COMMISSION REGULATION (EEC) No 2054/76

of 19 August 1976

on the sale for export to non-member countries of skimmed-milk powder held by intervention agencies and intended for use as feed

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 of 27 June 1968 on the common organization of the market in milk and milk products (1), as last amended by Regulation (EEC) No 559/76 (2), and in particular Article 7 (5), 13 (3), 17 (4) and 28 thereof,

Having regard to Council Regulation (EEC) No 876/68 of 28 June 1968 laying down general rules for granting export refunds on milk and milk products and criteria for fixing the amount of such refunds (3), as last amended by Regulation (EEC) No 2429/72 (4), and in particular Article 6 (3) thereof,

Whereas Council Regulation (EEC) No 1014/68 of 20 July 1968 laying down general rules for the public storage of skimmed-milk powder (5), as last amended by Regulation (EEC) No 2434/69 (6), established conditions for the remarketing of skimmed-milk powder held by intervention agencies; whereas certain intervention agencies hold skimmed-milk powder that no longer meets the first quality standards laid down in Article 1 (1) of Commission Regulation (EEC) No 1108/68 of 27 July 1968 on detailed rules of application for public storage of skimmed-milk powder (7), as last amended by Regulation (EEC) No 1457/75 (8);

Whereas to avoid costs incurred by prolonged storage of the quantities concerned, the stocks should be sold for export for use as feed; whereas the skimmed-milk powder concerned can be sold at a fixed price established in relation to the intervention price in effect at the time of conclusion of the contract and taking into account the market situation and the quality of the product;

Whereas the use of the skimmed-milk powder for feed can be ensured by denaturing or processing into compound feedingstuffs in accordance with Commission Regulation (EEC) No 990/72 of 15 May 1972 on detailed rules for granting aid for skimmed milk processed into compound feedingstuffs and for skimmed-milk powder for use as feed (9), as last amended by Regulation (EEC) No 804/76 (10); whereas, however, techniques for manufacturing feedingstuffs in certain importing countries may make it difficult to use denatured skimmed-milk powder; whereas it seems advisable therefore, subject to certain guarantees, to provide for the export of skimmed-milk powder without further processing and to make payment of the refund for the unaltered product for use as feed subject to conditions additional to those laid down in Commission Regulation (EEC) No 192/75 of 17 January 1975 laying down detailed rules for the application of export refunds in respect of agricultural products (11), as last amended by Regulation (EEC) No 2818/75 (12), and Commission Regulation (EEC) No 193/75 of 17 January 1975 laying down common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products (13), as last amended by Regulation (EEC) No 499/76 (14);

Whereas application of the special arrangements provided for by this Regulation requires certain derogations from Commission Regulation (EEC) No 2044/75 of 25 July 1975 on special detailed rules for the application of the system of import and export licences and the advance fixing of refunds in respect of milk and milk products (15), as last amended by Regulation (EEC) No 2053/76 (16);

Whereas to ensure that the skimmed-milk powder is not used for other purposes, provisions should be made for the constitution of a security as assurance that the obligation to export the product and incorporate it in animal feed is complied with;

Whereas the skimmed-milk powder is intended for a specific use and/or destination;

Whereas a system of inspection should be instituted to make sure that it is not diverted from its use and/or destination; whereas, if two or more Member States are responsible for such inspection, the provisions of

(1) OJ No L 148, 28. 6. 1968, p. 13.
(2) OJ No L 67, 15. 3. 1976, p. 9.
(3) OJ No L 155, 3. 7. 1968, p. 1.
(4) OJ No L 264, 23. 11. 1972, p. 1.
(5) OJ No L 173, 22. 7. 1968, p. 4.
(6) OJ No L 307, 7. 12. 1969, p. 2.
(7) OJ No L 184, 29. 7. 1968, p. 34.
(8) OJ No L 145, 6. 6. 1975, p. 17.
(9) OJ No L 115, 17. 5. 1972, p. 1.
(10) OJ No L 93, 8. 4. 1976, p. 22.
(11) OJ No L 25, 31. 1. 1975, p. 1.
(12) OJ No L 280, 31. 10. 1975, p. 31.
(13) OJ No L 25, 31. 1. 1975, p. 10.
(14) OJ No L 59, 6. 3. 1976, p. 18.
(15) OJ No L 213, 11. 8. 1975, p. 15.
(16) See page 15 of this Official Journal.

Commission Regulation (EEC) No 2315/69 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 (1), as last amended by Regulation (EEC) No 690/73 (2), should be applied;

Whereas for the sake of administrative simplicity there should be a more flexible procedure than presentation of the control copy for goods exported outside the Community; whereas the procedure of Commission Regulation (EEC) No 304/71 of 11 February 1971 on simplification of the Community transit procedure for goods carried by rail (3), as amended by the Act of Accession (4), provides that when a carriage operation starts within the Community and is to end outside it, no customs formalities have to be completed at the frontier customs office of the Community;

Whereas from 1 October 1976 the procedure in use has been that provided for in Commission Regulation (EEC) No 1687/76 of 30 June 1976 establishing the common procedures for inspection of the use and/or destination of product from intervention (5);

Whereas application of this measure calls for the provision of certain detailed information to the Commission which the Community has agreed to supply to GATT under the Arrangement concerning certain dairy products (6);

Whereas this measure is intended to replace the provisions of Commission Regulation (EEC) No 196/76 of 29 January 1976 laying down special rules governing the payment of the refund for skimmed-milk powder for use as feed in the country of destination (7), as last amended by Regulation (EEC) No 265/76 (8), and Commission Regulation (EEC) No 231/76 of 2 February 1976 on the sale of skimmed-milk powder at a reduced price for export for use as feed (9), as last amended by Regulation (EEC) No 500/76 (10);

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

(1) OJ No L. 295, 24. 11. 1969, p. 14.
(2) OJ No L. 66, 13. 3. 1973, p. 23.
(3) OJ No L. 35, 12. 2. 1971, p. 31.
(4) OJ No L. 73, 27. 3. 1972, p. 14.
(5) OJ No L. 190, 14. 7. 1976, p. 1.
(6) OJ No L. 124, 8. 7. 1970, p. 49.
(7) OJ No L. 23, 30. 1. 1976, p. 40.
(8) OJ No L. 33, 7. 2. 1976, p. 7.
(9) OJ No L. 28, 3. 2. 1976, p. 9.
(10) OJ No L. 59, 6. 3. 1976, p. 20.

HAS ADOPTED THIS REGULATION:

Article 1

Skimmed-milk powder bought in in accordance with Article 7 (1) of Regulation (EEC) No 804/68, and having been stored on the date of taking over for at least 20 months, shall be sold under the following conditions.

Article 2

1. The skimmed-milk powder in question shall be used for animal feed. It shall be exported either:

(a) after denaturing in accordance with Articles 2 and 3 of Regulation (EEC) No 990/72, or

(b) after incorporation into compound feedingstuffs in accordance with Article 4 of Regulation (EEC) No 990/72, or

(c) unprocessed, under the conditions provided for in Article 6.

2. The products specified in paragraph 1 (a) and (b) must, for skimmed-milk powder, conform to the conditions in Article 1.

Article 3

1. The skimmed-milk powder shall be sold ex storage depot, at a price equal to the purchase price applied by the intervention agency in question on the day the selling contract was concluded, reduced by eight units of account per 100 kilogrammes.

2. The skimmed-milk powder shall only be sold in quantities of 200 metric tons or more.

3. The conclusion of the selling contract shall be on the condition that the refund for the quantity in question has been fixed in advance under the conditions provided for in Article 5.

Article 4

1. The buyer shall pay for the skimmed-milk powder at the latest at the time of taking delivery.

2. The buyer shall take over the entire quantity of skimmed-milk powder bought, within the time limit of the period of validity of the export licence issued within the framework of the advance fixing of the refund.

Save in a case of *force majeure*, the contract shall be cancelled for the quantities not taken over by the buyer within the prescribed time limits.

3. Before taking delivery, the purchaser shall give an export security of 10 units of account per 100 kilogrammes. It shall be lodged:

— in respect of skimmed-milk powder referred to in Article 2 (a) and (b), with the intervention agency of the Member State in which denaturing or incorporation takes place,

— in respect of skimmed-milk powder referred to in Article 2 (c), with the intervention agency of the Member State taking delivery the skimmed-milk powder.

4. The security shall, at the choice of the buyer, be either a cash deposit or a guarantee issued by an institution satisfying the requirements laid down by the Member State with which the security is to be lodged.

5. Where a security is lodged with the intervention agency of a Member State other than that of delivery, that intervention agency shall forthwith forward to the intervention agency of the other Member State, an attestation referring to the sale specified in this Regulation, specifying in particular the amount of the security and, the quantity of skimmed-milk powder involved.

6. Release of the security as laid down in Article 13 shall be subject to the production of proof that the export was carried out by utilizing the certificate delivered within the framework of the advance fixing specified in Article 3 (3).

7. On application by the person concerned, Member States may release the security by instalments in proportion to the quantities of products in respect of which the proof referred to in paragraph 6 has been provided.

8. When the proof specified in paragraph 6 has not been given within six months following the expiry date of the validity period of the certificate, the security shall remain acquired except in a case of *force majeure*.

When the security remains acquired, it shall be deducted from the intervention expenditures in the dairy yield by indicating separately on the book-keeping accounts the amounts and quantities in question.

Article 5

1. The exporter must provide, when sending in the application of a certificate delivered within the scope of the advance fixing specified in Article 3 (3), the delivery contract in a third country stating at least :

(a) the name and address of the exporter ;

(b) the description of the product in question (and in particular, whether denatured or not) ;

(c) the quantity or quantities to be supplied ;

(d) the country of destination ;

(e) the selling price with reference to the related marketing stage ;

(f) the time and date of delivery ;

(g) that the products shall be used exclusively for animal feed, as specified in Article 6.

2. The application of the certificate delivered within the scope of the advance fixing and the certificate shall bear :

— in Section 12, one of the following :

'Export under Regulation (EEC) No 2054/76',

'Exportation dans le cadre du règlement (CEE) n° 2054/76',

'Ausfuhr im Rahmen der Verordnung (EWG) Nr. 2054/76',

'Esportazione nell'ambito del regolamento (CEE) n. 2054/76',

'Uitvoer in het kader van Verordening (EEG) nr. 2054/76',

'Udførsel i henhold til forordning (EØF) nr. 2054/76',

— in Section 13, the country of destination ; the certificate obliges to export to that country ;

— moreover, when the certificate concerns a product specified in Article 2 (a) or (b), in Section 12, one of the following :

'Content of skimmed-milk powder ... %',

'Teneur en lait écrémé en poudre ... %',

'Gehalt an Magermilchpulver ... %',

'Tenore in latte scremato in polvere ... %',

'Gehalte aan magere-melkpoeder ... %',

'Indhold af skummetmælkspulver ... %' ;

— moreover, when the certificate concerns a product specified in Article 2 (c), in Section 12, one of the following :

'To be used in the country of destination as feedingstuffs',

'Destiné à être utilisé dans le pays de destination pour l'alimentation des animaux',

'Zur Verwendung zu Futterzwecken im Bestimmungsland',

'Destinato ad essere utlizzato nel paese di destinazione per l'alimentazione degli animale',

'Bestemd om in het land van bestemming te worden gebruikt voor diervoeding',

'Til anvendelse i modtagerlandet som foder'.

3. The Member States shall communicate to the Commission, within a time limit of eight days calculated from the date of sending in the application of the certificate, the following information :

(a) the data specified in paragraph 1 (b) to (f), and

(b) the means of conveyance, the place of leaving the geographical territory of the Community and the place of entry into the country of destination, as far as the delivery contract specifies these data.

Article 6

1. In a case where the skimmed-milk powder should be exported unprocessed, the refund shall be subject to the provision of a certificate delivered by an official organization in the country of destination, adopted in accordance with Article 3 of Regulation (EEC) No 196/76, certifying that the product which was imported shall undergo a control ensuring that it will be exclusively used for animal feed and that it shall not be re-exported.

2. Immediately on receipt of the certificate, the Member States shall forward a copy to the Commission.

Article 7

1. From the time of its removal from intervention and until it leaves the geographical territory of the Community, the skimmed-milk powder shall be subject to customs or an equivalent administrative control.

2. Where a part of the control referred to in paragraph 1 is to be carried out in a Member State other than that in which the products are removed from intervention, the products shall be accompanied by the control copy referred to in Regulation (EEC) No 2315/69. The control copy shall be issued and used in accordance with the conditions laid down in Articles 5 and 6 of that Regulation.

Article 8

The customs export formalities shall be completed :

— in respect of skimmed-milk powder referred to in Article 2 (a) and (b), in the Member State where the denaturing or incorporation takes place,

— in respect of skimmed-milk powder referred to in Article 2 (c), in the Member State where the removal from intervention takes place.

Article 9

1. Where unprocessed skimmed-milk powder is presented at the customs office of departure :

— for dispatching to another Member State, to be denatured or incorporated and subsequently exported to a third country, or

— for export to a third country when crossing the territory of another Member State,

the control copy referred to in Article 7 (2) shall be issued subject to the production of a removal order issued by the intervention agency.

This order shall be numbered and shall indicate :

— the description of the products, such description being made in the manner prescribed for completion of Section 31 of the control copy,

— the number, kind, marks and number of packages,

— the gross weight and the net weight of the products,

— the reference to this Regulation,

— the information to be stated in Section 106 of the control copy.

This removal order shall be kept by the customs office of departure.

2. Where skimmed-milk powder having formed the object of denaturing or incorporation into compound feedingstuff in the Member State in which the removal from intervention took place, is presented for export to third countries at the customs office of departure when crossing the territory of another Member State, the control copy shall be issued subject to production of a document issued by the authorities which have verified the denaturing or incorporation. This document shall contain the same information as mentioned in paragraph 1 and shall be kept by the customs office of departure.

However such a document shall not be produced in those cases where the customs office of departure has verified the relevant processing.

3. In that part of the control copy headed 'Additional information', Sections 101, 103, 104 and 106 shall be completed.

Section 104 shall be completed by deleting as appropriate and entering one of the following endorsements :

(a) on dispatching skimmed-milk powder for denaturing or incorporation into compound feedingstuff :

'For processing and subsequent export (Regulation (EEC) No 2054/76)',

'Destiné à la transformation et à l'exportation ultérieure (règlement (CEE) n° 2054/76)',

'Zur Verarbeitung und anschließender Ausfuhr bestimmt (Verordnung (EWG) Nr. 2054/76)',

'Destinato alla trasformazione e successivamente all'esportazione (regolamento (CEE) n. 2054/76)',

'Bestemd om te worden verwerkt en vervolgens te worden uitgevoerd (Verordening (EEG) nr. 2054/76)',

'Til forarbejdning og efterfølgende udførsel (forordning (EØF) nr. 2054/76)' ;

(b) on export of skimmed-milk powder, denatured skimmed-milk powder or compound feedingstuff :

'For export (Regulation (EEC) No 2054/76)',

'Destiné à l'exportation (règlement (CEE) n° 2054/76)',

'Zur Ausfuhr bestimmt (Verordnung (EWG) Nr. 2054/76)',

'Destinato all'esportazione (regolamento (CEE) n. 2054/76)',

'Bestemd voor uitvoer (Verordening (EEG) nr. 2054/76)',

'Til udførsel (forordning (EØF) nr. 2054/76)'.

In Section 106 the following shall be entered :

— when applying paragraph 1, the number of the removal order, or

— when applying paragraph 2, the reference to the document mentioned therein,

— the day on which the purchaser took delivery,

— on export of denatured skimmed-milk powder and compound feedingstuff, the weight of skimmed-milk powder used to produce the quantity of products indicated in Section 103.

Article 10

1. Where skimmed-milk powder has been dispatched under Article 9 (1) to another Member State for denaturing or incorporation into compound feedingstuff, and the denatured skimmed-milk powder or the compound feedingstuff has to cross the territory of a third Member State for leaving the geographical territory of the Community, then the original customs office of destination shall, acting as a customs office of departure, issue one or more new control copies.

The new control copy or copies shall be completed in accordance with Article 9 (3) (b), taking into consideration the information stated in the original control copy. Moreover, Section 106 of the new control copy or copies shall contain the number of the original control copy and the name of the customs office which issued that copy.

2. Where endorsement in the section 'Control as to use and/or destination' of the control copy is made on the basis of information stated in control copies received from customs authorities in another Member State or in national documents received from other national authorities, the customs office of destination referred to in paragraph 1 shall enter under 'Remarks' the number(s) of the relevant control copies or national documents.

3. Where a part only of the products mentioned in the control copy has complied with the prescribed provisions, the customs office of destination shall indicate in the section of the control copy headed 'Control as to use and/or destination' the quantity of products which have complied with the provisions.

4. Where products have been dispatched in accordance with Article 9 (1) for denaturing or incorporation into compound feedingstuff, the customs office of destination shall send through official channels to the intervention agency of its own country a copy or photocopy of the endorsed control copy. The original of the endorsed control copy is to be returned to the dispatching Member State when the control has been implemented.

Article 11

Where, on completion of customs export formalities, products are placed under the procedure provided for in Regulation (EEC) No 304/71 for carriage to a station of destination outside the geographical territory of the Community, they shall be considered as exported from the moment when they are placed under the said procedure.

For the purpose of the preceding subparagraph, the customs office of departure where customs export formalities are completed shall ensure that the following endorsement is entered on the document issued as proof of export :

'Departure from the geographical territory of the Community under Regulation (EEC) No 304/71 procedure.'

The customs office of departure may permit the contract of carriage to be varied so that carriage ends within the Community only if it is established :

— that the security has not been released, or

— that a new security is given.

However, if the security has been released pursuant to the first subparagraph and the product has not left the geographical territory of the Community within the prescribed period, the customs office of departure shall so inform the agency responsible for the release of the security and shall provide it as soon as possible with all the necessary particulars. In such cases the release shall be regarded as having been made in error.

Article 12

1. Where the export cannot be carried out during the validity period of the certificate as a result of *force majeure*, the authorities of the Member State in which the security is lodged shall, at the request of the person concerned, decide :

(a) that the validity period of the certificate shall be extended for such period as may be considered necessary in view of the circumstances invoked, or

(b) if the products have been irretrievably lost, that the control shall be considered as carried out.

However, in those cases of *force majeure* where the measures referred to in (a) and (b) are not appropriate, the competent authorities shall inform the Commission, which may provide for the necessary measures under the procedure laid down in Article 30 of Regulation (EEC) No 804/68.

2. The person concerned shall furnished proof of the circumstances relied upon as constituting *force majeure*.

3. Member States shall inform the Commission each quarter of the cases in which they have applied paragraph 1, specifying the circumstances invoked, the quantity involved and the measures taken.

Article 13

Proof that the conditions as to the control referred to in Article 7 (1) have been fulfilled shall be furnished as follows :

(a) for skimmed-milk powder in respect of which the removal from intervention and the use and destination have been supervised by the authorities of a single Member State, by documents specified by that Member State ;

(b) for skimmed-milk powder in respect of which the use and destination have been supervised either by authorities both in the Member State where the removal from intervention took place and in one or more other Member State or only by authorities in the latter :

— by the control copies issued for that purpose, duly endorsed by the competent customs authorities, or by the copy or photocopy of the endorsed control copy referred to in Article 10 (2), and furthermore,

— if the products have undergone denaturing or incorporation into compound feedingstuff in the Member State in which they were removed from intervention, by documents specified by that Member State.

Article 14

1. Where a control copy intended to act as proof of export is not returned to the customs office of departure or relevant central body within three months of its issue owing to circumstances beyond the control of the party concerned, the latter may make application to the competent authorities for other documents to be accepted as equivalent, stating the grounds for such application and furnishing supporting documents. Such supporting documents must include the transport document and one or more of the documents specified in the second, third and fourth subparagraphs of Article 11 (1) of Regulation (EEC) No 192/75.

2. Member States shall, on 1 December, send returns to the Commission showing the number of applications made under the preceding paragraph, the reasons, where known, for the failure to return the control copy, the quantities concerned and the nature of the documents accepted as equivalent.

Article 15

With effect from 1 October 1976 the Annex to Regulation (EEC) No 1687/76 shall be amended as follows :

I. In 'I. Products to be exported in the same state as that in which they were when removed from intervention', point 9 shall be replaced by :

1. '9. Commission Regulation (EEC) No 2054/76 of 19 August 1976 on the sale for export to non-member countries of skimmed-milk powder held by intervention agencies and intended for use as feed (9)' ;

2. footnote (9) shall be replaced by :

'(9) OJ No L 228, 20. 8. 1976, p. 17'.

II. In 'II. Products subject to a use and/or destination other than that mentioned under I', point 12 shall be replaced by :

'12. Commission Regulation (EEC) No 2054/76 of 19 August 1976 on the sale for export to non-member countries of skimmed-milk powder held by intervention agencies and intended for use as feed :

(a) On dispatching skimmed-milk powder for processing :

— Section 104 :

"for processing and subsequent export (Regulation (EEC) No 2054/76)",

"destiné à la transformation et à l'exportation ultérieure (règlement (CEE) nº 2054/76)",

"zur Verarbeitung und anschließender Ausfuhr (Verordnung (EWG) Nr. 2054/76)",

"destinato alla trasformazione e successivamente all'esportazione (regolamento (CEE) n. 2054/76)",

"bestemd om te worden verwerkt en vervolgens worden uitgevoerd (Verordening (EEG) nr. 2054/76)",

"til forarbejdning og efterfølgende udførsel (forordning (EØF) nr. 2054/76)" ;

— Section 106 :

the date on which the skimmed-milk powder was removed from intervention.

(b) On export of processed skimmed-milk powder :

— Section 104 :

"for export (Regulation (EEC) No 2054/76)",

"destiné à l'exportation (règlement (CEE) n° 2054/76)",

"zur Ausfuhr bestimmt (Verordnung (EWG) Nr. 2054/76)",

"destinato all'esportazione (regolamento (CEE) n. 2054/76)",

"bestemd voor uitvoer (Verordening (EEG) nr. 2054/76)",

"til udførsel (forordning (EØF) nr. 2054/76)" ;

— Section 106 :

1. the date on which the skimmed-milk powder was removed from intervention ;
2. the weight of skimmed-milk powder used to produce the quantity of processed products indicated in Section 103.'

Article 16

1. Regulation (EEC) No 196/76 is cancelled.

It remains however applicable for operations having been subject of an advance fixing of the refund under the provisions of Regulation (EEC) No 196/76 before the date of this Regulation has entered into force.

2. Regulation (EEC) No 231/76 is cancelled.

It remains however applicable to skimmed-milk powder sold pursuant to this Regulation.

Article 17

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

The last sentence of Article 4 (3), and Articles 4 (4), (5) and (7), 7 to 11 and 13 and 14 shall be repealed from 1 October 1976. However, skimmed-milk powder removed from intervention before this date remains subject to these provisions.

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

Done at Brussels, 19 August 1976.

For the Commission

P. J. LARDINOIS

Member of the Commission