

European Communities

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Working Documents

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Report

drawn up on behalf of the Committee on Agriculture

on the proposal from the Commission of the European Communities to the Council (Doc. 1-844/80) for a Regulation amending Regulation (EEC) No 804/68 in respect of grant of export refunds by the tender system in the milk and milk products sector

Rapporteur: Mr E. WOLTJER

By letter of 29 January 1981, the Council of the European Communities requested the European Parliament, pursuant to Article 43 of the EEC Treaty, to deliver an opinion on the proposal from the Commission of the European Communities to the Council for a regulation amending Regulation (EEC) No 804/68 in respect of the granting of export refunds by the tender system in the milk and milk products sector.

The President of the European Parliament referred this proposal to the Committee on Agriculture as the committee responsible.

On 16 February 1981, the Committee on Agriculture appointed Mr. Woltjer rapporteur.

The Committee considered this proposal at its meetings of 11/12 May 1981, 21/22 September 1981 and 20/21 October 1981.

At its meeting of 20/21 October 1981, the Committee adopted the motion for a resolution and the explanatory statement by 16 votes to 3 with 8 abstentions.

Present: Sir Henry Plumb, chairman; Mr Früh, Mr Colleselli and Mr Delatte, vice-presidents; Mr Woltjer, rapporteur; Mrs Castle, Mr Curry, Mr Dalsass, Mr Diana, Mr Eyraud, Mr Gatto, Mr Gautier, Mr Helms, Mr Kirk, Mr Ligios, Mr Maffre-Baugé, Mr Maher, Mrs Martin (deputizing for Mr Caillavet), Mr B Nielsen, Mr d Ormesson, Mr Papaefstratiou, Mrs Pery (deputizing for Mr Sutra), Mr Provan, Mr Tolman, Mr Vernimmen, Mr Vitale and Mr Wettig.

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The Committee on Agriculture hereby submits to the European Parliament the following amendment and motion for a resolution together with explanatory statement:

A M E N D M E N T No 1

Article 17(3) of the draft Regulation (Doc. 1-844/80)

When it proves necessary for reasons of commercial policy, with a view to a better check on the quantity of exports qualifying for a refund and/or in order to grant only the necessary level of refund, refunds for the following bulk products - butter, butteroil and skimmed milk powder - may be granted by a tender procedure. The Council, acting by qualified majority vote on a proposal from the Commission, shall draw up a detailed list defining the products covered by this Article and the general rules applicable in cases where refunds are granted by tender procedure.

MOTION FOR A RESOLUTION

embodying the opinion of the European Parliament on the proposal from the Commission for a Council Regulation amending Regulation (EEC) No 804/68 in respect of the grant of export refunds by the tender system in the milk and milk products sector

European Parliament

- having regard to the proposal from the Commission of the European Communities to the Council (COM(80) 871 final),¹
 - having been consulted by the Council pursuant to Article 43(2) of the EEC Treaty (Doc.1-844/80),
 - having regard to the report of the Committee on Agriculture (Doc. 1-697/81),
1. Welcomes the Commission's efforts to improve its control over the management of export refunds, in order to reduce budgetary expenditure;
 2. Considers that it is only in the case of bulk products such as butter, butteroil and skimmed milk powder that the tender system can constitute a viable management instrument for assessing the level of export refunds more precisely and for carrying out a better check on the quantity of exports, provided that it is generally applied;
 3. Believes that in the case of products for immediate consumption the tender system would raise serious difficulties, such as unfair competition, speculation, etc.;
 4. Considers that the export of products for immediate consumption is more important for employment in the Community than the export of bulk products. Therefore wishes to prevent the management system leading to a situation in which the regular sale of these products is threatened by competition from Community-produced bulk products;
 5. Does not approve the proposal from the Commission to make it legally possible in the future for the tender system to be applied also for products for immediate consumption. It is desirable that experience should first be gained in operating the system for bulk products;

¹OJ No 356 of 31.12.80, p. 41

6. Points out to the Commission that the management of exports of exports of these products could still be improved considerably by better use of existing mechanisms, such as:
 - fixing the amount of the refund
 - the waiting period
 - shortening the advance-fixing period;
7. Wishes to be kept regularly informed on the management of the agricultural market, and particularly on market development prospects, stocks, exports, the amount of refunds and the results of the introduction of the tender system for bulk products;
8. Requests the Commission to incorporate the enclosed amendments into its proposal, pursuant to Article 149, second paragraph, of the EEC Treaty;
9. Recommends the introduction of regulations governing sales practices and advertising campaigns for the sale of milk products, in particular baby foods, in the developing countries. Refers, in this connection, to the very recent request from the WHO (World Health Organization) for a ban on the advertising of baby foods in the developing countries, in view of the serious risks involved in the use of baby foods under local conditions;
10. Requests the Commission and the Council to take the above mentioned reservations into account in approving the proposal.

EXPLANATORY STATEMENT

The European export policy for agricultural products has been under discussion for some time.

Although there are at present no large stocks in the milk products sector, it must be realized that this relatively favourable position has been achieved at the cost of considerable budgetary expenditure.

It is understandable that the Commission wishes to have regular information on the quantities of milk products which find their way to customers by means of export refunds. It is also logical for the Commission to investigate ways of relieving pressure on the budget, without going against the interests of the Community in the broadest sense. The European Parliament has already indicated that savings could be made by better management of export refunds.

The (occasional) export of large quantities of butter to the Soviet Union is a political factor which is not without importance.

The mechanisms currently available for controlling the costs involved in the Community export policy are:

- reducing the refund level
- the waiting period before delivery of an advance-fixing certificate.
- suspending the possibility of advance fixing.
- shortening the advance-fixing period.

Under its proposal (COM (80)871 fin.) the Commission wishes to add a further mechanism, namely a tender system in the milk and milk products sector.

The Commission considers that this proposal will enable it to deal with the problems outlined. A tender system will probably provide more accurate information on the quantities of milk products exported with the aid of refunds.

Although the present five-day waiting period provides some information it may well be an inadequate mechanism. It is also conceivable that a tender system will make it easier to determine the appropriate refund level, at least on the assumption that the trade will tender at the lowest price, given normal conditions of competition.

While appreciating the praiseworthy aim of the Commission, the committee nonetheless considers that, the proposal calls for a number of comments.

Although the Commission recognizes that for application of the suggested system there must be general implementing rules stipulating the products to which the system would be applied and under what terms, it should be established at this stage that the system is not suitable for products for immediate consumption.

The fact that we are concerned here with products which find their way to the customer via a costly marketing policy on the part of the dairy trade, means that any increase in uncertain factors in the milk sector is undesirable. Furthermore, how does the Commission plan to operate a tender system for a product such as cheese of which there are several hundred types. The question is somewhat different in the case of bulk products such as butter, butteroil and skimmed milk powder. Here the problems involved in the Commission's proposal are not as great. What is necessary is to define precisely what constitute bulk products. However, even in the case of these products it should not be anticipated that the refund level will be much lower. Tenders for butter exports to Russia in the spring of 1980 showed that the price for which tenders were received was lower and consequently the necessary refund higher, than the levels in force at that time.

In addition, one should not underestimate the risk of speculation in the certificates that may have been granted. Lastly, mention should be made of the risk of mutual agreements between tenderers. Since we are concerned here with a relatively small number of tenderers, such agreements are far from hypothetical.

For all that, it would appear that for bulk products, provided that these are clearly defined, the tender system may answer the Commission's needs to some extent.

The system of general application, with the parallel application of normal lower refunds with the possibility of advance fixing, should be preferred to special tenders without normal refunds since in the case of special tenders, the Commission cannot prevent the products

being re-exported via third countries, for example to the Soviet Union. Such transactions have indeed occurred in the past.

For products for immediate consumption it would be more sensible to envisage operating the advance fixing period in a more flexible way. In general, it would be preferable for the period to be made somewhat shorter. A more rapid adjustment of the advance fixing (perhaps in conjunction with the fixing of the refund level) should enable savings to be made in the budget. It would also be possible to control the volume of exports by changing the refund level.

Conclusions

The Commission's efforts to keep a better check on the quantities of milk products exported and the desirable refund level are comprehensible. Parliament cannot but welcome better management. It therefore wishes to remain closely involved in the Community's export policy, which concerns not only (national) economic interests but also political interests.

The proposed system should be applied exclusively to bulk products such as butter, butteroil and skimmed milk powder and this is also recognized by the Commission. The legal framework for amending Regulation 804/68 is therefore too broadly-based. The system should be based on the principle of general application of the tender system, parallel to which 'normal' refunds with the possibility of advance fixing would be applied if they were lower than those determined by means of the tender system. A system of special invitations to tender cannot meet the requirements.

The Commission's proposal discussed in this report deals only with the way in which export refunds for milk products should be determined and consequently the report does not go into the necessity for exporting milk products.

It should be pointed out that the keener competition between exporters which will result from the Commission's proposal, should not be accompanied by an increase in irresponsible sales practices and misleading advertising in the developing countries. The sale of baby foods in the developing countries should be discouraged. A proposal from the Commission for a regulation in this field is therefore required.

A Commission working document indicating a number of possible applications is annexed.

Elaboration of the application of the "Refund - by - tender" scheme.

The Commission has made a proposal for a Council Regulation amending Regulation (EEC) 804/68 which makes provision to fix export refunds in the Dairy Sector by means of a tendering system. (Doc. 4131/81 of 7 January 1981).

Following the adoption of this proposal general rules for the application of the system will be determined by the Council.

To facilitate the discussions the Commission puts forward the following guidelines:

1. What products?

In the first instance it is envisaged that this scheme would apply only to the bulk basic commodities: butter, butteroil and skimmed milk powder. The possibility of extending the scheme to whole milk powder and condensed milk should not be excluded in the future.

2. Circumstances?

The scheme might be applied in two ways:

- (a) specific application: for a particular quantity and a particular destination (a case by case approach); for example a quantity of butter for exportation to zone C2 during a particular period.
- (b) general application: at regular intervals to be determined by the Management Committee for non-predetermined quantities to all (other) destinations; traders would tender the refund which they required for exports during a period of 6 months to cover the quantities for which they would be prepared to commit themselves to export.

3. Impact on normal refund system

- (i) In the case of the specific tendering system (as outlined under 2 (a)) the normal refund would not be applicable for the destination to which the specific refund applies but all other destinations would operate under the normal system. This means that the normal refund may be higher than the tendered refund, and payment could only be made after proof of arrival (as at present with nil refund for zone C 2).
- (ii) In the case of the general approach it is envisaged that a normal refund (daily and prefixable) would apply in tandem with the tendered refund.

It would, however be lower than the most recent refund fixed by tender for the products covered by the system. The extent of the gap would be decided by Management Committee decision.

- b It would seem a logical consequence that for the basic products (butter, butter oil and SMP) which are exported other than in bulk the refund would follow the same pattern as the "normal" refund for bulk products. For dairy products other than basic products e.g. whole milk powder, condensed milk etc. a certain relationship in the refund level would seem to be appropriate.

4. Procedure

1. In the case of a specific tender (as defined at 2 (a)) the tender shall be opened by Commission Regulation (Procedure Article 30) which will indicate the product, the maximum quantity for which export will be acceptable, the country of destination, the period during which the certificate will be valid, ect.

A decision on the acceptable level of refund on the basis of the tender application will be subject to the approval of the Commission on the advice of the Management Committee.

As regards the mechanics of acceptance of offers the following points shall be observed:

- In the case where different levels of refunds have been submitted and if the total quantity of acceptable offers does not exceed the indicated maximum quantity, the individual amounts of refund submitted will be regarded as binding, though these amounts may vary over a given range.
 - If the total quantity of acceptable offers is higher than the maximum quantity, the quantities of the offers with the lowest refunds will receive preference.

 - If more than the maximum quantity is offered at the same level of refund each offerer will be allocated an equal percentage, with the provision that the tenderer may withdraw should this be in his interest.
 - Certificates issued in the framework of a "specific tender" shall not be transferable.
- (2) In the case of a general tender (as defined under 2 (b)) the tender procedure shall be set down in a Commission Regulation (Procedure Article 30) which will indicate the intervals at which offers may be submitted on a regular basis, probably once or twice a month).

The Regulation will also specify the product and possibly the limitation of destinations where applicable. The normal validity as well as the deposit for prefixation certificates should apply and the certificate may be transferable. No maximum quantity will be indicated in the Regulation but subject to the prevailing situation the acceptable quantities will be controlled by means of the acceptance of the offers.

- (3) The destination indicated in the offer will be obligatory for the "specific" tender and if relevant, for the "general tender".
- (4) If the submissions do not reach an acceptable level all the offers may be rejected.
- (5) A deposit must be lodged with each submission and will only be released when an export certificate has been issued to the successful tenderer on the date of the announcement of the results.

5. Tenders issued by Importing Third Countries

The question arises as to whether the refund tendering system can be applied in the case of tenders issued in importing third countries for important quantities of basic commodities, especially when the delivery period is longer than the validity of the certificate. Of course in such a case the system can only function if the delay between the issue of a tender and the latest date for submission of offers for that tender makes it practicable. Where the system could operate decisions would be taken on a case by case basis, and the prefixation period might be extended beyond the normal validity period.

Because the country of destination would not be excluded from the normal refund in this case the exporter would have choice between the "normal" refund without any quantitative limitation but with a validity of only 6 months or of submitting a tender request for a specific quantity possibly at a lower refund but for a longer prefixation period.

6. Long term contracts

The tendering system may be very suitable where long term contracts at predetermined price-levels are to be established for a period of one or more years. A special tender would be opened on a case by case basis. The system would operate very much on the same basis as No 5.

7. Remarks

One of the possibilities which may be encountered in operating a tendering system is that small groups of (important) exporters might well monopolise the offers. This opened up the possibility of these traders forming a cartel for the purpose of "fixing" the refund level before the offers are made.

While it must be admitted that such a risk may exist it is felt that the effect of free competition among traders would minimise this prospect, especially if provisions favorable to small trade are incorporated.

In any event as it would quickly become evident if cartels were formed, the Commission would have to take remedial action which would consist of annulling the tender concerned (refusal of all offers introduced for that time).

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