COMMISSION REGULATION (EEC) No 765/86

of 14 March 1986

laying down detailed rules for the sale of butter from intervention stock for export to certain destinations

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 3768/85 (2), and in particular Article 6 (7) thereof,

Having regard to Council Regulation (EEC) No 1678/85 of 11 June 1985 on the exchange rates to be applied in agriculture (3), as last amended by Regulation (EEC) No 505/86 (4), and in particular Article 4 thereof,

Whereas Article 6 of Council Regulation (EEC) No 985/68 of 15 July 1968 laying down general rules for intervention on the market in butter and cream (5), as last amended by Regulation (EEC) No 3790/85 (6), provides that special conditions may be laid down when butter is put on sale for export in order to take account of the special requirements for such sales and to ensure that the product is not diverted from its destination;

Whereas the quantities of butter now in public storage are such that a major effort should be made to make use of opportunities for disposing of it on the market of certain third countries without in any way interfering with the world market; whereas butter that has been in storage for not less than 18 months should be disposed of;

Whereas in order to increase the scope for sales opportunities on certain international markets provision should be made that the butter may be exported in the same state or after processing;

Whereas it would be desirable to make this butter from public storage available to operators at a reduced price; whereas measures should be adopted to ensure that butter sold under this Regulation is not released in the Community;

Whereas operators may buy the butter in question throughout the Community; whereas steps should be taken, therefore, to adjust the monetary compensatory amounts in relation to the level of the sales prices of the butter from intervention;

Whereas in order to ensure that the butter is not diverted from its intended destination, a control system should be applied from the time the butter is removed from stock until it arrives at its destination in the third country concerned; whereas for reasons of clarity it should be recalled that the control provisions laid down in Commission Regulation (EEC) No 1687/76 (7), as last amended by Regulation (EEC) No 683/86 (8), apply; whereas, moreover, in view of the specific nature of the transaction, additional conditions must be laid down;

Whereas account should be taken of the obligations arising under the International Dairy Arrangement, in particular those provided for in the decision adopted on 31 May 1985 by the Protocol Committee concerning fat and concerning minimum quantities, prices, countries of destination and delivery periods for butter and butteroil exported at a price below the minimum price;

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. The sale shall take place, under the conditions laid down in this Regulation, of butter bought in pursuant to Article 6 (1) of Regulation (EEC) No 804/68 which is not less than 18 months old on the date of its removal.

2. Butter sold pursuant to this Regulation shall be exported in the same state or after processing to one of the destinations set out in the Annex hereto.

Article 2

1. The butter shall be sold ex cold storage depot in accordance with the standing tendering procedure conducted by each intervention agency for the relevant quantities of butter it holds.

2. The intervention agency shall draw up a notice of invitation to tender including:

(1) OJ No L 148, 28. 6. 1968, p. 13.
(2) OJ No L 362, 31. 12. 1985, p. 8.
(3) OJ No L 164, 24. 6. 1985, p. 11.
(4) OJ No L 51, 28. 2. 1986, p. 1.
(5) OJ No L 169, 18. 7. 1968, p. 1.
(6) OJ No L 367, 31. 12. 1985, p. 5.
(7) OJ No L 190, 14. 7. 1976, p. 1.
(8) OJ No L 62, 5. 3. 1986, p. 10.

(a) the quantities of butter put on sale in each depot, specifying, where appropriate, the quantities of butter with a fat content of less than 82 % included in those quantities;

(b) the closing date 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* not less than eight days prior to the expiry of the first deadline fixed for the submission of tenders. The intervention agency may, in addition, insert the notice in other publications.

Article 3

1. During the period of validity of the standing invitation to tender the intervention agency shall conduct special invitations to tender. Each of the latter shall concern any of the butter referred to in Article 1 remaining available.

2. The closing date for the submission of tenders for each special invitation to tender shall be the second Tuesday of each month at midday. When the Tuesday is a public holiday, the deadline shall be extended until the first subsequent working day at midday.

However, for the first invitation, the closing date for the submission of bids shall be midday on 24 March 1986.

Article 4

1. Intervention agencies shall keep up to date and make available to interested parties, at their request, a list of the cold storage depots in which the butter put up for sale by tender is stored and of the corresponding quantities. The intervention agencies shall in addition publish this updated list regularly, in an appropriate form which they shall specify in the notice of invitation to tender referred to in Article 2.

2. Intervention agencies shall take the necessary measures to enable interested parties to examine at their expense, before submitting their tenders, samples of the butter put up for sale.

Article 5

1. Interested parties shall participate in special invitations to tender either by lodging their written tender with the intervention agency against an acknowledgement of receipt or by registered letter sent to the intervention agency. The intervention agencies may authorize the use of telex.

2. Tenders shall contain:

(a) the name and address of the participant in the tendering procedure;

(b) the total quantity applied for;

(c) the intended destination of the butter, with details of the quantities which are to be exported unprocessed and those which are to be exported after processing;

(d) the price tendered per tonne of butter, not including domestic taxes, ex cold storage depot, expressed in the currency of the Member State in which the tendering procedure took place;

(e) the cold storage depots where the butter is held,

(f) the quantities applied for in other Member States.

3. A tender shall be valid only if:

(a) it is in respect of a minimum quantity of 10 000 tonnes, taking account of the quantities applied for in the other Member States;

(b) it is accompanied by a written undertaking by the tenderer to export the butter allocated to him unprocessed or after processing within the period laid down in Article 15 to the destination specified in the tender;

(c) proof is furnished that tenderers have lodged, before the expiry of the deadline for the submission of tenders, the security referred to in Article 6 for the special tendering procedure concerned.

4. Tenders may not be withdrawn after the expiry of the deadline referred to in Article 3 (2) for the submission of tenders relating to the special tendering procedure concerned.

Article 6

1. Under this Regulation the maintenance of the tender after the expiry of the deadline for the submission of tenders, the advance fixing of the amount of the refund and, where relevant, of the monetary compensatory amount referred to in Article 9 (2), the removal of the butter and the payment of the price within the time limit referred to in the first subparagraph of Article 10 (2) shall constitute principal requirements whose fulfilment shall be ensured by the lodging of a security of 25 ECU per tonne. Where the above requirements are not met, the entire tendering security shall be forfeit.

2. The security shall be established in the Member State in which the tender is submitted.

Article 7

1. In the light of the tenders received for each special invitation to tender and in accordance with the procedure laid down in Article 30 of Regulation (EEC) No 804/68, the following shall be determined:

— the minimum quantity for each sale to be made to a single third country,

— a minimum selling price.

A decision may be taken not to proceed with the tendering procedure, in particular:

— if the aggregate of the bids received:

  — do not permit the minimum quantity referred to in the previous subparagraph to be reached,

  — do not relate to depots located in at least three Member States,

— if a minimum percentage of the total quantity requested does not concern butter with a fat content of less than 82 %.

2. Simultaneously with the fixing of the minimum sales prices and in accordance with the same procedure, the amount of the securities to guarantee the fulfilment of the principal requirements concerning export of the butter unprocessed or after processing within the period laid down in Article 15, and its arrival in the country of destination shown in the tender shall be fixed.

In cases where the obligations concerning the time limit referred to in Article 15, the export of the butter and its arrival in the country of destination are not complied with, the security referred to in the first subparagraph shall be wholly forfeit.

This amount shall be equal to the intervention price for butter valid on the closing date for the submission of tenders increased by 10 ECU per tonne.

3. The minimum selling price referred to in paragraph 1 and the price to be paid by successful tenderers shall be converted into national currency using the representative rate applicable on the closing date for the submission of tenders under the special tendering procedure concerned.

Article 8

1. Tenders shall be rejected if the price proposed is lower than the minimum price applicable for the special tendering procedure, account being taken, where appropriate, of the intended destination.

2. Without prejudice to paragraph 1, the successful tenderer shall be the person whose tender price is highest for the destination of the butter shown in the tender.

3. Where acceptance of two or more tenders offering the same price for butter for the same depot and for the same country 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.

4. Obligations arising under the tendering procedure shall not be transferable.

Article 9

1. Tenderers shall be informed forthwith by the intervention agency of the outcome of their participation in the special tendering procedure.

2. Within 10 working days of the closing date for the submission of tenders, successful tenderers shall submit an application for the advance fixing of the refund and, where appropriate, of the monetary compensatory amount. Applications and licences shall contain in Section 12 the following particulars: 'For export under Regulation (EEC) No 765/86'.

3. Notwithstanding the first sentence of Article 9 of Commission Regulation (EEC) No 2729/81 [1], the export licence fixing in advance the refund shall continue to apply throughout the period that supplies are to be delivered under this Regulation.

4. The monetary compensatory amounts applicable to the products referred to in this Regulation shall be fixed pursuant to Council Regulation (EEC) No 1677/85 [2], and shall be multiplied by a coefficient set out in Part 5 of Annex I of Commission Regulation (EEC) No 3598/85 [3] fixing the monetary compensatory amounts.

5. Before removing the butter, successful tenderers shall lodge with the intervention agencies in respect of each quantity of butter they remove the security referred to in Article 7 (2), in accordance with Article 13 (1) of Regulation (EEC) No 1687/76.

6. The intervention agency shall issue a removal order showing:

(a) the quantity in respect of which the security has been lodged;

(b) the cold storage depot in which it is stored.

Article 10

1. Before 1 December 1986, the successful tenderer shall remove the butter which has been sold to him.

The butter may be removed in batches, each of which may not be less than 15 tonnes.

Except in cases of *force majeure*, where the butter is not removed within the period referred to in the first subparagraph, storage shall be at the expense of the successful tenderer with effect from the first day following the expiry of that period.

2. The successful tenderer shall pay the intervention agency within three months, calculated from the date of removal of the butter, and in respect of each quantity he has removed, the price shown in his tender.

The security referred to in Article 6 (1) shall be released forthwith in respect of quantities for which the price has been paid within the period specified.

Except in cases of *force majeure*, where the successful tenderer has failed to make the payment referred to in the first subparagraph within the prescribed period, in addition to the loss of the security referred to in Article 6 (1), the sale shall be cancelled for the remaining quantities.

Article 11

1. Butter for export in the same state shall be supplied by the intervention agency in packaging bearing at least one of the following descriptions in clearly visible and legible letters;

(1) OJ No L 272, 26. 9. 1981, p. 19.

(2) OJ No L 164, 24. 6. 1985, p. 6.

(3) OJ No L 349, 27. 12. 1985, p. 1.

— Smør bestemt til udførsel i henhold til forordning (EØF) nr. 765/86,
— Butter zur Ausfuhr — Verordnung (EWG) Nr. 765/86,
— Βούτυρο που προορίζεται να εξαχθεί βάσει του κανονισμού (ΕΟΚ) αριθ. 765/86,
— Butter for export under Regulation (EEC) No 765/86,
— Mantequilla destinada a la exportación con arreglo al Reglamento (CEE) nº 765/86,
— Beurre destiné à être exporté au titre du règlement (CEE) nº 765/86,
— Burro destinato ad essere esportato nel quadro del regolamento (CEE) n. 765/86,
— Boter voor uitvoer in het kader van Verordening (EEG) nr. 765/86,
— Manteiga destinada à exportação em conformidade com o Regulamento (CEE) nº 765/86.

2. The butter referred to in paragraph 1 may be exported in its original packaging or after having been repackaged in another packaging.

The acceptance by the customs service of the export declaration for the butter referred to in this Article must take place before 1 December 1986, in the Member State where the butter has been removed from store.

Article 12

1. Butter sold pursuant to this Regulation may be exported after processing.

2. In such a case, the tender must:

— specify the quantity of butter sold that will be processed,
— include the undertaking to specify to the competent authorities, before the removal of the butter, the undertakings in which the processing will be carried out, registered for that purpose by the Member State on whose territory the processing will take place.

3. The butter shall be supplied by the intervention agency in packaging bearing at least one of the following descriptions in clearly visible and legible letters:

— Smør til forarbejdning — forordning (EØF) nr. 765/86.
— zur Verarbeitung bestimmte Butter — Verordnung (EWG) Nr. 765/86.
— Βούτυρο που προορίζεται για μεταποίηση — κανονισμός (ΕΟΚ) αριθ. 765/86.
— Butter for processing — Regulation (EEC) No 765/86.
— Mantequilla destinada a la transformación — Reglamento (CEE) nº 765/86.
— Beurre destiné à la transformation — règlement (CEE) nº 765/86.
— Burro destinato alla trasformazione — regolamento (CEE) n. 765/86.
— Boter voor verwerking — Verordening (EEG) nr. 765/86.
— Manteiga destinada à transformação — Regulamento (CEE) nº 765/86.

4. The total quantity of butter referred to in the first indent of paragraph 2 above shall be processed at the undertakings referred to in paragraph 2 into a product with a milk fat content by weight of more than 99,5 %.

5. A tracer or marker shall be added to the product obtained, save where this is expressly forbidden by the importing country. Member States may select a tracer or marker from among those which are normally used in trade and notify the Commission of the type which has been used and of the quantity added to the product in question.

6. The operation referred to in paragraph 5 shall be conducted in the same premises as that referred to in paragraph 4.

7. The acceptance by the customs service of the export declaration for the butter processed in accordance with this Article must take place, before 1 December 1986, in the Member State where the butter has been processed.

8. From the time of removal of the butter and until the final product is exported, the butter referred to in Article 11 and the product processed in accordance with paragraphs 4 and 5 shall be placed under customs control or shall be subject to an administrative control offering equivalent guarantees.

Article 13

The competent authority of the Member State on whose territory the processing operations referred to in paragraph 12 are carried out shall supervise those operations.

The costs of such supervision shall be borne by the operator concerned.

Article 14

On acceptance by the customs service of the export declaration carried out under this Regulation, export licences fixing the refund in advance as referred to in Article 9 (2) shall be required.

Article 15

The delivery period to the country of destination in question shall expire on 30 November 1986.

Article 16

1. Except in cases of *force majeure,* the 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 furnished within 12 months of the date of acceptance of the export declaration.

However, if the proof is furnished within the 18 months following the abovementioned period, 85 % of the security shall be reimbursed.

2. The provisions of Regulation (EEC) No 1687/76 shall apply with effect from the date of removal except where there is a provision to the contrary under this Regulation.

The special entries to be made in Sections 104 and 106 of the control copy shall be those set out in Part I, point 21 and Part II, point 37 of the Annex to Regulation (EEC) No 1687/76.

Article 17

1. The following point and the relevant footnote shall be added to Part I of the Annex to Regulation (EEC) No 1687/76 entitled 'Products to be exported in the same state as that in which they were when removed from intervention stock':

'21. Commission Regulation (EEC) No 765/86 of 14 March 1986 laying down detailed rules for the sale of butter from intervention stock for export to certain destinations ([21]);

([21]) OJ No L 72, 15. 3. 1986, p. 11.

2. The following point and the relevant footnote shall be added to Part II of the Annex to Regulation (EEC) No 1687/76 entitled 'Products subject to a use and/or destination other than that mentioned under I':

'37. Commission Regulation (EEC) No 765/85 of 14 March 1986 laying down detailed rules for the sale of butter from intervention stock for export to certain destinations (Article 6) ([37]):

(a) on the dispatch of the butter for processing:

Section 104:

— til forarbejdning og senere eksport — forordning (EØF) nr. 765/86.

— zur Verarbeitung und späteren Ausfuhr bestimmt — Verordnung (EWG) Nr. 765/86.

— προοριζόμενο για μεταποίηση και για μετέπειτα εξαγωγή — κανονισμός (ΕΟΚ) αριθ. 765/86.

— intended for processing and, subsequently, export — Regulation (EEC) No 765/86.

— destinada a la transformación y exportación posterior — Reglamento (CEE) nº 765/86.

— destiné à la transformation et à l'exportation — règlement (CEE) nº 765/86.

— destinato alla trasformazione e alla successiva esportazione — regolamento (CEE) n. 765/86.

— bestemd om te worden verwerkt en vervolgens te worden uitgevoerd — Verordening (EEG) nr. 765/86.

— destinada à transformação e à exportação posterior — Regulamento (CEE) nº 765/86.

Section 106:

the closing date for removing the butter;

(b) On the export of the finished product:

Section 104:

— til eksport — forordning (EØF) nr. 765/86.

— zur Ausfuhr bestimmt — Verordnung (EWG) Nr. 765/86.

— προοριζόμενο για εξαγωγή — κανονισμός (ΕΟΚ) αριθ. 765/86.

— intended for export — Regulation (EEC) No 765/86.

— destinada a la exportación — Reglamento (CEE) nº 765/86.

— destiné à l'exportation — règlement (CEE) nº 765/86.

— destinato all'esportazione — regolamento (CEE) n. 765/86.

— bestemd voor uitvoer — Verordening (EEG) nr. 765/86.

— destinado à exportação — Regulamento (CEE) nº 765/86.

Section 106:

— the closing date for removing the butter,

— the weight of butter used to manufacture the quantity of the finished product shown in Section 10.3.

([37]) OJ No L 72, 15. 3. 1986, p. 11.'

Article 18

Member States shall notify the Commission forthwith of the quantities of butter which are the subject of:

— a sales contract,

— removal,

— processing,

under this Regulation.

Article 19

This Regulation shall enter into force on the day of 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, 14 March 1986.

For the Commission

Frans ANDRIESSEN

Vice-President

ANNEX

Destinations

Zone C 2 (1)
India
Pakistan

(1) As shown in the Annex to Regulation (EEC) No 1098/68 as last amended by Regulation (EEC) No 2283/81.