I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EEC) No 303/77

of 14 February 1977

laying down general rules for the supply of skimmed-milk powder and butteroil as food aid

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 559/76 [2], and in particular Articles 6 (7), 7 (5) and 28 thereof,

Whereas the Community food-aid programme provides for the supply of considerable quantities of skimmed-milk powder and butteroil to certain developing countries and international organizations; whereas the skimmed-milk powder and the butter, from which the butteroil to be supplied is manufactured, should in principle be provided from the stocks of the intervention agencies; whereas taking into account the market situation purchases may however also be made on the Community market, in particular in the case of skimmed-milk powder when the intervention stocks do not correspond to the characteristics required for its particular destination;

Whereas the relevant basic rules also provide that in respect of individual deliveries a tendering procedure is in principle to be held to determine the transport costs and, where necessary, the purchase price; whereas in exceptional cases a direct award procedure may be decided upon;

Whereas, in the light of the experience gained from implementing food-aid programmes, it appears useful to harmonize and consolidate into one Regulation the implementing provisions which have hitherto applied to individual operations;

Whereas Commission Regulation (EEC) No 1687/76 of 30 June 1976 laying down common detailed rules for verifying the use and/or destination of products from intervention [3], as last amended by Regulation (EEC) No 3135/76 [4], applies to products from intervention stocks to be supplied as food aid under this Regulation;

Whereas the proof that goods have been delivered to the destination prescribed should continue to be furnished by producing the control copy referred to in Article 1 of Regulation (EEC) No 2315/69 of 19 November 1969 on the use of Community transit documents for the purpose of applying Community measures for verifying the use and/or destination of goods [5], as amended by Regulation (EEC) No 690/73 [6];

Whereas the following Regulations will become redundant on publication of these general rules and therefore have to be repealed:

— Commission Regulation (EEC) No 1365/74 of 31 May 1974 on the supply of butteroil as food aid to certain developing countries [7], as last amended by Regulation (EEC) No 2390/75 [8],

— Commission Regulation (EEC) No 2121/74 of 9 August 1974 on the supply of butteroil as food aid to the World Food Programme [9], as last amended by Regulation (EEC) No 2390/75,

— Commission Regulation (EEC) No 2557/74 of 4 October 1974 concerning the invitation to tender for the cost of delivery, as food aid, of skimmed-milk powder to certain third countries [10],

---

[1] OJ No L 148, 28. 6. 1968, p. 13.
[2] OJ No L 67, 15. 3. 1976, p. 9.
[3] OJ No L 190, 14. 7. 1976, p. 1.
[4] OJ No L 353, 23. 12. 1976, p. 38.
[5] OJ No L 295, 24. 11. 1969, p. 14.
[6] OJ No L 66, 13. 3. 1973, p. 23.
[7] OJ No L 147, 1. 6. 1974, p. 46.
[8] OJ No L 246, 20. 9. 1975, p. 5.
[9] OJ No L 222, 12. 8. 1974, p. 10.
[10] OJ No L 274, 9. 10. 1974, p. 7.

— Commission Regulation (EEC) No 597/75 of 6 March 1975 concerning invitations to tender for the cost of delivery of skimmed-milk powder in public storage as food aid to the countries of the Sahel and Ethiopia (1),

— Commission Regulation (EEC) No 750/75 of 21 March 1975 concerning invitations to tender for the costs of manufacture and delivery of butteroil as food aid to the countries of the Sahel and Ethiopia (2), as last amended by Regulation (EEC) No 2212/76 (3),

— Commission Regulation (EEC) No 1221/75 of 6 May 1975 concerning the conditions for invitations to tender for the costs of delivery, as food aid, of skimmed-milk powder for the World Food Programme (4), as amended by Regulation (EEC) No 2061/75 (5),

— Commission Regulation (EEC) No 2247/75 of 29 August 1975 on the terms of invitations to tender for the cost of manufacture and delivery of butteroil as food aid to certain developing countries and to the World Food Programme (6), as last amended by Regulation (EEC) No 2402/76 (7),

— Commission Regulation (EEC) No 2660/75 of 20 October 1975 on invitations to tender for the supply of butteroil bought on the Community market as food aid to certain developing countries and to the World Food Programme (8);

Whereas the Annex to Regulation (EEC) No 1687/76 must be adapted to take account of the new legal position;

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:

TITLE I

General provisions

Article 1

When a decision is taken to supply skimmed-milk powder or butteroil as food aid to an international organization or to a developing country (hereinafter referred to as 'the recipient') the general provisions of this Regulation shall apply without prejudice to special provisions to be laid down in specific cases.

(1) OJ No L 63, 8. 3. 1975, p. 7.
(2) OJ No L 74, 22. 3. 1975, p. 30.
(3) OJ No L 249, 11. 9. 1976, p. 5.
(4) OJ No L 121, 14. 5. 1975, p. 17.
(5) OJ No L 209, 7. 8. 1975, p. 19.
(6) OJ No L 229, 30. 8. 1975, p. 60.
(7) OJ No L 270, 2. 10. 1976, p. 23.
(8) OJ No L 270, 21. 10. 1975, p. 11.

Article 2

1. The delivery of skimmed-milk powder or butteroil as food aid shall be carried out by a business established in the Community (hereinafter called 'the successful tenderer') and selected in accordance with one of the procedures referred to in Article 12.

2. The delivery shall be made at one of the delivery stages listed in Annex I to this Regulation. The delivery shall be governed by the detailed procedures laid down therein, the terms used in commercial trade being disregarded.

3. When carrying out the delivery to the recipient according to the conditions laid down, the successful tenderer shall act as the agent of the Community.

Article 3

1. The successful tenderer shall be responsible for any loss or damage to the goods and shall therefore insure the goods for their value on the Community market, up to the time when the recipient draws up the relevant take-over certificate referred to in Article 4 (2).

2. Additional costs of insurance which arise from delays of over eight days, on the part of the recipient, between the actual delivery of the goods and the drawing up of the take-over certificate shall be reimbursed to the successful tenderer by the intervention agency concerned on production of the relevant proof and shall be borne by the Community without prejudice to subsequent reimbursement by the recipient.

Article 4

1. The successful tenderer shall submit to any checks carried out by the recipient's agent and for this purpose shall hand over to him a list containing the following information relating to the goods supplied:

(a) the quantity, type, markings and numbers of the packages,

(b) the gross and net weight of the goods,

(c) the number of empty sacks delivered under Article 6 (3), and taken over at the relevant delivery stage,

(d) as necessary, the number of the control copy referred to in Article 19 (2).

2. The take-over certificate which the recipient's agent shall hand over to the successful tenderer at the time of the take-over shall contain the following information :

(a) the place and date of the take-over,

(b) a description of the goods taken over as set out in paragraph 1 (a), (b) and (c) and, when necessary, the number of the control copy referred to in Article 19 (2),

(c) any comments on the condition of the goods.

Article 5

1. Where delivery is made 'to the port of unloading', the intervention agency concerned shall as soon as possible notify the recipient's agent indicated by the Commission, of the name of the vessel, the date of loading, the port of unloading and the particulars referred to in Article 4 (1) (a), (b) and (c) as noted at the time of dispatch.

The successful tenderer shall notify the recipient of the expected date of arrival of the vessel at the port of unloading at least 10 days before that date.

The successful tenderer shall ensure that the charter-party contains a term that the captain shall notify the recipient at least 72 hours in advance of the estimated date of arrival of the vessel at the port of unloading.

2. Where delivery is made 'free at destination', the intervention agency concerned shall as soon as possible notify the recipient's agent indicated by the Commission, of the date of loading, the means of transport used for transporting the goods to their destination, the port of unloading and the particulars referred to in Article 4 (1) (a), (b) and (c) as noted at the time of dispatch.

The successful tenderer shall notify the recipient of the estimated date of arrival of the goods at their destination at least two days before that date.

TITLE II

Special provisions for deliveries of skimmed-milk powder

Article 6

1. The skimmed-milk powder to be supplied shall, as appropriate :

(a) be placed at the disposal of the successful tenderer in the stores of a specified intervention agency, or

(b) be purchased on the Community market.

2. The skimmed-milk powder shall meet the quality and packaging requirements laid down in the Annex to Commission Regulation (EEC) No 1108/68 of 27 July 1968 on detailed rules of application for public storage of skimmed-milk powder [1], as last amended by Regulation (EEC) No 1457/75 [2]. The packaging shall be dry, clean and undamaged.

If the skimmed-milk powder is to contain vitamin additives, the appropriate requirements shall be laid down separately for each individual delivery.

In exceptional cases, specific packaging requirements may be laid down.

3. In the case referred to in paragraph 1 (a), the intervention agency shall provide an additional 2 % of empty sacks corresponding to the sacks containing the goods. In the case referred to in paragraph 1 (b), the purchase on the Community market shall include these additional empty sacks.

In the case of delivery 'to the port of unloading' or 'free at destination' the successful tenderer shall enter these empty sacks on the bill of lading.

Article 7

1. If the skimmed-milk powder to be delivered comes from intervention stocks, it shall not be handed over by the intervention agency unless a security for delivery has been lodged, the amount of which shall correspond to the intervention price for skimmed-milk powder, applicable on the day when the milk powder is taken over, increased by 1·5 units of account per 100 kilograms.

2. The successful tenderer shall ensure that the quantity of skimmed-milk powder made available by the intervention agency corresponds to the quantity to be delivered.

It shall further ensure that the packaging of the skimmed-milk powder is dry, clean and undamaged.

3. The intervention agency shall make available the skimmed-milk powder as follows :

— in the case of a railway truck or a lorry, loaded (but not stowed) on the means of transport at the loading platform of the warehouse,

— in the case of any other means of transport, in particular a container, on the loading platform of the warehouse.

4. The insurance contract referred to in Article 3 (1) shall contain a clause whereby the insurer shall, in case of accident, pay the intervention agency compensation equal to the value of the skimmed-milk powder concerned (at the intervention price applicable on the day when the powder was taken over).

(1) OJ No L 184, 29. 7. 1968, p. 34.
(2) OJ No L 145, 6. 6. 1975, p. 17.

Article 8

1. If the goods to be delivered are purchased on the Community market, the competent agency in the Member State concerned shall check that the quality and packaging comply with the conditions laid down and shall issue a certificate to that effect on conclusion of the said check.

2. For the purposes of the check referred to in paragraph 1, the successful tenderer shall notify the competent agency carrying out the check, of the date when the packaging of the skimmed-milk powder is to begin, at least three working days before that date. The skimmed-milk powder may only be dispatched from the place of packaging after authorization by the competent authority.

3. From the time of the check referred to in paragraph 1, the skimmed-milk powder shall be subject to customs control or similar administrative control providing equivalent security up to the time when, in the case of delivery 'to the port of shipment', one copy of the take-over certificate referred to in Article 4 (2) is returned to the competent authority referred to in Article 19 (6) and, in the case of delivery 'to the port of unloading' or 'free at destination', the goods have left the geographical territory of the Community.

TITLE III

Special provisions for deliveries of butteroil

Article 9

1. The butteroil to be supplied shall be manufactured, as appropriate, from :

(a) butter placed at the disposal of the successful tenderer in the stores of a specified intervention agency, or

(b) butter or cream of Community origin available on the Community market.

2. The butteroil to be supplied shall meet the quality and packaging requirements laid down in Annex II to this Regulation.

The conformity of the packaging materials used with the requirements laid down shall be established by the presentation of the certificate referred to in Annex II (2), issued by the approved package testing agency, and still valid on the day of using the said packages.

3. Only those processing undertakings which are approved for that purpose by the Member State on whose territory the manufacture of the butteroil takes place may be entrusted with the supply of butteroil. Only those undertakings which provide sufficient guarantee that they will comply with the obligations laid down in this Regulation may be approved. Such approval shall be withdrawn if it becomes evident that these conditions are no longer satisfied.

Article 10

1. If the butteroil to be delivered is to be manufactured from butter from intervention stocks :

(a) the intervention agency, before the tender or the conclusion of the directly awarded contract, shall take all necessary measures to enable interested parties to examine at their own expense samples taken from the butter,

(b) the butter shall not be handed over by the intervention agency unless a security for processing and delivery has been lodged, the amount of which shall correspond to the Community intervention price for butter applicable on the day when the butter is taken over increased by two units of account per 100 kilograms.

2. The successful tenderer shall undertake :

(a) to pay for the butter delivered by the intervention agency according to the following conditions :

— the purchase price of the butter on leaving the cold store shall be equal to the Community intervention price applicable on the day fixed as the closing date for receipt of tenders, where the successful tenderer was selected under the tendering procedure laid down in Article 12 (1), or the day of concluding the directly awarded contract, where the successful tenderer was selected under the procedure laid down in Article 12 (2) ;

— subject to Article 21 (3), the successful tenderer shall pay for the butter delivered within 90 days of the final date fixed by the intervention agency for delivery ;

(b) not to make any complaint concerning the quality and nature of the butter made available by the intervention agency,

(c) to manufacture the butteroil to be delivered only from the butter handed over by the intervention agency for that purpose.

3. The intervention agency shall make available the butter loaded (but not stowed) on the means of transport at the loading platform of the cold store.

4. The insurance contract referred to in Article 3 (1) shall contain a clause whereby the insurer shall, in case of accident, pay the intervention agency compensation equal to the value of the butter concerned (at the intervention price applicable on the day when the goods were taken over).

Article 11

1. The competent agency of the Member State concerned shall check that Article 9 (1) (b) and (2) and Article 10 (2) (c) are complied with and shall issue a certificate to that effect on conclusion of the said check.

2. For the purpose of the check referred to in paragraph 1, the successful tenderer shall notify the competent agency carrying out the check, of the date when the manufacture and packaging of the butteroil is to begin, at least three working days before that date. The butteroil may only be dispatched from the place of manufacture and packaging after authorization by the competent authority.

3. From the time of the check referred to in paragraph 1, the butteroil bought on the market shall be subject to customs control or similar administrative control providing equivalent security up to the time when, in the case of delivery 'to the port of shipment', one copy of the take-over certificate referred to in Article 4 (2) is returned to the competent authority referred to in Article 19 (6) and, in the case of delivery 'to the port of unloading' or 'free at destination', the goods have left the geographical territory of the Community.

TITLE IV

Tendering procedure and direct award procedure

Article 12

1. In order to determine the transport cost and, where appropriate, the price for the purchase or manufacture and the packaging of the skimmed-milk powder or butteroil, a tendering procedure shall be held in accordance with the rules laid down in Articles 13 to 17.

2. In cases of special urgency, however, or when the quantities involved are relatively small, a direct award procedure may be adopted, and shall be subject to the rules laid down in Article 18.

Article 13

1. When the decision is taken to conduct a tendering procedure, the intervention agency or agencies entrusted with supplying the goods shall give notice of an invitation to tender indicating in particular :

— the quantity of goods to be delivered,

— the destination and the delivery stage within the meaning of Annex I,

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

— the date by which the delivery is to take place,

— if appropriate, the location of the warehouse or warehouses in which the skimmed-milk powder to be supplied or the butter intended for the manufacture of the butteroil to be supplied are stored,

— in cases of delivery 'to the port of unloading' or 'free at destination', the name and address of the recipient's agent responsible for taking delivery.

2. The notice of invitation to tender shall be published in the *Official Journal of the European Communities* at least 12 days before the closing date for submission of tenders. In addition, the intervention agencies may proceed with publication elsewhere.

Article 14

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

If the goods to be supplied are purchased on the Community market the tender shall be handed in to the intervention agency of the Member State on whose territory the goods are to be manufactured and packaged in accordance with Article 6 (2) in the case of skimmed-milk powder or in accordance with Article 9 (2) and Annex II in the case of butteroil.

2. Where the invitation to tender is in respect of several lots each tender shall relate to one lot only.

A tender shall be valid only if it relates to the whole of a lot.

The Regulation concerning an individual tendering procedure may, however, provide that tenders are still valid if they relate only to a partial quantity of 500 tonnes or a multiple of 500 tonnes of the total quantity of the lot in question. In this case the tenderer whose tender relates to a multiple of 500 tonnes shall state the minimum partial quantity which may be awarded to him.

3. The tender shall indicate :

(a) the name and address of the tenderer,

(b) the port of shipment chosen from among Community ports accessible for ocean-going ships, provided that the individual tendering procedure does not provide for any special limitations. In the case of a delivery 'to the port of shipment' only one port may be indicated in a tender ;

(c) the amount tendered, exclusive of taxes, expressed in the currency of the Member State to whose intervention agency the tender is submitted and to which the tenderer undertakes to make the delivery concerned on the terms laid down ; this

amount shall include insurance costs under Article 3 and, in the case of butteroil manufactured from intervention stocks, the purchase price of the butter in accordance with Articles 10 (2) (a) and 21 (3).

4. No tender shall be valid unless it further indicates both the amount tendered referred to in paragraph 3 (c) and, according to the circumstances, what proportion thereof covers :

(a) the cost of transportation to the port of shipment ;

(b) the cost of transportation beyond the port of shipment.

5. No tender shall be valid if it contains conditions and/or reservations which are not expressly authorized.

6. No tender shall be valid unless it is accompanied by :

(a) proof that the tendering security referred to in Article 15 has been lodged before the final date for submission of tenders ;

(b) an undertaking from the tenderer that he will abide by the conditions of the tendering procedure ;

(c) in the case of a delivery of butteroil, the document certifying the approval referred to in Article 9 (3) and, where appropriate, the undertakings referred to in Article 10 (2).

7. Tenders may not be withdrawn.

Article 15

1. The tendering security shall amount to :

(a) five units of account per tonne of skimmed-milk powder from intervention stocks ;

(b) 20 units of account per tonne of skimmed-milk powder purchased on the Community market ;

(c) 15 units of account per tonne of butteroil produced from butter from intervention stocks ;

(d) 40 units of account per tonne of butteroil purchased on the Community market.

2. It shall be provided, at the choice of the tenderer, either in cash or in the form of a guarantee from an appropriate institution which satisfies the criteria fixed by the Member State in which the security is provided.

Article 16

1. 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 shall be fixed in units of account or a decision shall be taken to make no award.

2. For the purposes of the decision referred to in paragraph 1 and for the award, as regards the delivery of butteroil bought on the Community market, the amounts of the tenders made to the United Kingdom and Irish intervention agencies shall, after conversion into units of account, be considered to have been increased by the accession compensatory amount which is applicable to the quantities of butteroil concerned in trade between the original Community and Denmark and the new Member State concerned.

The accession compensatory amount expressed in units of account referred to in the preceding subparagraph shall be calculated on the basis of a fat content in the butteroil of 99·9 %.

Article 17

1. A tender shall be refused if the amount proposed, converted into units of account and, where necessary, adjusted under Article 16 (2), exceeds the maximum amount referred to in Article 16 (1).

2. Without prejudice to paragraph 1, the successful tenderer shall be the one whose tender is the lowest, when converted into units of account and, where necessary, adjusted under Article 16 (2).

3. If the tendering procedure is carried out simultaneously by several intervention agencies and if two or more of them receive tenders for the same amount expressed in units of account which prove to be the most favourable, the intervention agency which is to award the tender shall be determined in accordance with the procedure referred to in Article 16 (1).

Where a single intervention agency has to take into account more than one tender for the same amount, the award shall be made by the drawing of lots.

4. Each tenderer shall immediately be notified by the intervention agency of the result of his participation in the tendering procedure.

5. Rights and obligations arising from the award shall not be transferable.

6. The intervention agency shall immediately notify the Commission of the name and address of the successful tenderer.

Article 18

1. Where it is decided to determine the delivery costs by means of a direct award procedure, the intervention agency entrusted with the delivery shall conclude the relevant contracts on the most favourable terms as regards costs.

2. In these contracts, the delivery costs shall be broken down in accordance with Article 14 (4).

3. The intervention agency shall immediately forward to the Commission a copy of the contract(s) under the direct award.

TITLE V

Special rules, in particular on the use of the control copy

Article 19

Where the goods to be delivered neither come from nor are to be manufactured from products coming from intervention agency stocks, the following conditions shall apply :

1. The completion of customs export formalities and, in the case of vitamin-enriched skimmed-milk powder or butteroil, also the manufacture and packaging shall take place in the Member State in which the tender was submitted or the contract under the direct award procedure was concluded.

2. (a) In the case of a delivery 'to the port of shipment', where the port of shipment designated in the tender or in the contract under the direct award procedure is situated in a Member State other than that in which the customs export formalities were completed, or

   (b) in the case of a delivery 'to the port of unloading' or 'free at destination', where the goods leave the geographical territory of the Community from a Member State other than that in which the customs export formalities were completed, the goods shall from the time of completion of the said formalities until the termination of the control referred to in Articles 8 (3) and 11 (3), be accompanied by the control copy provided for in Regulation (EEC) No 2315/69.

3. The control copy shall be issued only on production of a certificate from the competent authority which issued the certificate referred to, as appropriate, in Article 8 (1) or in Article 11 (1). Such certificate shall be numbered and shall contain the following details :

   — a description of the goods in the manner prescribed for completion of Section 31 of the control copy and, where appropriate, any other information necessary for the purposes of control,

   — the quantity, the type, markings and numbers of the packages,

   — the gross and net weight of the goods,

   — a reference to this Regulation.

   The certificate shall be kept by the customs office of departure.

4. Sections 101, 103, 104 and 106 of the control copy shall be completed.

   Section 104 shall be completed by deleting as appropriate and entering under the second indent one of the following endorsements :

   (a) In the case of a delivery 'to the port of shipment' :

   — 'Food aid (Regulation (EEC) No .../77) to be delivered to the port of .....' ;

   — 'Fødevarehjælp (forordning (EØF) nr. .../77) bestemt til levering i havnen i .....' ;

   — 'Nahrungsmittelhilfe (Verordnung (EWG) Nr. .../77), zur Lieferung zum Hafen von ..... bestimmt' ;

   — 'Aide alimentaire (règlement (CEE) nº .../77) destinée à être livrée au port de .....' ;

   — 'Aiuto alimentare (regolamento (CEE) n. .../77) destinato ad essere consegnato nel porto di .....' ;

   — 'Voedselhulp (Verordening (EEG) nr. .../77), bestemd om te worden geleverd in de haven van .....' ;

   (b) In the case of a delivery 'to the port of unloading' or 'free at destination' :

   — 'For export as food aid (Regulation (EEC) No .../77)' ;

   — 'Bestemt til udførsel som fødevarehjælop (forordning (EØF) nr. .../77)' ;

   — 'Als Nahrungsmittelhilfe auszuführen (Verordnung (EWG) Nr. .../77)' ;

   — 'Destiné à être exporté au titre de l'aide alimentaire (règlement (CEE) nº .../77)' ;

   — 'Destinato ad essere esportato a titolo di aiuto alimentare (regolamento (CEE) n. .../77)' ;

   — 'Bestemd om te worden uitgevoerd als voedselhulp (Verordening (EEG) nr. .../77)'.

   Section 106 shall contain the number of the certificate referred to in paragraph 3.

5. As regards the use of the control copy, Articles 8 and 14 of Regulation (EEC) No 1687/76 shall apply *mutatis mutandis*.

6. In the case of deliveries 'to the port of shipment', control shall be deemed to have been completed, without prejudice to Article 20 (1), when the competent customs authority or, when there has been no control, another appointed authority has received a copy of the take-over certificate referred to in Article 4 (2). This copy shall be kept by the authority concerned.

Article 20

1. In the case of a delivery 'to the port of shipment', the Member State in which the port of shipment is situated shall take all necessary measures to check whether the goods taken over by the recipient leave the geographical territory of the Community by that port of shipment.

2. If the goods are not exported within three months from the day on which the take-over certificate referred to in Article 4 (2) was issued by the recipient, the Member State concerned shall inform the Commission thereof giving any available information as to the reasons therefor.

TITLE VI

Conditions for the payment and release of securities

Article 21

1. The amount agreed with the intervention agency for the delivery shall be paid only on production of the following documents :

(a) the original of the take-over certificate referred to in Article 4 (2) drawn up by the recipient's agent ;

(b) if appropriate, the certificate referred to in Article 8 (1) or 11 (1) ;

(c) in the case of goods from intervention stocks or goods manufactured therefrom, the proof referred to in Article 12 of Regulation (EEC) No 1687/76 ;

(d) in the case of goods other than those referred to under (c), the control copy referred to in Article 19 (2) to (5) or, if the destination has been checked only by the authorities of a single Member State, the documents laid down by that Member State.

2. If, in the case of delivery 'to the port of unloading' or 'free at destination' of skimmed-milk powder or butteroil purchased on the Community market, owing to circumstances beyond the control of the successful tenderer, the time limit set for delivery has to be extended or if the submission of the take-over certificate referred to in paragraph 1 (a) is delayed, the competent agency may, on production of the supporting documents referred to in paragraph 1 (b) and (d), make a payment on account.

If, in the case of delivery 'to the port of shipment' of skimmed-milk powder or butteroil purchased on the Community market, the circumstances referred to in the first subparagraph occur, the competent agency, with the prior permission of the Commission, may also make a payment on account.

However, such payment on account may not exceed 90 % of the sum agreed for the delivery and shall only be paid if the successful tenderer lodges a security under the terms of Article 15 (2), equal to 10 % of the payment on account.

3. In the case of delivery of butteroil manufactured from butter from intervention stocks, the competent authority of the Member State of sale shall, on presentation of the supporting documents referred to in paragraph 1, annul the obligation of the successful tenderer to pay pursuant to Article 10 (2) (a) the purchase price for the butter delivered, up to the amount indicated in the tender or in the contract under the direct award, and shall pay to the successful tenderer the difference between the two amounts within 15 days from the presentation of the supporting documents, if such difference represents a credit to the successful tenderer.

Article 22

1. At the request of the Commission, if it subsequently designates a port of shipment or unloading or a destination other than that originally scheduled, and in agreement with the successful tenderer, the competent intervention agency may cause the products to be delivered to the new port or destination designated.

In such a case the competent intervention agency shall agree with the successful tenderer the reduction or increase in the costs as originally established.

The intervention agency shall immediately notify the Commission of the new amounts of costs agreed.

2. If the successful tenderer, for reasons of *force majeure*, has to bear exceptional costs which cannot be covered by insurance, it may receive compensation therefor on production of supporting documents and with the prior agreement of the Commission.

Article 23

Except in case of *force majeure*, the successful tenderer shall bear any financial consequences for the Community by reason of non-delivery of the goods to the place and at the time appointed, provided that the recipient allowed delivery to be effected to such place and at such time.

Any costs resulting from non-delivery of the goods as a result of *force majeure* shall be assumed by the competent agency of the Member State concerned and shall be borne by the Community.

Article 24

1. Except in case of *force majeure*, the tendering security referred to in Article 15 shall be released only where :

(a) the tenderer did not withdraw his tender before the tender was awarded and where :

— in the cases referred to in Article 15 (1) (a) and (c), the security for delivery provided for in Article 7 (1) or 10 (1) has been lodged,

— in the cases referred to in Article 15 (1) (b) and (d), the supporting documents referred to in Article 21 (1) have been forwarded to the intervention agency;

(b) the tender was not accepted.

2. Except in case of *force majeure*, the securities for delivery provided for in Articles 7 (1) and 10 (1) shall be released only where the supporting documents referred to in Article 21 (1) have been forwarded to the intervention agency.

3. In the case of deliveries 'to the port of shipment' or 'free at destination' of goods from intervention stocks or goods manufactured therefrom, the supporting document referred to in Article 21 (1) (a) may be replaced, for the purpose of the release of the securities referred to in paragraph 2, by a copy of the insurance contract referred to in Article 3 containing the clause provided for in Article 7 (4) or 10 (4), as appropriate.

4. Except in case of *force majeure*, the security provided for in the third subparagraph of Article 21 (2) shall be released only on production of the certificate referred to in Article 21 (1) (a).

5. All securities shall be released as soon as the requisite supporting documents have been produced.

6. Except in case of *force majeure*, if the necessary supporting documents are not produced within six months from the last day of the delivery period, the security concerned shall be forfeited.

Article 25

1. In case of *force majeure* occurring during the period of control referred to in Article 8 (3) of 11 (3), as appropriate, Article 11 of Regulation (EEC) No 1687/76 shall apply as in the case of goods from intervention stocks or goods manufactured therefrom.

2. In any other case of *force majeure*, the intervention agency concerned shall take the measures which it considers necessary in the light of the circumstances invoked.

TITLE VII

Final provisions

Article 26

No refund or monetary or accession compensatory amount shall be applied to the goods supplied pursuant to this Regulation.

Article 27

1. Regulations (EEC) No 1365/74, (EEC) No 2121/74, (EEC) No 2557/74, (EEC) No 597/75, (EEC) No 750/75, (EEC) No 1221/75, (EEC) No 2247/75 and (EEC) No 2660/75 are hereby repealed.

However, they shall continue to apply to deliveries in respect of which there is provision for their application in individual Regulations concerning the delivery of food aid.

2. The Annex to Regulation (EEC) No 1687/76 is hereby amended in accordance with Annex III hereto.

Article 28

This Regulation shall enter into force on 1 April 1977.

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

Done at Brussels, 14 February 1977.

For the Commission

Finn GUNDELACH

Vice-President

ANNEX I

DELIVERY STAGES AND ARRANGEMENTS

I. Delivery to the port of shipment

1. Delivery shall be deemed to have taken place and the risks shall pass from the successful tenderer to the recipient at the moment when the products are deposited at the port of shipment designated for the delivery, at the berth indicated by the recipient or his agent. Costs beyond such delivery shall be borne by the recipient in accordance with Article 3.

2. The successful tenderer shall effect delivery on a date within the period fixed therefor. The recipient shall determine the delivery schedule with him.

3. Where the recipient is unable to take delivery of the goods on the date referred to in paragraph 2, his agent shall notify the successful tenderer without delay.

   In that case, the successful tenderer and the agent of the recipient may agree a new date for the start of the delivery and, if necessary, a new schedule. In any event, the costs resulting from the delay shall, except in case of *force majeure*, be borne by the recipient.

II. Delivery to the port of unloading, ship's hold

1. Delivery shall be deemed to have taken place and the risks shall pass from the successful tenderer to the recipient at the moment when the latter's agent actually takes possession of the goods in the ship's hold at the port of unloading.

   The recipient shall bear all the costs incurred subsequent to delivery, including unloading costs (e.g. breaking bulk, hoisting, reception) as well as lighterage.

2. Any demurrage cost or dispatch money at the port of unloading shall respectively be charged or payable to the recipient.

   The rates thereof and the rules relating thereto, laid down in the contract between the successful tenderer and the carrier, must be agreed between the successful tenderer and the receiving agent of the recipient.

III. Delivery to the port of unloading, deposit on quay or on lighter

1. Delivery shall be deemed to have taken place and the risks shall pass from the successful tenderer to the recipient at the moment when the products are actually deposited on the quay at the port of unloading or, where appropriate, on the lighter.

   The recipient shall bear all the costs incurred subsequent to delivery, including reception costs and lighterage.

2. Any demurrage costs or dispatch money at the port of unloading shall respectively be charged or payable to the recipient.

   The rates thereof and the rules thereto, laid down in the contract between the successful tenderers and the carrier, must be agreed between the successful tenderer and the receiving agent of the recipient.

IV. Delivery 'free at destination'

Delivery shall be deemed to have taken place and the risks shall pass from the successful tenderer to the recipient at the moment when the products actually arrive at the place of destination fixed for the delivery.

The recipient shall bear all the costs incurred subsequent to delivery, including reception costs and any transhipment costs.

ANNEX II

I. Quality requirements for butteroil

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

Composition characteristics :

moisture content and non-milk fat constituents : maximum 0·2 %,

fats : minimum 99·8 %,

free fatty acids : maximum 0·5 % (oleic acid),

amount of peroxide/kg : maximum one unit (in milliequivalents of activated oxygen per kg),

flavour : fresh,

smell : absence of smells unconnected with butteroil.

The use of neutralizing agents is not permitted.

For certain deliveries, special requirements may be specified.

II. Packaging of butteroil

1. The butteroil is to be packed in metal canisters completely filled and hermetically sealed in an atmosphere of nitrogen.

   The metal canisters are to be packed in cartons containing :

   — either four five-kilogramm canisters, or

   — one 20-kilogram canister.

   The complete packaging should be strong enough to withstand a long sea journey and transportation by land in a tropical climate.

Closed cartons, as prepared for delivery, containing either one 20-kilogram metal canister or four five-kilogram canisters 95 % full of water, must be able to resist :

(a) three falls from a height of one metre on three different edges relating to different axes ; this test, for which five complete packages are to be used, must be effected in accordance with ISO standard No 2248. After the tests :

   — the metal canisters may be crushed out of shape but no leakage must occur after elimination of the vacuum ;

   — the cartons may be damaged and show small tears in the seams and sealed flaps but seams must not be completely torn and flaps must not have come unstuck or be torn off ;

   — the damage must not be such as to endanger the safe transport of the canister(s) in the carton ;

(b) a compression test in accordance with ISO standards No 2872 and No 2874. For this test, each complete packaging is placed separately, in the normal transportation position, between the plates of the press ;

   During the test, the relative speed of the plates is 10 mm/minute. After application of a pressure of 3 500 kg/m^2 over the base area, the entire packaging (metal canisters and carton) may get slightly out of shape but must keep its entirety. Five complete packagings must be tested.

   Before the tests the complete, filled packagings are subjected to the following treatment in accordance with ISO standard No 2233 : storage for 48 hours at 25 °C with a relative humidity of 90 %.

2. The conformity of the packaging with the standards defined above must have been verified by a testing agency approved by the Member State concerned, which shall issue the appropriate certificate and test report together with a description of the technical characteristics of the packaging material.

   The certificate provided for above shall only be valid for a period of six months. Before the expiry thereof the type of packaging used must undergo a new verification, and a new certificate valid for six months must be issued.

3. Markings on the packaging

The metal canister shall have stamped upon it the following information in the language or languages specified in the notice of invitation to tender :

(a) the description : 'Butteroil' ;

(b) the words : 'Gift of the European Economic Community' (to be completed as appropriate for each individual delivery) ;

(c) the net weight ;

(d) the month and year of manufacture ;

(e) the processing undertaking — in code.

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

ANNEX III

AMENDMENTS TO THE ANNEX TO REGULATION (EEC) No 1687/76

1. In 'I. Products to be exported in the same state as that in which they were when removed from intervention stock' add after paragraph 9 the following paragraph 10 and the footnote ([10]):

'10. Commission Regulation (EEC) No 303/77 of 14 February 1977 on general rules for the supply of skimmed-milk powder and butteroil as food aid ([10]).

([10]) OJ No L 43, 15. 2. 1977, p. 1.'.

2. In 'II. Products subject to a use and/or destination other than that mentioned under I'.

A. delete paragraph 8 and the corresponding footnote; these provisions shall, however, continue to apply to deliveries for which there is provision in individual Regulations for the application of Regulation (EEC) No 2247/75,

B. add after paragraph 13 the following paragraph 14 and the corresponding footnote ([5]):

'14. Commission Regulation (EEC) No 303/77 of 14 February 1977 on general rules for the supply of skimmed-milk powder and butteroil as food aid ([5]):

(a) on the release of butter for processing into butteroil:

— Section 104: 'for processing and subsequent delivery as food aid (Regulation (EEC) No .../77)',

'til forarbejdning og efterfølgende levering som fødevarehjælp (forordning (EØF) nr. .../77)';

'zur Verarbeitung und anschließenden Lieferung im Rahmen der Nahrungsmittelhilfe (Verordnung (EWG) Nr. .../77)',

'destiné à la transformation et à livraison ultérieure au titre de l'aide alimentaire (règlement (CEE) n° .../77)',

'destinato alla trasformazione e successivamente alla fornitura a titolo di aiuto alimentare (regolamento (CEE) n. .../77)',

'bestemd om te worden verwerkt en vervolgens als voedselhulp te worden geleverd (Verordening (EEG) nr. .../77)';

(b) on the dispatch of butteroil 'to the port of unloading' or 'free at destination':

— Section 104: 'For export as food aid (Regulation (EEC) No .../77)',

'Bestemt til udførsel som fødevarehjælp (forordning (EØF) nr. .../77)',

'Als Nahrungsmittelhilfe auszuführen (Verordnung (EWG) Nr. .../77)',

'Destiné à être exporté au titre de l'aide alimentaire (règlement (CEE) n° .../77)',

'Destinato ad essere esportato a titolo di aiuto alimentare (regolamento (CEE) n. .../77)',

'Bestemd om te worden uitgevoerd als voedselhulp (Verordening (EEG) nr. .../77)';

— Section 106: The weight of butter used to produce the quantity of butteroil indicated in Section 103.

(c) on the dispatch of skimmed-milk powder or butteroil 'to the port of shipment':

— Section 104: 'Food aid (Regulation (EEC) No .../77) to be delivered to the port of .....',

'Fødevarehjælp (forordning (EØF) nr. .../77), bestemt til levering i havnen i .....',

'Nahrungsmittelhilfe (Verordnung (EWG) Nr. .../77), zur Lieferung zum Hafen von ..... bestimmt',

'Aide alimentaire (règlement (CEE) nº .../77) destinée à être livrée au port de .....',

'Aiuto alimentare (regolamento (CEE) n. .../77), destinato ad essere consegnato nel porto di .....',

'Voedselhulp (Verordening (EEG) nr. .../77), bestemd om te worden geleverd in de haven van .....'.

— Section 106 : Where appropriate the weight of butter used to produce the quantity of butteroil indicated in Section 103.

(5) OJ No L 43, 15. 2. 1977, p. 1.'.