COMMISSION REGULATION (EEC) No 400/80

of 19 February 1980

on a standing invitation to tender for butter held by intervention agencies and intended for export to certain non-member countries and amending Regulations (EEC) No 2140/79 and (EEC) No 1687/76

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 1761/78 [2], and in particular Articles 6 (7) and 28 thereof,

Having regard to Council Regulation (EEC) No 985/68 of 15 July 1968 laying down general rules for intervention on the market in butter and cream [3], as last amended by Regulation (EEC) No 2714/72 [4], and in particular Article 7a thereof,

Having regard to Council Regulation (EEC) No 974/71 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 [5], as last amended by Regulation (EEC) No 987/79 [6], and in particular Article 6 thereof,

Having regard to Council Regulation (EEC) No 878/77 of 26 April 1977 on the exchange rates to be applied in agriculture [7], as last amended by Regulation (EEC) No 2835/79 [8], and in particular Article 4 (3) thereof,

Whereas the Community currently has large quantities of butter in public storage ; whereas to the extent that outlets are available, steps should be taken to sell that butter ;

Whereas certain quantities are suitable for sale for export to certain non-member countries ; whereas exporters should be permitted to obtain supplies from intervention agencies ;

Whereas in order to determine the selling price in line with market prices, to keep a check on the quantities sold and to ensure equal access for all concerned, the butter in question should be sold in accordance with a standing invitation to tender procedure ;

Whereas, to simplify administration, export refunds should not be granted on butter exported under this Regulation, but an appropriate reduction made in the selling price ;

Whereas, to ensure that the butter reaches its destination, supervision must be exercised from the time the butter leaves the store until it reaches its destination in the non-member country concerned ; whereas, in addition to the supervisory provisions laid down in Commission Regulation (EEC) No 1687/76 [9], as last amended by Regulation (EEC) No 298/80 [10], it is necessary to lay down additional conditions in view of the specific nature of the operation ;

Whereas for the application of monetary compensatory amounts fixed by Commission Regulation (EEC) No 2140/79 [11], as last amended by Commission Regulation (EEC) No 300/80 [12], a coefficient should be introduced to take account of the difference between the price at sale by tender and the intervention price for butter forming the basis for the calculation of monetary compensatory amounts ;

Whereas the Management Committee for Milk and Milk Products has not delivered an opinion within the time limit set by its chairman,

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 April 1979 shall be sold under the conditions laid down hereinafter.

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(1) OJ No L 148, 28. 6. 1968, p. 13.
(2) OJ No L 204, 28. 7. 1978, p. 6.
(3) OJ No L 169, 18. 7. 1968, p. 1.
(4) OJ No L 291, 28. 12. 1972, p. 15.
(5) OJ No L 106, 12. 5. 1971, p. 1.
(6) OJ No L 123, 19. 5. 1979, p. 5.
(7) OJ No L 106, 29. 4. 1977, p. 27.
(8) OJ No L 320, 15. 12. 1979, p. 58.
(9) OJ No L 190, 14. 7. 1976, p. 1.
(10) OJ No L 32, 9. 2. 1980, p. 23.
(11) OJ No L 247, 1. 10. 1979, p. 1.
(12) OJ No L 32, 9. 2. 1980, p. 30.

Article 2

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

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

(a) the location of the coldstore or stores where the butter is held ;

(b) the quantity of butter for sale in each store, specifying, where appropriate, the quantity of that butter having a fat content of less than 82 % ;

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

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

Article 3

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

2. The period for the submission of each of such individual tenders shall expire at 12 noon each second and fourth Monday of the month, except the fourth Monday in December. If the Monday is a public holiday, the period shall be extended to 12 noon on the following working day.

The time limit for the first individual invitation to tender shall expire on 10 March 1980 at 12 noon.

Article 4

1. The intervention agency shall update and make available to prospective tenderers on request the list provided for in Article 2 (2) (b) of the quantity of butter for sale by tender in each coldstore. The intervention agency shall also publish the updated lists at regular intervals in an appropriate form to be specified in the notice of invitation to tender provided for in Article 2 (2).

2. The intervention agency shall take the measures necessary to enable prospective tenderers to examine at their own expense, before tendering, samples taken from the butter for sale.

Article 5

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

2. The tender shall state :

(a) the name and address of the tenderer ;

(b) the quantity to which the tender relates, specifying the fat content of the butter where the intervention agency concerned has offered for sale butter of a fat content of less than 82 % ;

(c) the country of destination of the butter, which must be one of those within Zone C1 and C2 within the meaning of Commission Regulation (EEC) No 1098/68 [1], as last amended by Regulation (EEC) No 242/80 [2].

(d) the price offered per 100 kilograms of butter having the fat content required, account being taken of Article 14, exclusive of internal taxes, ex coldstore in which the butter is held, expressed in the currency of the Member State in which the invitation to tender is held ;

(e) the coldstore in question and if desired an alternative store.

A tender relating to two or more stores, independently of any alternative store, shall be considered to comprise as many tenders as there are coldstores mentioned.

Tenders shall relate only to butter of uniform fat content (either equal to or greater than 82 %, or less than 82 %) intended for a single country of destination.

3. A tender shall not be valid unless it relates to a quantity of at least 50 tonnes. However, if the quantity available in a store is less than 50 tonnes, the available quantity shall consitute the minimum quantity for tender.

4. A tender shall not be valid unless :

(a) it is accompanied by a written undertaking by the tenderer to export any butter awarded to him unaltered and in its original packaging referred to in Article 11, within the time limit laid down in Article 10 (3), to the country of destination specified in his tender in accordance with paragraph 2 (c) ;

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[1] OJ No L 184, 29. 7. 1968, p. 10.
[2] OJ No L 27, 2. 2. 1980, p. 27.

(b) the tenderer encloses a declaration to the effect that he agrees to forego any claim as to the quality and characteristics of any butter sold to him ;

(c) proof is furnished that, before expiry of the period set for the submission of tenders, the tenderer has lodged the tendering security referred to in Article 6 in respect of the relevant individual invitation to tender.

5. A tender may stipulate that it is not to be regarded as having been submitted :

(a) unless a contract is awarded in respect of the entire quantity indicated in the tender ;

(b) unless a contract is awarded in respect of a specific quantity indicated in the tender.

6. No tender may be withdrawn after the closing date as specified in Article 3 (2) for the individual invitation to tender concerned.

7. After the closing date for the submission of tenders under each individual invitation, the intervention agencies shall communicate immediately to the Commission, by telex, the quantities tendered for, the prices offered and the country of destination indicated in each tender.

Article 6

1. The tendering security shall be 60 ECU per tonne.

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

3. The tendering security shall be lodged in the Member State in which the tender is submitted.

Article 7

1. In the light of the tenders received in response to each individual invitation to tender and in accordance with the procedure laid down in Article 30 of Regulation (EEC) No 804/68, a minimum selling price shall be fixed, which may be varied according to the fat content of the butter and to the destination zone within the meaning of Regulation (EEC) No 1098/68 (C1 or C2).

A decision may be taken to make no award in respect of an invitation to tender.

2. At the same time as the minimum selling price is fixed and under the same procedure, the amount of the export security designed to ensure that the butter is exported and reaches the country of destination specified in the tender shall be fixed per 100 kilograms.

3. The minimum selling price and the price payable by the successful tenderer shall be converted into national currency using the representative rate valid on the closing date for the submission of tenders in respect of the individual invitation in question.

Article 8

1. A tender shall be rejected if the price offered is lower than the minimum price fixed for the individual invitation to tender, account being taken of the fat content of the butter in question.

2. Save as provided in paragraph 1, a contract shall be awarded to the tenderer whose tender differs most from the minimum price fixed for butter for the zone of destination specified in the tender. If the quantity available in the store in question is not exhausted by this award, contracts for the remaining quantity shall be awarded to the other tenderers according to the price offered, starting with the one whose price differs most from the relevant minimum price.

3. Where acceptance of a tender would lead to a contract being awarded for more butter than is available at the coldstore in question, 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 for butter for the same zone of destination or differing by the same amount from the relevant minimum price would lead to contracts being awarded in excess of the quantity available, the award shall be made by dividing the quantity available proportionately to the quantities specified in the tenders concerned.

However, where such allocation would lead to any award of less than 20 tonnes of butter, the awards shall be made by drawing lots.

5. For the purposes of paragrahs 2, 3 and 4, 'quantity available' shall mean the quantity remaining available after tenders submitted under Regulations (EEC) No 1282/72, (EEC) No 1717/72, (EEC) No 2315/76, (EEC) No 649/78 and (EEC) No 262/79 have been taken into consideration.

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

Article 9

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

2. The successful tenderer shall, before taking delivery of the butter, and within the period specified in Article 10 (2), pay the intervention agency an amount corresponding to his tender for the quantity which he intends to remove from store.

Article 10

1. Where the amount referred to in Article 9 (2) has been paid and the security referred to in Article 7 (2) has been lodged in accordance with Article 13 (1) of Regulation (EEC) No 1687/76, the intervention agency shall issue a removal warrant stating :

(a) the quantity of butter in respect of which the conditions referred to above have been satisfied ;

(b) the coldstore where it is stored ;

(c) the final date for taking delivery ;

(d) the closing date for the individual invitation to tender under which the butter was sold ;

(e) country of destination.

2. The successful tenderer shall take delivery of the butter within 30 days of the final date for submission of tenders. Delivery may be in instalments.

Except in cases of *force majeure*, if the successful tenderer has not made the payment referred to in Article 9 (2) within the specified period, the sale shall be cancelled in respect of the remaining quantities.

If the payment referred to in Article 9 (2) has been made without delivery of the butter having been taken within the period referred to above, the successful tenderer shall bear the cost of storing the butter with effect from the day following that referred to in paragraph 1 (c).

3. Butter, delivery of which has been taken by the purchaser, must be exported within 180 days from the closing date for the submission of tenders in respect of the individual invitation to tender in question.

Article 11

Butter shall be delivered by the intervention agency in packages bearing one or more of the following endorsements in letters at least 1 cm high :

— 'Butter for export (Regulation (EEC) No 400/80)',

— 'Beurre destiné à l'exportation (règlement (CEE) n° 400/80)',

— 'Smør bestemt til export (forordning (EØF) nr. 400/80)',

— 'Butter zur Ausfuhr Verordnung (EWG) Nr. 400/80)',

— 'Burro destinato all'exportazione (regolamento (CEE) n. 400/80)',

— 'Boter voor uitvoer (Verordening (EEG) nr. 400/80)',

and an endorsement showing the country of destination.

Article 12

1. Except in cases of *force majeure*, the tendering security shall be forfeit in respect of any quantity for which the tenderer :

(a) withdrew the tender after expiry of the time limit as specified in Article 3 (2) for the submission of tenders ; or

(b) did not, within the period prescribed, pay the amount corresponding to the tender referred to in Article 9 (2) or lodge the export security referred to in Article 7 (2).

2. The tendering security in respect of any quantity for which no contract is awarded shall be released immediately.

3. Except in cases of *force majeure*, the export security referred to in Article 7 (2) shall be forfeit in proportion to the quantities for which the proof referred to in Article 13 (4) of Regulation (EEC) No 1687/76 has not been produced within 18 months, calculated from the final day for submission of tenders in respect of the individual invitation to tender in question.

Article 13

1. In cases of *force majeure* not coming within Article 11 (1) of Regulation (EEC) No 1687/76, the intervention agency shall take the measures necessary in view of the circumstances invoked.

2. The 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 14

1. No export refund shall be granted on butter sold and exported under this Regulation.

However, such butter shall be considered as satisfying the provisions of Article 2 (1) (b) of Regulation (EEC) No 754/76 from the time when the customs export formalities have been completed. If the provisions of Article 2 (2) of the said Regulation apply, an amount equal to the security referred to in Article 7 (2) of this Regulation must be paid. The amount shall be considered as a security which has been forfeited within the meaning of Article 2 of Regulation (EEC) No 352/78.

2. The monetary compensatory amounts applicable to butter sold under this Regulation shall be equal to the monetary compensatory amounts fixed under Regulation (EEC) No 974/71 multiplied by the coefficient given in Part 5 of Annex I in the corresponding note to the Commission Regulation fixing the monetary compensatory amounts.

If necessary the Commission may adjust this coefficient.

Article 15

The following is added to note (4) of Part 5 of Annex I to Regulation (EEC) No 2140/79 :

'In Regulation (EEC) No 400/80, the amount indicated is multiplied by a coefficient equal to the quotient of the division of the amount of the minimum selling price fixed for the tendering concerned, by the buying-in price for butter of the same type applicable on the day set as the final date for the submission of tenders.'

Article 16

Regulation (EEC) No 1687/76 is amended as follows :

In Part I of the Annex, 'Products to be exported in the same state as that in which they were when removed from intervention stock', the following point 18 and footnote (18) relating thereto are added :

'18. Commission Regulation (EEC) No 400/80 of 19 February 1980 on a standing invitation to tender for butter held by intervention agencies and intended for export to certain non-member countries (18).

(18) OJ No L 46, 21. 2. 1980, p. 14.'

Article 17

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, 19 February 1980.

For the Commission

Finn GUNDELACH

Vice-President