REGULATION (EEC) No 1412/73 OF THE COMMISSION

of 25 May 1973

concerning the supply of butteroil for shipment to certain third countries as a measure of Community aid to UNRWA

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 (1) of 27 June 1968 on the common organization of the market in milk and milk products, as last amended by the Act (2) concerning the conditions of Accession and the adjustments to the Treaties, and in particular Article 6 (7) thereof ;

Whereas Council Regulation (EEC) No 1692/72 (3) of 2 August 1972, laying down general rules for the supply of milk to the World Food Programme and to UNRWA, provides for the supply to the United Nations Relief Works Agency, known hereafter as UNRWA, of 2 000 metric tons of butteroil, produced from butter held by the intervention agencies ; whereas, UNRWA has requested that this supply be fulfilled ;

Whereas this supply, in accordance with Regulation (EEC) No 1692/72 Article 2 (2) shall be fulfilled according to the provisions of the tender procedure which the competent agencies of the Member States shall follow for this purpose ;

Whereas so far as the tender procedure is concerned, it is essential to repeat that established by Commission Regulation (EEC) No 2537/72 (4) of 4 December 1972, concerning the tender procedure for the supply of butteroil for shipment to the World Food Programme, as amended by Regulation (EEC) No 453/73 (5) ;

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. There shall be put up for tender, in accordance with the provisions of this Regulation, the supply of 2 000 metric tons of butteroil for UNRWA, produced from butter having been bought in accordance with Article 6 (1) of Regulation (EEC) No 804/68.

2. The shipment shall be on a cif basis. It will be divided into two lots :

(a) The Port of Beirut (Lebanon) — 1 200 metric tons,

(b) The Port of Ashod (Israel) — 800 metric tons.

3. The shipment envisaged in paragraph 2 shall take place on a date to be specified by the intervention agency, after 15 and before 31 July 1973.

Article 2

1. The invitation to tender envisaged by Article 1 shall be undertaken by the German intervention agency. The latter shall give notice of an invitation to tender whose publication in the *Official Journal of the European Communities* shall be made at least eight days before the closing date fixed for the submission of tender.

2. The closing date for the receipt of tenders shall be 12 June 1973 at 12 noon.

3. The relevant intervention agency, in its notice of invitation to tender, shall indicate the storage depots where the butter which is to be manufactured into butteroil is in stock and shall make the necessary provisions to allow interested parties, to examine at their own cost, before submitting a tender, samples taken from the butter.

Article 3

The invitation to tender shall be open to processing undertakings approved for this purpose by the Member State on whose territory the processing is to take place. Only those undertakings which can fulfill the obligations provided for in this Regulation may be approved.

(1) OJ No L 148, 28. 6. 1968, p. 13.
(2) OJ No L 73, 27. 3. 1972, p. 14.
(3) OJ No L 178, 5. 8. 1972, p. 1.
(4) OJ No L 272, 5. 12. 1972, p. 15.
(5) OJ No L 53, 26. 2. 1973, p. 4.

Article 4

1. Tenders shall be submitted either in writing and handed in against a receipt to the intervention agency or sent by registered letter or by telex to the intervention agency.

2. Each tender cannot be for more than one lot.

3. The tender shall indicate :

(a) The name and address of the tenderer ;

(b) The amount, expressed in German Marks for which the tenderer undertakes to deliver butteroil cif to the port of Beirut or Ashod as appropriate. This amount shall include the purchase price of the butter in accordance with the conditions defined in Article 10 (1), the costs of processing, packing, transporting and delivering the butter envisaged in Article 6 ;

(c) one or more of the warehouses, chosen from the list of warehouses for each lot from which the tenderer wishes to collect the butter ;

(d) the port of embarkation of the butteroil chosen from one of the Community ports.

4. A tender shall be valid only if it relates to an entire lot put up for tender.

5. Each tender must be accompanied by :

(a) A document certifying the approval envisaged in Article 3 ;

(b) An undertaking from the tenderer that he will respect the conditions provided for in Article 6 (2) and Article 10 ;

(c) A declaration by the tenderer according to which he will forgo any claim regarding the quality and characteristics of the butter eventually sold ;

(d) Proof that the security envisaged in Article 5 has been lodged before the final date for submission of offers.

Article 5

1. The security required for the invitation to tender shall be 10 units of account per metric ton of butteroil.

2. It shall take the form, at the choice of the German intervention agency, of either a cheque made out in favour of the intervention agency, or a bank guarantee corresponding to the criteria fixed by this Member State.

Article 6

1. The delivery costs are the costs involved up to the point where the goods are effectively deposited on the quay of the port of disembarkation or on lighters where the latter system is used, it being understood that the benefitting organization shall bear all the costs arising from the delivery of the goods including reception costs.

2. Demurrage costs at the port of disembarkation arising from delays which are the fault of the benefitting organization are to the cost of the latter. The rates and methods fixed in the contract between the successful tenderer and the transporter, must have been previously agreed between the successful tenderer and the receiving authorities of the benefitting organization.

Article 7

1. The German intervention agency shall take necessary measures to ensure that the successful tenderer can take delivery of the butter necessary for processing into butteroil, from the warehouse indicated in his tender.

2. Butteroil delivered under the title of the supply in question must be manufactured exclusively from butter for which delivery was taken by the successful tenderer from the intervention agency.

Article 8

Taking account of the tenders received and in accordance with the procedure of Article 30 of Regulation (EEC) No 804/68, an amount shall be fixed expressed in units of account or else a decision shall be taken not to proceed with the individual application to tender.

Article 9

1. The tender shall be refused if the amount proposed converted into units of account is more than the maximum amount valid for the lot in question.

2. Without prejudice to the provisions of paragraph 1, the successful tenderer is the one who presents the lowest offer amount. Where several offers for the same amount converted into units of account are taken into consideration, the award of the tenderer shall be by drawing lots.

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

4. Rights and obligations arising from awards shall not be transferable.

Article 10

1. The purchase price of the butter is fixed at 176 units of account per 100 kg ex coldstore.

2. Subject to the reservation in the provisions of Article 14, the successful tenderer shall pay for the butter for which he takes delivery within 45 days following the time limit fixed in Article 1 (3) for the delivery cif of the butteroil.

Article 11

1. The successful tenderer shall, by the date fixed in accordance with Article 1 (3), complete the delivery cif Beirut or Ashod, whichever is the case, of the quantities of butteroil concerned, meeting the conditions of quality, packaging and marking provided in the Annex to Regulation (EEC) No 2537/72, taking account of the adaptations defined in paragraph 2. The delivery cif shall be taken as completed when the goods are effectively deposited on the quay of the port of disembarkation or on lighters when the latter system is used.

2. The butteroil shall be packed in accordance with heading II of the Annex to Regulation (EEC) No 2537/72, in 20 kg metal containers. The reference in heading II point 3 (b) of the Annex to Regulation (EEC) No 2537/72 is, however, replaced by the following reference in the French language : 'Don de la Communauté économique européenne — Action office de secours et de travaux des Nations Unies pour les réfugiés de Palestine.'

3. The successful tenderer shall accord with all quantitative controls issued by UNRWA. He shall provide, to this end, a list summarizing the lots making up the supply.

Article 12

Where the processing of butter into butteroil takes place in the Member States selling the butter, the following provisions are applicable :

1. The competent agency of the Member State shall provide control of the manufacture and packaging of the butteroil as envisaged by Article 3 (b) of Regulation (EEC) No 1692/72 following the conditions envisaged in Article 7 (2).

2. If the agency concerned, considers at the end of this control that the relevant conditions have been fulfilled, they shall provide to the successful tenderer, an equivalent attestation.

Article 13

Where the processing of the butter or the export of the oil takes place in another Member State than that which is selling the butter, the proof of exportation must be provided by the production of the copy of the control document envisaged in Article 1 of Commission Regulation (EEC) No 2315/69 of 19 November 1969, concerning the use of Community transit documents arising from the application of Community measures following the control of use and/or destination of goods.

The boxes numbered 101, 103 and 104 in the control copy shall be completed. Box number 104 shall be completed by striking out the unnecessary references and setting out under the second paragraph one of the following phrases :

(a) if the butter is to be processed in another Member State :

'Beurre destiné

1. à être transformé en butteroil

2. puis à être exporté au bénéfice de l'UNRWA au titre du règlement (CEE) no 1412/73'

'Butter bestimmt

1. zur Verarbeitung zu butteroil

2. alsdann zur Ausfuhr zu Gunsten der UNRWA gemäß der Verordnung (EWG) Nr. 1412/73'

'Burro destinato

1. ad essere trasformato in butteroil

2. ad essere esportato a beneficio dell'UNRWA a titolo del regolamento (CEE) n. 1412/73'

'Boter bestemd

1. om te worden verwerkt tot butteroil

2. om nadien te worden uitgevoerd ten behoeve van de UNRWA krachtens Verordening (EEC) Nr. 1412/73'.

'Butter destined

1. to be processed into butteroil

2. then to be exported for the benefit of UNRWA in accordance with Regulation (EEC) No 1412/73'

'Smør bestemt til

1. fremstilling af butteroil

2. hereafter eksport til gunst for UNRWA i overensstemmelse med forordning (EØF) nr. 1412/73'.

Where the export control envisaged under 2 is completed in another Member State than that where the processing took place, as envisaged in 1, the customs' office which controlled the processing envisaged under 1, shall send the control copy to the export office of the Member State selling the butter, indicating that it has only controlled the processing envisaged under 1 and shall deliver to the interested party, a copy of the control as envisaged in Article 1 of Regulation (EEC) No 2315/69 with Boxes 101, 103, 104 and 106 completed. Box 104 shall include one of the references indicated under (b) below ; Box 106 shall include the control copy number provided by the export office of the Member State selling the butter as well as the name of that office. The Customs office which controlled the destination envisaged under 2 shall annotate the control copy provided by the office which controlled the processing envisaged under 1 and shall send this copy via the aforesaid office to the export office of the Member State selling the butter ;

(b) if the butter processed into butteroil is to be exported from another Member State :

'Butteroil destiné à être exporté au bénéfice de l'UNRWA, au titre du règlement (CEE) no 1412/73'

'Gemäß der Verordnung (EWG) Nr. 1412/73 zu Gunsten der UNRWA auszuführendes butteroil'

'Butteroil destinato ad essere esportato a beneficio dell'UNRWA, in virtù del regolamento (CEE) n. 1412/73'

'Butteroil bestemd om te worden uitgevoerd ten behoeve van de UNRWA, overeenkomstig Verordening nr. 1412/73'

'Butteroil destined to be exported for the benefit of UNRWA in accordance with Regulation (EEC) No 1412/73'

'Butteroil bestemt til eksport til gunst for UNRWA i overensstemmelse med forordning (EØF) nr. 1412/73'

Article 14

After the delivery cif in accordance with the conditions envisaged in Article 11, UNRWA shall deliver a certification certifying that the lot which was the object of the individual application to tender has been received within the time limits prescribed.

Article 15

1. Upon presentation of the documents envisaged :

— in Articles 12 (2) and 14 in the case where the processing of the butter and export of the butteroil has taken place in the territory of the selling Member State,

— in Articles 12 (2), 13 (b) and 14 in the case where the processing of butter into butteroil is completed in the territory of the Member State selling the butter and where the export takes place in another Member State.

— in Articles 13 (a) and 14 in the case where the processing into butteroil takes place in another Member State than that selling the butter,

the competent agency of the Member State where the processing into butteroil took place, shall cancel the obligation of the successful tenderer to pay the purchase price of the butter for which delivery was taken up to the amount indicated in the tender and shall pay to him, within 15 days calculated from the day of the presentation of the certifying documents envisaged above, the difference between these two amounts, if this difference is to the advantage of the successful tenderer.

In the case where this cancellation takes place in another Member State than that selling the butter, the competent agency of the first Member State shall immediately notify to the competent agency of the Member State selling the butter, the amount to which this cancellation relates.

2. Moreover, the competent agency of the Member State upon whose territory the processing has taken place, shall ensure within 60 days at the most, that a presumptive contribution of 15 units of account per metric ton of butteroil taken delivery of, is paid to UNRWA for the forwarding and distribution of the butteroil.

Article 16

Except in cases of *force majeure,* the successful tenderer shall accept all financial responsibility which would have been borne by the Community for non delivery of the butteroil to the place and by the time desired, UNRWA having made possible delivery to the place and by the time desired. The costs resulting from a non-delivery of butteroil following a case of *force majeure* shall be borne by the competent agency of the Member State where the processing has taken place.

Article 17

1. Except in the case of *force majeure,* the security required for the invitation to tender envisaged in Article 5, shall only be released :

(a) if the tender has not been pursued,

(b) If the tenderer has not withdrawn his tender before the contract is awarded and if the documents referred to in Article 15 (1) paragraph one, or three as appropriate have been supplied to the intervention agency.

2. The security shall be released immediately.

3. In cases of *force majeure,* the intervention agency selling the butter shall determine the measures necessary in view of the circumstances invoked.

Article 18

No refund and no compensatory amount shall apply to the butter and butteroil referred to in this notice.

Article 19

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, 25 May 1973.

For the Commission

The President

François-Xavier ORTOLI