COMMISSION REGULATION (EEC) No 3280/82

of 6 December 1982

on the granting by standing invitation to tender of special aid for butter from private storage for export to non-member countries

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 1183/82 [2], and in particular Articles 6 (7) and 28 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 [3], as last amended by Regulation (EEC) No 3605/81 [4], 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 [5], as last amended by Regulation (EEC) No 2792/82 [6], and in particular Article 4 (3) thereof,

Whereas Article 9 (2) of Council Regulation (EEC) No 985/68 [7], as last amended by the Act of Accession of Greece, provides that, should the situation on the Community market so require, the intervention agency may be authorized to remarket some or all of the butter in storage;

Whereas Commission Regulation (EEC) No 3279/82 of 6 December 1982 on a standing invitation to tender for butter held by intervention agencies and intended for export to non-member countries and amending Regulation (EEC) No 1687/76 [8] enables Community operators to have recourse to butter from public storage if the butter is intended for export to non-member countries;

Whereas measures should be taken to ensure that the abovementioned operation, which involves only butter from public storage, does not compromise the removal from storage of butter which has qualified for the private storage aid referred to in Article 6 (2) of Regulation (EEC) No 804/68; whereas, therefore, with a view to maintaining the marketability of butter from private storage in accordance with Article 6 (3) of the abovementioned Regulation, provision should be made for such butter to be exported on similar terms;

Whereas such a measure may be introduced by providing for the granting of special aid for butter which has been covered by a storage contract in accordance with Article 8 (2) of Regulation (EEC) No 985/68; whereas, for the sake of clarity, it should be stipulated that aid shall be granted only for butter which has been removed from storage between 16 September and 31 March of the following year, this being the period laid down for removal from storage in Article 28 of Commission Regulation (EEC) No 685/69 [9], as last amended by Regulation (EEC) No 1442/82 [10];

Whereas, to fix the amount of the special aid, it would be appropriate to have recourse to a tendering procedure which enables effective checks to be made on the quantities of butter qualifying for aid and enables account to be taken of the general situation on the Community and world markets;

Whereas, to ensure that the butter is not diverted from its intended use, it should be subject to a system of controls from the time when it is removed from storage until the time when it arrives at its destination in the non-member country concerned;

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

1. Special aid shall be granted for butter which has been under storage contract pursuant to Article 8 (2) of Regulation (EEC) No 985/68 for at least four months and which is released from storage during the period laid down for removal from storage in Article 28 (1) of Regulation (EEC) No 685/69, where such butter is intended for export to non-member countries under the conditions laid down in this Regulation.

[1] OJ No L 148, 28. 6. 1968, p. 13.
[2] OJ No L 146, 20. 5. 1982, p. 1.
[3] OJ No L 106, 12. 5. 1971, p. 1.
[4] OJ No L 362, 17. 12. 1981, p. 2.
[5] OJ No L 106, 29. 4. 1977, p. 27.
[6] OJ No L 295, 21. 10. 1982, p. 6.
[7] OJ No L 169, 18. 7. 1968, p. 1.
[8] See page 7 of this Official Journal.
[9] OJ No L 90, 15. 4. 1969, p. 12.
[10] OJ No L 158, 9. 6. 1982, p. 16.

2. The special aid shall be granted to the signatory of the storage contract by the Member State responsible for the intervention agency with which the said contract was concluded.

3. The amount of the aid shall be fixed by means of a standing invitation to tender. However, no invitation to tender shall be organized between 1 April and 31 August of each year.

Article 2

1. The intervention agencies shall draw up a notice of invitation to tender, stating in particular:

(a) the time limit and the place for the submission of tenders;

(b) the formalities relating to the provision of the tendering and export securities.

2. The notice of invitation to tender shall be published in the *Official Journal of the European Communities* at least eight days before the expiry of the first time limit set for the submission of tenders.

The intervention agencies may also publish the notice elsewhere.

Article 3

The time limits for the submission of tenders in response to individual invitations shall expire each second Monday of the month at 12 noon. If the Monday falls on a public holiday the time limit shall be extended to the following working day at 12 noon.

However, the time limit on the first individual invitation to tender shall expire on 20 December 1982 at 12 noon.

Article 4

1. Interested parties shall participate in an individual invitation to tender either by submitting a tender in writing, against acknowledgement of a receipt, to the intervention agency with which the storage contract was concluded or by registered letter addressed to the intervention agency. Intervention agencies may authorize the use of telex.

2. Tenders shall include the following particulars:

(a) the name and address of the tenderer, who was party to the storage contract;

(b) the amount of aid proposed, expressed per 100 kilograms of butter in the currency of the Member State in which the tendering procedure takes place, stating the fat content of the butter if, in the Member State concerned, storage contracts are concluded for butter with a fat content of less than 82 %;

(c) the quantity of butter covered by the aid and intended for export within the time limit specified in Article 9 (3);

(d) the coldstore in which the butter is held and the reference numbers of the lots;

(e) the country of destination of the butter

3. Tenders shall relate only to butter of uniform fat content (either equal to or greater than 82 %, or less than 82 %).

A tender shall be valid only if it relates to a quantity of at least 50 tonnes. However, if the quantity of butter which satisfies the conditions set forth in Article 1 and which the tenderer still holds under storage contract is less than 50 tonnes, the available quantity shall constitute 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 the effect that any butter for which aid is granted will be exported unaltered and in its original packaging, within the time limit laid down in Article 9 (3), to the country of destination specified in his tender;

(b) proof is furnished that, before expiry of the time limit set for the submission of tenders, the tenderer has lodged the tendering security referred to in Article 5 in respect of the relevant individual invitation to tender;

(c) the tender does not contain any conditions and/or reservations that are not expressly authorized.

5. Once the time limit for the submission of tenders in response to the individual invitation to tender concerned has expired:

(a) tenders may not be withdrawn;

(b) the intervention agencies shall inform the Commission immediately, by telex, of the amounts of aid proposed, the quantities concerned and the country of destination specified in each tender.

Article 5

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

2. It shall be provided, at the option of the tenderer, in cash or in the form of a guarantee given by an establishment which meets the criteria laid down by the Member State with which the security is lodged.

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

Article 6

1. In accordance with the procedure laid down in Article 30 of Regulation (EEC) No 804/68, a maximum amount of aid, expressed per 100 kilograms of butter, shall be fixed for each country of destination under each individual tendering procedure, account being taken of the minimum price valid for the corresponding individual tendering procedure under Regulation (EEC) No 3279/82. The amount of the aid may be differentiated according to the fat content of the butter.

Under the abovementioned procedure, a decision may also be taken to make no award or to make only a partial award, depending on the destinations.

2. At the same time as the maximum amounts of aid and under the same procedure, the amount of the export securities which are intended to ensure that the butter is exported and that it is imported into the country of destination specified in the tender shall be fixed per 100 kilograms.

3. The maximum amount referred to in paragraph 1 and the aid paid to the successful tenderers shall be converted into national currency at the representative rate valid on the closing date for the submission of tenders in response to the individual invitation concerned.

Article 7

1. A tender shall be rejected if the amount of aid proposed is greater than the maximum amount fixed for each country of destination under each individual tendering procedure, account being taken of the fat content of the butter concerned.

2. Without prejudice to paragraph 1, contracts shall be awarded to tenderers who propose an amount of aid which does not exceed the maximum amount fixed for the country of destination specified in the tender.

3. Rights and obligations arising in connection with the tendering procedure shall not be transferable.

Article 8

1. Each tenderer shall immediately be notified by the intervention agency of the outcome of his participation in the tendering procedure.

2. In the case of successful tenderers, this notification shall include the following particulars:

(a) the final date for the submission of tenders in response to the individual invitation concerned;

(b) the particulars referred to in Article 4 (2) (b), (c), (d) and (e);

(c) the final date for export of the quantity of butter specified in the tender.

Article 9

1. Removal from storage within the meaning of the penultimate subparagraph of Article 24 (1) of Regulation (EEC) No 685/69 shall take place within 30 days of the closing date for the submission of tenders in response to the individual invitations concerned, subject to the setting of a shorter time limit, if need be, pursuant to Article 1 (1).

2. Before the butter is removed from storage, the export security referred to in Article 6 (2) shall be lodged with the intervention agency where the storage contract was signed. The security shall be lodged, at the option of the tenderer, either in cash or in the form of guarantee given by an establishment which satisfies the criteria laid down by the Member State with which the security is lodged.

3. Butter removed from storage must be exported within 80 days of the closing date for the submission of tenders in response to the individual invitation concerned.

Article 10

1. From the time of its removal from storage until the time when it has left the geographical territory of the Community, the butter referred to in Article 1 shall be subject to customs control or to a form of administrative control offering equivalent guarantees.

2. Proof that the butter referred to in Article 1 has left the geographical territory of the Community shall be furnished by the production of:

(a) the control copy issued and used in accordance with the provisions of Commission Regulation (EEC) No 223/77 (1) and of this Regulation, where the butter is to leave the geographical territory of the Community from a Member State other than that in which it is stored;

(b) the document to be specified by the competent authorities of the Member States, where the butter is to leave the geographical territory of the Community from the Member State in which it is stored.

Article 11

On their removal from storage, packages of the butter referred to in Article 1 shall bear one or more of the following endorsements in letters at least one centimetre high:

— 'Butter for export (Regulation (EEC) No 3280/82)',

— 'Smør bestemt til eksport (forordning (EØF) nr. 3280/82)',

— 'Butter zur Ausfuhr (Verordnung (EWG) Nr. 3280/82)',

— 'Βούτυρο πού προορίζεται γιά έξαγωγή (κανονισμός (ΕΟΚ) άριθ. 3280/82)',

— 'Beurre destiné à l'exportation (règlement (CEE) n° 3280/82)',

— Burro destinato all'esportazione (regolamento (CEE) n. 3280/82)',

— 'Boter voor uitvoer (Verordening (EEG) nr. 3280/82)',

and an endorsement specifying the country of destination.

(1) OJ No L 38, 9. 2. 1977, p. 20.

Article 12

1. The customs export formalities shall be completed in the Member State in which the butter referred to in Article 1 is removed from storage.

After acceptance of the export declaration relating thereto, the butter shall be considered, for the purposes of Article 1 (2) of Council Regulation (EEC) No 222/77 [1] on Community transit, as no longer coming under Article 9 (2) of the Treaty.

2. In the case referred to in Article 10 (2) (a), the control copy shall be issued by the customs office where the customs export formalities are completed.

3. Acceptance of the export declaration and the issue of the control copy shall be conditional on the production of a certificate issued by the intervention agency with which the butter storage contract was concluded.

This certificate shall bear a serial number and shall show the following particulars :

— the description of the butter which should be given in the appropriate sections of the export declaration and the control copy and, if need be, any other particulars required for control purposes,

— the quantity and type of packages, together with the markings and numbers thereon,

— the gross weight and the net weight of the butter, expressed in kilograms,

— a reference to this Regulation.

This certificate shall be kept by the customs office concerned.

4. One of the following endorsements shall appear on the export declaration :

— 'Export without refund (Regulation (EEC) No 3280/82)',

— Udførsel uden restitution (forordning (EØF) nr. 3280/82)',

— 'Ausfuhr ohne Erstattung (Verordnung (EWG) Nr. 3280/82)',

— "Εξαγωγή χωρίς επιστροφή (κανονισμός (ΕΟΚ) άριθ. 3280/82)',

— 'Exportation sans restitution (règlement (CEE) n° 3280/82',

— 'Esportazione senza restituzione (regolamento (CEE) n. 3280/82)',

— 'Uitvoer zonder restitutie (Verordening (EEG) nr. 3280/82)'.

5. Section 104 of the control copy must be completed by deleting the word 'other' and by adding one of the endorsements listed in paragraph 4.

[1] OJ No L 38, 9. 2. 1977, p. 1.

Article 13

1. If, on completion of the customs export formalities, the butter referred to in Article 1 is placed under one of the procedures laid down in Section 1 of Title IV of Regulation (EEC) No 223/77 for transportation to a station of destination or to a consignee outside the geographical territory of the Community, it shall be considered as exported with effect from the time at which it is placed under one of the said procedures.

2. For the purposes of implementing paragraph 1, the customs office which has accepted the export declaration shall ensure that the following endorsement appears on the document issued as proof of export :

'Left the geographical territory of the Community under one of the procedures laid down in Section 1 of Title IV of Regulation (EEC) No 223/77.'

This customs office may not authorize any alteration to the transport contract which would have the effect of the transport terminating within the Community unless it has been established :

— that, where an export security has been lodged with an intervention agency, the said security has not been released, or

— that a new security has been lodged.

However, if the security has been released pursuant to paragraph 1 and if the butter has not left the geographical territory of the Community within the prescribed time limit, the customs office shall so inform the body responsible for releasing the security and shall communicate all the necessary particulars to that body as soon as possible. In such cases, the security shall be considered as having been released in error.

Article 14

Control copies returned to the customs office of departure or to the central body in the Member State in which the products were removed from storage shall be forwarded through official channels to the intervention agency of the said Member State.

Article 15

1. In cases where the conditions laid down as regards use or destination have not been fulfilled as a result of *force majeure*, the competent authorities of the Member State in which the security has been lodged shall decide, at the request of the interested party :

(a) that the period laid down for the operation should be extended for the time considered necessary in the light of the circumstances invoked ; or

(b) that the controls may be considered to have been carried out, if the products have been irretrievably lost.

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

2. The interested party shall furnish proof concerning the circumstances invoked as a case of *force majeure.*

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

Article 16

Payment of the special aid shall be made after the butter has left storage in accordance with Article 9 (1), on presentation of the proof that the export security referred to in Article 9 (2) has been lodged, within one month at most from the date of receipt of the said proof by the agency authorized to grant the aid.

Article 17

Applications for export licences and the export licences themselves shall show, in section 13, the name of the non-member country specified in the tender ; the licence shall require export to that destination.

Article 18

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

(a) has withdrawn the tender after the expiry of the time limit for the submission of tenders, as referred to in Article 2 (2) ; or

(b) has not lodged the export security referred to in Article 9 (2) within the prescribed time limit.

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 9 (2) shall be forfeit in proportion to the quantities for which proof of importation into the country of destination has not been supplied within 12 months of the date of acceptance of the export declaration ; Articles 20 and 31 (2) of Commission Regulation (EEC) No 2730/79 [1] shall apply.

Article 19

1. In cases of *force majeure* not covered by Article 15, the intervention agency shall decide on the measures which it considers 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 quantities involved and the measures taken.

Article 20

1. No export refund shall be granted on butter which qualifies for aid and is exported under this Regulation.

However, such butter shall be considered as satisfying the provisions of Article 2 (1) (b) of Council Regulation (EEC) No 754/76 [2] as from the date of acceptance of the export declaration relating thereto.

If the provisions of Article 2 (2) of the said Regulation are applicable, an amount equal to the security referred to in Article 9 (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 Council Regulation (EEC) No 352/78 [3].

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

If necessary, the Commission may adjust this coefficient.

Article 21

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

[1] OJ No L 317, 12. 12. 1979, p. 1.
[2] OJ No L 89, 2. 4. 1976, p. 1.
[3] OJ No L 50, 22. 2. 1978, p. 1.

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

Done at Brussels, 6 December 1982.

For the Commission

Poul DALSAGER

Member of the Commission