COMMISSION REGULATION (EEC) No 863/91

of 8 April 1991

on the special sale of intervention butter for export to the Soviet Union and amending Regulation (EEC) No 569/88

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 3641/90 [2], and in particular Article 6 (7) thereof,

Having regard to Council Regulation (EEC) No 1678/85 of 11 June 1985 fixing the conversion rates to be applied in agriculture [3], as last amended by Regulation (EEC) No 791/91 [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 3644/90 [6], provides that, when butter is put on sale for export, special conditions may be laid down to take account of the special requirements for such sales and to guarantee that the product is not diverted from its destination;

Whereas on 12 December 1990 the Committee of the Protocol regarding milk fat, acting within the framework of the General Agreement on Tariffs and Trade (GATT), granted a derogation from Article 3 of the Protocol regarding milk fat in order to allow sales of butter to the Soviet Union at prices lower than the minimum GATT price;

Whereas the quantities of butter at present in public storage and the likely increase in these quantities in the future are such that they should be usd to the greatest possible extent for such sales; whereas, therefore, it seems desirable to make certain quantites of butter in public storage available to operators, using the tendering procedure in order to fix the minimum selling price;

Whereas, in order to ensure that the butter is not diverted from its destination, a system of supervision should operate from the time the butter is removed from storage until it has reached its destination in the third country concerned; whereas, for reasons of clarity, it should be specified that the provisions on supervision laid down by Commission Regulation (EEC) No 569/88 [7], as last amended by Regulation (EEC) No 843/91 [8], and by Commission Regulation (EEC) No 2220/85 [9], as last amended by Regulation (EEC) No 3745/89 [10], are applicable; whereas, moreover, in view of the specific nature of this operation, additional conditions should be introduced;

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

HAS ADOPTED THIS REGULATION:

Article 1

Under the conditions laid down in this Regulation, a maximum quantity of 124 000 tonnes of butter with a fat content greater than or equal to 82 % and purchased in accordance with Article 6 (1) of Regulation (EEC) No 804/68 shall be sold. The allocation by Member State of the quantities of butter sold shall be that set out in the Annex.

Article 2

1. The butter shall be sold ex-cold storage plant by invitation to tender.

2. The Annex shall serve as notice of invitation to tender. The information concerning quantities and places where the butter is stored may be obtained by prospective tenderers at the addresses indicated in the Annex. In addition, intervention agencies may display notices and publish additional information.

3. Tenderers shall submit their tenders to one of the intervention agencies referred to in the Annex not later than 12 noon on 16 April 1991. After expiry of the above-mentioned time limit and before 20 April 1991, tenderers shall send copies of their offers, by telex or fax, to the Commission of the European Communities, Division VI-D-1, 120 rue de la Loi, B-1049 Brussels (telex 22037B AGREC; telefax 235 33 10). Before that same date, the intervention agencies shall notify the Commission of tenders received.

(1) OJ No L 148, 28. 6. 1968, p. 13.
(2) OJ No L 362, 27. 12. 1990, p. 5.
(3) OJ No L 164, 24. 6. 1985, p. 11.
(4) OJ No L 81, 28. 3. 1991, p. 110.
(5) OJ No L 169, 18. 7. 1968, p. 1.
(6) OJ No L 362, 27. 12. 1990, p. 10.
(7) OJ No L 55, 1. 3. 1988, p. 1.
(8) OJ No L 85, 5. 4. 1991, p. 26.
(9) OJ No L 205, 3. 8. 1985, p. 5.
(10) OJ No L 364, 14. 12. 1989, p. 54.

4. Each tender shall state the name and address of the tenderer and shall not be valid unless :

(a) it relates to a minimum total quantity of 6 200 tonnes of butter, of which 50 % is held by the Irish intervention agency ;

(b) it offers a single price per tonne, expressed in ecus, for the total quantity of butter to which the tender relates ;

(c) it is accompanied by a written undertaking by the tenderer waiving any rights to legal action in respect of the quality and characteristics of the butter sold and a written undertaking to export the butter awarded, in an unaltered state, within the time limit and to the destination indicated in this Regulation ;

(d) proof is furnished that, before expiry of the period set for the submission of tenders, the tenderer has lodged a tendering security of ECU 10 per tonne guaranteeing compliance with the primary requirements relating to non-withdrawal of the tender after the closing date for submission of tenders, removal of the quantities sold and payment of any storage costs due.

5. With a view to fulfilling the conditions laid down in paragraph 4, tenderers may submit partial tenders to several of the intervention agencies referred to in the Annex ; where this is the case, the tenders shall offer the same price expressed in ecus.

6. The butter must be imported into the Soviet Union.

Article 3

1. Intervention agencies shall update and make available to prospective tenderers on request the list of the cold stores where the butter for sale is stored and the quantities available.

2. Intervention agencies shall take the measures necessary to enable prospective tenderers to examine at their own expense, before tendering, samples of the butter for sale.

Article 4

1. A minimum selling price shall be fixed, taking account of the tenders received and in accordance with the procedure laid down in Article 30 of Regulation (EEC) No 804/68. Tenders shall be rejected if the proposed price is lower than the minimum price. Where two or more tenders under consideration offering the same prices or the same difference from the minimum price relate to a total quantity exceeding the quantity available, the quantity available shall be allocated proportionately to the quantities tendered for.

A decision may be taken to make no award in respect of the invitation to tender. Where this is the case, or where all the tenders received do not cover the total quantity referred to in Article 1, a decision may be taken to issue a new invitation to tender.

2. At the same time as the minimum selling price is fixed and following the same procedure, the amount of the securities referred to in the first and second indents of the first subparagraph of Article 5 (1) and the coefficient to be applied to any monetary compensatory amounts applicable to the butter sold shall be fixed.

3. Each tenderer shall be notified immediately by the intervention agency of the result of his participation in the invitation to tender.

4. Obligations arising in connection with the award shall not be transferable.

Article 5

1. Before the removal of the butter and within the period specified in paragraph 2, the purchaser shall lodge with the intervention agency concerned, in respect of each quantity to be removed :

— a security guaranteeing compliance with the primary requirement that the butter be imported into the country of destination ; notwithstanding Article 17 (1) of Council Regulation (EEC) No 3665/85 [1] importation must be effected not later than 30 September 1991 ; however, if the prospective tenderer is not able to complete the deliveries by that date because the Soviet Union cannot ensure its unloading, the intended deliveries may be completed not later than 31 December 1991,

— a security guaranteeing compliance with the primary requirement that the selling price be paid, where this is paid after removal.

Except in cases of *force majeure*, the security referred to in the first indent of the first subparagraph shall be forfeit in proportion to those quantities for which the proof referred to in Article 18 of Regulation (EEC) No 569/88 has not been produced within the time limit of 12 months as from the date on which the export declaration is accepted.

2. The purchaser shall remove the butter which has been sold to him not later than 31 August 1991 and the cost of storing the butter removed after that date shall be chargeable to him. Removal may be split up into part lots of not less than 20 tonnes each.

3. The purchaser shall pay the selling price proposed in his tender to the intervention agency not later than 31 August 1991.

4. Where the payment referred to in paragraph 3 has not been made within the specified time limit, the security referred to in the second indent of the first subparagraph of paragraph 1 shall be forfeit for the quantities concerned.

[1] OJ No L 354, 30. 12. 1985, p. 1.

Article 6

1. The butter shall be delivered by the intervention agency in packages bearing the following statement in letters at least one centimetre high in the language or languages of the exporting country:

'Regulation (EEC) No 863/91: Butter for the Soviet Union.'

2. The intervention agency shall issue to the successful tenderer a removal slip indicating:

— the quantity of butter in respect of which the securities referred to in Article 5 (1) have been lodged,

— the coldstore where the quantity is stored.

Article 7

The exchange rate to be applied within the framework of this Regulation shall be the representative rate valid on the day on which the time limit for submission of tenders expires.

Article 8

The following point and footnote are hereby added to Part I 'Products to be exported in the same state as that in which they were removed from intervention stock' of the Annex to Regulation (EEC) No 569/88:

'84. Commission Regulation (EEC) No 863/91 of 8 April 1991 on the special sale of intervention butter for export to the Soviet Union [84].

[84] OJ No L 88, 9. 4. 1991, p. 11.'

Article 9

No export refund shall be granted in respect of the butter sold under this Regulation. Accession compensatory amounts shall not apply. The monetary compensatory amounts applicable to butter sold under this Regulation shall be multiplied by the coefficient fixed in accordance with Article 4 (2).

Article 10

Member States shall notify the Commission, at the latest by Tuesday of each week, of the quantities of butter which have, in the previous week:

— been removed from storage,

— been exported,

— been imported into the Soviet Union.

Article 11

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, 8 April 1991.

For the Commission

Ray MAC SHARRY

Member of the Commission

ANNEX

Notice of invitation to tender for the sale of butter held by the following intervention agencies in accordance with Regulation (EEC) No 863/91

I. *Allocation of the quantities of butter referred to in Article 1*

(tonnes)

Belgium	3 000
Denmark	4 000
Germany	5 000
Ireland	62 000
Netherlands	50 000
Total	124 000

II. *Addresses of the intervention agencies concerned*

— Office Belge de l'économie et de l'agriculture,
Secteur 'produits et industries agricoles et alimentaires',
Rue de Trèves 82,
B-1040 Brussels
(tel. 32 2 230 17 40 ; telex 24076 / 65567 ; telefax 32 2 230 25 33)

— EF-direktoratet,
Frederiksborggade 18,
DK-1360 København K
(tel. 45 31 92 70 00 ; telex 15137 EFDIR-DK ; telefax 45 33 92 69 48)

— Bundesanstalt für landwirtschaftliche Marktordnung (BALM),
Adickesallee 40,
D-6000 Frankfurt am Main
(tel. 49 691 56 40 ; telex 411 727 and 411 156 ; telefax 1564651 ; teletex 699 07 32)

— Department of Agriculture and Food, Intervention Unit,
Agriculture House,
Kildare Street,
IRL-Dublin 2
(tel. 353 1 78 90 11 ; telex 93 607 AGRI-EI ; telefax 353 1 616 263)

— Voedselvoorzienings in- en Verkoopbureau,
Burg. Kessenplein 3 — Postbus 960,
NL-6430 AZ Hoensbroek
(tel. 31 45 23 83 83 ; telex 56 396 ; telefax 31 45 22 27 35)