COMMISSION REGULATION (EEC) No 1813/93

of 7 July 1993

amending Regulation (EEC) No 570/88 on the sale of butter at reduced prices and the grant of aid for cream, butter and concentrated butter for use in the manufacture of pastry products, ice-cream and other foodstuffs

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 2071/92 [2], and in particular Articles 6 (7). 12 (3) and 28 thereof,

Whereas, following the amendments made by Commission Regulation (EEC) No 124/92 [3] to Commission Regulation (EEC) No 570/88 [4], as last amended by Regulation (EEC) No 3774/92 [5], there has been found to be some ambiguity, with regard to the homogenous distribution of organoleptic tracers on an examination of the wording of the second subparagraph of Article (6) (1) on the one hand and Annex IIa, on the other; whereas, for reasons of legal certainty, Article 6 (2) should be completed with retroactive effect;

Whereas the concept of intermediate products has been interpreted differently in some Member States; whereas, to remedy this and avoid any discrimination amongst Community operators, criteria should be laid down to allow the products in question to be identified in an objective and transparent manner; whereas, however, intermediate products should, for technical and commercial reasons, mean products which are obtained from concentrated butter meeting the requirements of Annex IV of Regulation (EEC) No 570/88 and which satisfy certain conditions, in particular a minimum butterfat content;

Whereas it should also be specified that intermediate products as well as intermediate processing establishments must be subject to a trial approval procedure; whereas, in order to prevent the abusive use of such a procedure, approval should be made conditional on proof that incorporation into an intermediate product is justified;

Whereas Article 23 (5) of Regulation (EEC) No 570/88 lays down less stringent control measures for products to which tracers have been added in the case of small final users who undertake in writing to purchase maximum quantities over an annual period; whereas less stringent control is no longer to apply where a final user fails to observe those maximum quantities; whereas it should be laid down that non-compliance with this undertaking must not in all cases and indefinitely lead to the definitive loss of the benefit of less stringent control;

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

Regulation (EEC) No 570/88 is amended as follows:

1. the following subparagraph is added to Article 6 (2):

   'However, with regard to cream, the provisions laid down in the first subparagraph shall not apply if the products referred to in Annex IIa (1) Point 1 (a) are added in such quantities that their flavour or colour can be perceived after the addition of tracers and up to incorporation into the final products referred to in point 2 of Article 4.';

2. Article 9 (1) (a) is replaced by the following:

   '(a) in accordance with Article 10, the processing establishment and the intermediate products shall or shall not be approved on the basis of an application which specifies in particular the composition of the manufactured products and their butterfat content and which sets out that incorporation into those intermediate products is justified for the manufacture of the final products referred to in Article 4. The list of establishments of final processing and, where appropriate, the list of re-sellers marketing the products shall be forwarded to the competent authority together with the application for approval. These lists shall be updated in accordance with provisions laid down by the Member State concerned;'

3. the following Article 9a is inserted:

   'Article 9a

   The intermediate products referred to in Article 9 shall, without prejudice to Article 4, be products other than the products falling within CN codes 0401 and 0405.

(1) OJ No L 148, 28. 6. 1968, p. 13.
(2) OJ No L 215, 30. 7. 1992, p. 64.
(3) OJ No L 14, 21. 1. 1992, p. 28.
(4) OJ No L 55, 1. 3. 1988, p. 31.
(5) OJ No L 383, 29. 12. 1992, p. 48.

However,

(a) products with a butterfat content of not less than 82 % manufactured exclusively from the concentrated butter referred to in point (b) of the second paragraph of Article 1 at an establishment approved to that effect in accordance with Article 10, on condition that the tracers referred to in Article 6 (1) have been added to them shall be considered as intermediate products; in this case, the minimum selling price paid and the maximum amount of aid granted shall correspond respectively to the minimum selling price and the maximum amount of aid fixed in accordance with Article 18 in respect of traced butter with a fat content of 82 %;

(b) the mixtures referred to in Annex VIII shall not be considered as intermediate products.';

4. Article 23 is amended as follows:

— the second subparagraph of point 5 is replaced by the following:

'This point shall apply only if the final user undertakes in writing to purchase over an annual period only a maximum quantity of nine tonnes of butter-equivalent of which, as appropriate, a maximum quantity of 14 tonnes of cream or, as regards butter or concentrated butter, the same quantity in intermediate products. This point shall no longer apply to a final user who has not complied with this undertaking. However, the competent authority may, on the basis of a written request by the user setting out the reasons for non-compliance with his previous undertaking, approve, if it deems it justified, a further undertaking by that same user. The said approval may take effect only after a period of 12 months following the request. In the meantime, the checks referred to in point 3 shall apply.'

— the following point 8 is added:

'8. After one year of application of the system provided for in Article 9a, each Member State shall draw up a report on the implementation of the provisions relating to the intermediate products referred to in point (a) of the aforesaid Article, and shall forward it to the Commission.';

5. the Annex to this Regulation is added as Annex VIII.

Article 2

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

However, point 1 of Article 1 shall apply with effect from 7 May 1991.

It shall apply from 1 August 1993.

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

Done at Brussels, 7 July 1993.

For the Commission

René STEICHEN

Member of the Commission

ANNEX

'ANNEX VIII

Products referred to in point (b) of Article 9a

1. Preparations obtained from mixing butterfat with fats covered by Chapter 15 of the combined nomenclature but not including the products falling within CN code 1806.

2. Preparations obtained by mixing butterfat with the products covered by Chapter 21 obtained from products covered by Chapter 15.'