REGULATION (EEC) No 2978/74 OF THE COMMISSION

of 26 November 1974

laying down conditions for the sale for export of skimmed-milk powder held by intervention agencies and concerning the adjustment of refunds fixed in advance for skimmed-milk powder not coming from intervention stocks

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 Article 7 (5), the first subparagraph of Article 17 (4) and Article 28 thereof;

Whereas large quantities of skimmed-milk powder are currently held in public storage in the Community; whereas steps should be taken to sell these stocks where outlets for the product exist;

Whereas Commission Regulation (EEC) No 2609/74 [3] of 14 October 1974 on the sale for export of skimmed-milk powder held by intervention agencies authorized Community exporters to obtain supplies of skimmed-milk powder from intervention agencies during the month of October 1974 for export in performance of long-term contracts; whereas, since the situation on the world market is more or less unchanged, that measure should be extended;

Whereas experience has shown that some provisions of the abovementioned Regulation should be amended, particularly as regards the selling price, the final dates for payments and for taking delivery and the advance fixing of the refund;

Whereas this Regulation gives exporters who purchase from intervention agencies a certain measure of price guarantee which may extend beyond the date on which any amendment of the intervention price is effected; whereas means should accordingly be sought whereby exporters of skimmed-milk powder who purchase on the open market may benefit from a similar guarantee; whereas subparagraph (a) of the second subparagraph of Article 5 (3) of Council Regulation (EEC) No 876/68 [4] of 28 June 1968 laying down general rules for granting export refunds on milk and milk products and criteria for fixing the amount of such refunds, as last amended by Regulation (EEC) No 2429/72 [5], provides that refunds fixed in advance may be adjusted if intervention prices are altered; whereas having regard to the present market situation, which already indicates the possibility of such an adjustment, it is appropriate to make provision for the latter;

Whereas the Management Committee for Milk and Milk Products has not delivered on opinion within the time limit set by its Chairman,

HAS ADOPTED THIS REGULATION:

Article 1

1. The intervention agencies shall offer for sale, on the terms set out below, skimmed-milk powder bought in under Article 7 of Regulation (EEC) No 804/68 and placed in storage after 31 March 1974 but before 1 September 1974.

2. Provided that the total quantity of skimmed-milk powder as specified in Article 1 sold by any one intervention agency shall not exceed 50 % of the quantity held by that agency at the date of entry into force of this Regulation.

3. Contracts of sale must be concluded not later than 31 December 1974.

Article 2

1. The skimmed-milk powder shall be sold:

(a) ex-storage depot at a price equal to the buying-in price applied by the relevant intervention agency at the time when the contract is concluded, plus 1·5 u.a./100 kg;

(b) in lots of 5 000 metric tons or more;

(c) to purchasers who:

— can produce evidence of a contract concluded on or after 7 October 1974 under which they have undertaken to deliver over a period exceeding five months to a third country indicated in the contract a quantity of not less than 5 000 metric tons of skimmed-milk powder;

— can produce evidence that they have lodged an application for advance fixing of the refund and for an export licence valid for eight months, applicable to the country of destination specified in the contract referred to in the

[1] OJ No L 148, 28. 6. 1968, p. 13.
[2] OJ No L 85, 29. 3. 1974, p. 51.
[3] OJ No L 278, 15. 10. 1974, p. 7.
[4] OJ No L 155, 3. 7. 1968, p. 1.
[5] OJ No L 264, 23. 11. 1972, p. 1.

first indent and relating to the quantity of skimmed-milk powder to be purchased ;

— give an undertaking that they will, under the abovementioned export licence and in performance of the contract referred to in the first indent, export the quantity of skimmed-milk powder purchased ;

(d) in packaging marked in letters at least 2 cm high with one or more of the following endorsements :

— 'Skimmed-milk powder for export under Regulation (EEC) No 2978/74',

— 'Lait écrémé en poudre destiné à l'exportation conformément au règlement (CEE) n° 2978/74',

— 'Magermilchpulver für die Ausfuhr gemäß der Verordnung (EWG) Nr. 2978/74',

— 'Latte scremato in polvere destinato all'esportazione conformemente al regolamento (CEE) n. 2978/74',

— 'Magere-melkpoeder bestemd voor uitvoer, volgens Verordening (EEG) nr. 2978/74',

— 'Skummetmælkspulver bestemt for eksport i overensstemmelse med forordning (EØF) nr. 2978/74'.

2. The sale by the intervention agency of the skimmed-milk powder shall be subject to the provision by the purchaser, on or before conclusion of the contract of sale, of security in an amount of 10 u.a./100 kg.

Such security shall take the form, as the Member State chooses, either of a cheque made out in favour of the intervention agency or of a guarantee satisfying the requirements laid down by the Member State concerned.

Article 3

1. The purchaser shall take over the skimmed-milk powder within the following time limits, reckoned from the end of the month in which the contract of sale is concluded :

(a) three months, as regards half the quantity purchased ;

(b) six months, as regards the remainder.

The purchaser may take delivery of each half in instalments, provided that the above time limits are complied with.

2. Except in cases of *force majeure,* if the buyer fails to take delivery of the skimmed-milk powder within the periods specified in paragraph 1 he shall pay the storage costs incurred in respect of the outstanding quantities by the intervention agency from the day on which the contract of sale was concluded until the day on which delivery is taken. Such costs shall be calculated at a flat rate of 0·029 u.a./100 kg per day of storage.

3. Before taking delivery of any quantity, the purchaser :

(a) shall pay the intervention agency for the quantity in question ;

(b) shall pay any storage costs due under paragraph 2.

4. When the conditions set out in paragraph 3 have been satisfied, the intervention agency shall issue a removal order indicating :

(a) the quantity in respect of which those conditions have been satisfied ;

(b) the storage depot or depots where the quantity in question is stored ;

(c) the final dates pursuant to paragraphs 1 and 6 for taking delivery of the skimmed-milk powder ;

(d) where appropriate, the date up to which any storage costs due under paragraph 2 have been paid in respect of the quantity in question.

5. If at the time of taking delivery the skimmed-milk powder purchased has been in store for more than six months, the intervention agency may, if the purchaser so requests, substitute for the quantity outstanding an equivalent quantity which has been in store for less than six months.

6. Except in cases of *force majeure,* if the buyer fails to take over the skimmed-milk powder within eight months reckoned from the end of the month in which the contract of sale with the intervention agency was concluded, the contract shall be terminated in respect of the quantities outstanding.

7. In cases of *force majeure,* the intervention agency shall take such action as it considers necessary in the light of the circumstances invoked.

Where an intervention agency accepts a case of *force majeure* as such, the Member State concerned shall immediately so notify the Commission, which shall inform the other Member States.

Article 4

1. From the time of its removal from store until it leaves the geographical territory of the Community the skimmed-milk powder shall be placed under customs control or under an administrative control offering equivalent safeguards.

2. Customs export formalities shall be completed in the Member State of sale.

Article 5

1. The security provided for in Article 2 (2) shall be forfeit in respect of any quantities in respect of which the contract of sale is terminated pursuant to Article 3 (6).

Moreover, except in case of *force majeure,* the security shall be released only in respect of those quantities in respect of which the purchaser furnishes proof of

exportation in accordance with the third indent of Article 2 (1) (c).

2. This proof shall be furnished as follows :

(a) where the product leaves the geographical territory of the Community from the territory of the Member State of sale, by production of a customs document certifying such departure and specifying that the product was exported under this Regulation, or

where the product leaves the geographical territory of the Community from the territory of a Member State other than the Member State of sale, by production of the control copy provided for in Article 1 of Regulation (EEC) No 2315/69.

Sections 101, 103 and 104 of the control copy shall be completed. Section 104 shall be completed by deleting as necessary and entering against the second indent one of the endorsements specified in Article 2 (1) (d) of this Regulation ; and

the provisions of Article 5 (3) of Regulation No 1041/67/EEC shall apply *mutatis mutandis ;*

(b) by production of documents as referred to in Article 8 (1) of Regulation No 1041/67/EEC establishing that the quantities concerned have in fact been imported into the third country in question.

Article 6

If the intervention price for skimmed-milk powder is altered for the 1975/76 milk year, refunds fixed in advance prior to 1 January 1975 for a period exceeding 60 days in respect of products falling within subheading 04.02 A II b) 1 of the Common Customs Tariff shall be adjusted accordingly. Provided that a refund is fixed in advance under the second indent of Article 2 (1) (c) or for exportations under Regulation (EEC) No 2609/74 it shall not be subject to any adjustment within the meaning of Article 5 (3) of Regulation (EEC) No 876/68.

Article 7

The Member States shall inform the Commission forthwith of the quantities of skimmed-milk powder in respect of which contracts of sale have been concluded by the intervention agency under this Regulation, indicating for each quantity the country of destination and the delivery period prescribed by the contract as referred to in the first indent of Article 2 (1) (c).

Article 8

This Regulation shall enter into force on the 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, 26 November 1974.

For the Commission

The President

François-Xavier ORTOLI