REGULATION (EEC) No 1365/74 OF THE COMMISSION

of 31 May 1974

on the supply of butteroil as food aid to certain developing countries

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 Regulation (EEC) No 662/74 [2], and in particular Articles 6 (7) and 28 thereof;

Whereas Council Regulation (EEC) No 530/74 [3] of 4 March 1974 laying down general rules for the supply of milk fats as food aid to certain developing countries and certain international organizations provides *inter alia* for the placing at the disposal of those countries of a certain quantity of butter held by intervention agencies, to be delivered in the form of butter or butteroil;

Whereas under Article 2 of Regulation (EEC) No 530/74 the costs of processing, packaging and transport in respect of each supply are in principle to be covered under a tendering procedure;

Whereas the procedure to be adopted for this purpose should in the main be taken over from that established by Commission Regulation (EEC) No 567/74 [4] of 8 March 1974 on the supply of butteroil as food aid to the countries of the Sahel and Ethiopia;

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

Where it is decided to supply butteroil fas to the developing countries listed in the Annex to Regulation (EEC) No 530/74, the invitation to tender referred to in Article 2 of the said Regulation shall be organized in accordance with the detailed rules laid down in this Regulation.

Article 2

1. The intervention agency concerned shall give notice of an invitation to tender indicating in particular:

— the location of the coldstore or stores where the butter which is to be manufactured into butteroil is held;

— the quantity of butteroil to be delivered;

— the indication of the ports in the Community where delivery fas can take place;

— the closing date and address for the receipt of tenders;

— the date on which delivery fas is to take place.

2. The notice of invitation to tender shall be published in the *Official Journal of the European Communities* at least 10 days before the closing date for the submission of tenders.

3. The intervention agency shall take the measures necessary to enable prospective tenderers to examine at their own expense, before submitting a tender, samples of the butter.

Article 3

The invitation to tender shall be open only 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 fulfil the obligations provided for in this Regulation may be approved.

Article 4

1. Tenders, which shall be in writing, shall be submitted either by delivery by hand to the intervention agency against acknowledgement of receipt or by registered letter addressed to the intervention agency. The intervention agency may also authorize the use of telex for presentation of tenders.

2. Where the invitation to tender is in respect of two or more lots no tender may be made for more than one lot.

3. The tender shall indicate:

(a) the name and address of the tenderer,

(b) the amount for which the tenderer undertakes to make the supply in question, expressed in the currency of the Member State in which the invitation to tender is made; this amount shall include the purchase price of the butter on the terms laid down in Articles 9 and 13, the costs of processing,

(1) OJ No L 148, 28. 6. 1968, p. 13.
(2) OJ No L 85, 29. 3. 1974, p. 51.
(3) OJ No L 65, 7. 3. 1974, p. 1.
(4) OJ No L 69, 12. 3. 1974, p. 3.

packing and delivering the butteroil and the cost of insuring the goods to their full value,

(c) one or more coldstores, chosen from the list of such stores in the notice of invitation to tender, at which the tenderer wishes to take delivery of the butter,

(d) the Community port where delivery fas takes place, chosen from among the ports designated for the purpose of the invitation to tender in question.

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

5. A tender shall not be valid unless accompanied by :

(a) a document certifying the approval referred to in Article 3 ;

(b) an undertaking from the tenderer that he will fulfil the obligations laid down by Article 6 (3) and Article 10 ;

(c) a declaration whereby the tenderer agrees to forgo any claim as to the quality or characteristics of any butter sold to him ;

(d) proof that before expiry of the period set for the submission of tenders the security referred to in Article 5 has been lodged.

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 option of the Member State concerned, either of a cheque made out in favour of the intervention agency, or of a bank guarantee which satisfies the criteria fixed by the Member State.

Article 6

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

2. Immediately on leaving the coldstore and until the moment when it leaves the geographical territory of the Community in the form of butteroil, the butter shall be placed under customs control or under an administrative control offering equivalent safeguards.

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

Article 7

In the light of the tenders received and in accordance with the procedure laid down in Article 30 of Regulation (EEC) No 804/68, a maximum amount expressed in units of account shall be fixed or alternatively a decision shall be taken to make no award.

Article 8

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

2. Without prejudice to the provisions of paragraph 1, the successful tenderer shall for each lot be the one making the lowest offer. Where two or more valid offers specify identical amounts in units of account the award shall be made 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. The intervention agencies shall immediately inform the Commission of the names of the successful tenderer or tenderers.

5. Rights and obligations arising in connection with the invitation to tender shall not be transferable.

Article 9

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

2. Subject to the provisions of Article 13 the successful tenderer shall pay for the butter which shall be removed within 45 days following the date fixed by the intervention agency for the delivery fas of the butteroil.

Article 10

Every successful tenderer shall on the date fixed by the intervention agency deliver fas at the port specified in the tender a quantity of butteroil equal to the quantity there specified and meeting the requirements as to quality and packaging laid down in the Annex to this Regulation. Any schedule for instalment deliveries shall be agreed between the successful tenderer and the agent of the recipient country.

The goods shall be regarded as delivered fas when they are deposited in the port of shipment at a point designated by the recipient country or its agent easily accessible to the ship.

Article 11

Where the processing of the butter into butteroil takes place in the Member State of sale, the following provisions shall apply :

1. At the time of the manufacture and packing of the butteroil, the competent agency of the Member State in question shall carry out checks to ensure that

— the quality and packing conform to Article 3 (b) of Regulation (EEC) No 530/74,

— the requirements of Article 6 (3) are complied with.

2. If on concluding these checks the agency concerned finds that the relevant conditions have been fulfilled, it shall issue to the successful tenderer a certificate to this effect.

Article 12

Where the processing of the butter and/or delivery fas of the butteroil takes place in a Member State other than that of sale, proof that the butter has been processed in accordance with the conditions referred to in subparagraph (1) of Article 11 and/or that the butteroil has been delivered fas shall be furnished by production of the control copy provided for in Article 1 of Commission Regulation (EEC) No 2315/69 [1] of 19 November 1969 concerning the use of Community transit documents for the purpose of applying Community measures for verifying the use and/or destination of goods, as last amended by Regulation (EEC) No 690/73 [2].

The sections 101, 103 and 104 in the control copy shall be completed. Section 104 shall be completed by deleting as necessary and entering against the second indent one of the following endorsements :

1. If the butter is to be processed in a Member State other than that of sale :

'Beurre destiné :
(a) à être transformé en butteroil,
(b) puis à être livré fas au titre de l'aide alimentaire (règlement (CEE) n° 530/74)'

'Butter bestimmt :
(a) zur Verarbeitung zu butteroil,
(b) alsdann zur Lieferung fas als Nahrungsmittelhilfe (Verordnung (EWG) Nr. 530/74)'

'Burro destinato :
(a) ad essere trasformato in butteroil,
(b) ad essere successivamente consegnato fas a titolo di aiuto alimentare (regolamento (CEE) n. 530/74)'

'Boter bestemd :
(a) om te worden verwerkt tot butteroil,
(b) om nadien fas te worden geleverd als voedselhulp (Verordening (EEG) nr. 530/74)'

'Butter to be :
(a) processed into butteroil, and subsequently,
(b) delivered fas as food aid (Regulation (EEC) No 530/74)'

'Smør bestemt til :
(a) fremstilling af butteroil,
(b) herefter til levering fas som fødevarehjælp (forordning (EØF) nr. 530/74)'.

Where verification that the butteroil has been delivered as specified in (b) is to take place in a Member State other than that where processing as specified in (a) takes place, the customs office which verifies such processing shall return the control copy to the customs office of departure, indicating that it has only verified that the goods have been processed as specified in (a), and shall issue to the person concerned for the butteroil so obtained one or more control copies as referred to in Article 1 of Regulation (EEC) No 2315/69, with sections 101, 103, 104 and 106 completed ; in section 103 there shall be entered the net weight of the butteroil after processing in accordance with (a) ; section 104 shall contain one of the endorsements set out at point 2 below ; in section 106 there shall be entered :

— the number of the control copy from the customs office of departure and the name of that office,
— the weight of the butter used to produce the quantity of butteroil entered in section 103.

The customs office which verifies that delivery as specified in (b) has taken place shall endorse the control copy from the office which verified that the goods had been processed as specified in (a) and shall return this copy via this latter office to the office of departure in the Member State of sale.

2. If the butter is processed into butteroil in the Member State of sale and is to be delivered fas in another Member State :

'Butteroil destiné à être livré fas au titre de l'aide alimentaire (règlement (CEE) n° 530/74)'

'Als Nahrungsmittelhilfe fas zu lieferndes butteroil (Verordnung (EWG) Nr. 530/74)'

'Butteroil destinato ad essere consegnato fas a titolo di aiuto alimentare (regolamento (CEE) n. 530/74)'

'Butteroil bestemd om fas te worden geleverd als voedselhulp (verordening (EEG) nr. 530/74)'

'Butteroil to be delivered fas as food aid (Regulation (EEC) No 530/74)'

'Butteroil bestemt til levering fas som fødevarehjælp (forordning (EØF) nr. 530/74)'.

The customs office which verified delivery shall endorse the control copy and return it to the office of departure in the Member State of sale.

Article 13

Upon presentation :

— of the documents referred to in subparagraph (2) of Article 11 and in Article 14, where the processing of the butter and delivery fas of the butteroil has taken place in the Member State of sale,
— of the document referred to in subparagraph (1) of Article 12 and in Article 14, where processing has taken place in a Member State other than that of sale,
— of the documents referred to in subparagraph (2) of Article 11, in the subparagraph (2) of Article 12

[1] OJ No L 295, 24. 11. 1969, p. 14.
[2] OJ No L 66, 13. 3. 1973, p. 23.

and in Article 14, where processing has taken place in the Member State of sale and delivery fas has taken place in another Member State,

the competent agency of the Member State of sale shall release each successful tenderer from his obligation to pay the purchase price of the butter removed by him, provided that the amount in respect of which such release is given does not exceed that for which the tenderer undertook to supply the butteroil, and shall within 15 days reckoned from the day on which the abovementioned supporting documents are produced pay to him an amount equal to the difference, where this is in favour of the tenderer, between the aforesaid two amounts.

Article 14

On delivery fas of the goods at the port of embarkation, the receiving agent appointed by the recipient country, or where no such agent is appointed the intervention agency of the Member State on whose territory embarkation takes place, shall issue to the successful tenderer as agent for the Community a certificate of delivery.

Article 15

Except in cases of *force majeure* every successful tenderer shall accept all financial liability devolving upon the Community by reason of failure to deliver the butteroil at the place and by the time appointed, provided always that the recipient country has made it possible for the butteroil to be so delivered.

Any demurrage costs resulting from such delays shall be chargeable to the successful tenderer only if the rates and other details concerning such costs have been previously agreed upon between the successful tenderer and the recipient country. Other costs resulting from such delays shall be chargeable to the successful tenderer only if they have been incurred by the recipient country with the agreement of the competent intervention agency.

Cost incurred by reasons of failure to deliver the butteroil as a result of *force majeure* shall be borne by the competent agency of the Member State of sale.

If the recipient country is unable to load the butteroil on the date or dates fixed in accordance with Article 10 and if the successful tenderer is unable to obtain payment from the recipient country of the resulting costs, the competent agency of the Member State of sale shall take all measures necessary to ensure that such costs are not borne by the successful tenderer.

Article 16

1. Except in cases of *force majeure*, the security required under Article 5 shall be released only in the following circumstances :

(a) if the tender has been refused,

(b) if the tenderer has not withdrawn his tender before the contract is awarded and has produced to the intervention agency the documents required under the first, second or third indent as the case may be of Article 13.

2. Release of the security shall take place immediately.

3. In case of *force majeure* the intervention agency shall adopt the measures which appear warranted by the circumstances invoked.

Article 17

No refund or compensatory amount (whether monetary or accession) shall be applied to the butter or butteroil to which this Regulation applies.

Article 18

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, 31 May 1974.

For the Commission

The President

François-Xavier ORTOLI

ANNEX

I. Quality requirements for butteroil

Characteristics : concentrated milk fat with a minimum pure fat content of 99·8 %.

Compositional characteristics :
moisture content and non-milk fat constituents : maximum 0·2 %
fats : minimum 99·8 %
free fatty acids : maximum 0·5 % (oleic acid)
Peroxide/kg : maximum 1 unit (in milliequivalents of oxygen per kg)
Flavour : fresh
Smell : no foreign odours

II. Packaging of butteroil

1. The butteroil is to be packed in metal canisters fully filled and hermetically sealed in an atmosphere of nitrogen. The canisters should be strong enough to withstand a long sea journey. Their composition must not be such as to be harmful to human health or to cause a change in the colour, taste or odour of their contents.

   Each canister must be sealed by double-seaming so as to be fully leak-tight.

2. The canisters must be packed into cartons containing either :

   (a) 4 canisters of 5 kg each, or

   (b) 1 canister of 20 kg.

   The cartons must have a rupture-strength of 29 kg/cm^2.

   Cartons containing 4 canisters of 5 kg must also contain separators of duplex cardboard of a rupture-strength of at least 13 kg/cm^2.

   Each carton must be firmly sealed by means of adhesive applied to the entire surface area of the upper and lower flaps.

3. A label to be affixed vertically to each canister must bear the following particulars in the language or languages of the recipient country :

   (a) the description : 'Butteroil',

   (b) the words : 'Gift of the European Economic Community' (to be completed according to the country of destination),

   (c) net weight,

   (d) month and year of manufacture,

   (e) name of the processing undertaking — in the form of a code number.

   In addition to the above, the following must be marked on the two sides of each carton : the manufacturer's lot number and the number of cartons making up the lot.

III. Special provisions

In the case of certain specific destinations for projects involving supplies for the reconstitution of milk, special requirements may be laid down in the Regulation opening the relevant individual invitation to tender.