— the weight of the skimmed-milk powder used to produce the quantity of compound feedingstuffs indicated in Section 103.

The customs office which has verified that exportation as specified in (ii) has taken place shall endorse the control copy from the office which verified processing and shall return this copy via the said office to the customs office of departure in the Member State of sale.

(bb) If the skimmed-milk powder is processed into compound feedingstuffs in the Member State of sale and is to be dispatched from the geographical territory of the Community via another Member State, Section 104 shall be completed by deletion of the items inapplicable and by insertion against the second indent of one of the following endorsements:

'Compound feedingstuffs for export pursuant to Regulation (EEC) No 3178/75',

'Aliments composés destinés à être exportés au titre du règlement (CEE) n° 3178/75',

'Zur Ausfuhr bestimmtes Mischfutter gemäß Verordnung (EWG) Nr. 3178/75',

'Alimenti composti destinati ad essere esportati a titolo del regolamento (CEE) n. 3178/75',

'Mengvoeder bestemd voor uitvoer volgens Verordening (EEG) nr. 3178/75',

'Foderblandinger bestemt til eksport i henhold til forordning (EØF) nr. 3178/75'.

Section 106 shall indicate:

— the date on which the successful tenderer took delivery of the skimmed-milk powder,

— the weight of skimmed-milk powder used to produce the quantity of compound feedingstuffs indicated in Section 103.

The customs office which verified exportation shall endorse the control copy and return it to the customs office of departure in the Member State of sale.

2. Except in the event of *force majeure,* the processing and export security referred to in Article 13 (1) shall be released only in respect of those quantities in respect of which the proof specified in paragraph 1 has been furnished.

The security shall be released at once.

Article 18

In the event of *force majeure,* the intervention agency shall take such action as it considers necessary having regard to the circumstances invoked.

Article 19

Member States shall inform the Commission by Tuesday of each week of the quantities of skimmed-milk powder released from storage pursuant to this Regulation during the preceding week.

Article 20

1. In respect of skimmed-milk powder sold under this Regulation, the compensatory amounts fixed pursuant to Regulation (EEC) No 974/71 shall be multiplied by a coefficient to be determined under the procedure referred to in Article 8 at the same time as the minimum selling price by reference to the difference between that price and the market price of skimmed-milk powder.

2. The aid provided for in Article 10 of Regulation (EEC) No 804/68 shall not be granted for in respect of skimmed-milk powder incorporated in compound feedingstuffs manufactured pursuant to this Regulation.

3. Regulation (EEC) No 532/75 shall not apply to the compound feedingstuffs referred to in paragraph 2.

Article 21

This Regulation shall enter into force on the 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, 4 December 1975.

For the Commission

P. J. LARDINOIS

Member of the Commission