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REGULATION (EEC) No 394/70 OF THE COMMISSION

of 2 March 1960

on detailed rules for granting export refunds on sugar

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community;

Having regard to Council Regulation No 1009/67/EEC[1] of 18 December 1967 on the common organisation of the market in sugar, as last amended by Regulation (EEC) No 2485/69,[2] and in particular Article 17 (4) thereof;

Whereas in addition to its general provisions Council Regulation (EEC) No 766/68[3] of 18 June 1968 laying down general rules for granting export refunds on sugar, as last amended by Regulation (EEC) No 2488/69,[4] provides for the possibility of inviting tenders to determine the amount of the refund; whereas detailed rules for the application of that Regulation were laid down by Commission Regulation (EEC) No 839/68[5] of 28 June 1968 on detailed rules concerning export refunds on sugar, as last amended by Regulation (EEC) No 1965/69[6]; whereas Regulation (EEC) No 839/68 has already been amended several times and whereas further amendments are now necessary; whereas in the interests of clarity, detailed rules for granting export refunds on sugar should therefore be regrouped in a new Regulation;

Whereas, to ensure equal treatment for all interested parties in the Community, invitations to tender organised by Member States should conform to uniform principles;

Whereas, if they are to be accessible to all parties concerned, invitations to tender must be published; whereas in all Member States the largest possible number of interested parties can be contacted if, in addition to publication at national level, provision is also made for the publication of each invitation to tender in the *Official Journal of the European Communities;*

Whereas, to facilitate exportation, provision should be made for the possibility of standing invitations to tender under which partial invitations to tender would be issued, thus obviating the need to await specific Community measures;

Whereas it would be in line with the purpose of the invitation to tender to admit only those tenders which contain the information necessary for them to be assessed, and which, by virtue of their submission, entail the acceptance of certain obligations ensuring that an export licence will be applied for in respect of the quantity of products for which the tender is accepted;

Whereas, since the purpose of the invitation is to determine the amount of the refund, the award must be made to the tenderer who indicates the lowest refund; whereas, where a maximum tonnage is fixed, it is also necessary to provide for apportioning that tonnage on the basis of the refunds indicated in the tenders concerned; whereas, in such a case, the tenderer should not however be obliged to abide by his tender if he is awarded a tonnage which is less than the tonnage indicated by him in his tender;

Whereas, in view of the frequent fluctuations in sugar prices and given normal practice in the international sugar trade, it is particularly important that successful tenderers should be promptly notified; whereas, for the same reasons, the tenderer should be free to make the validity of his tender conditional upon the maximum amount of the refund being fixed at a given time; whereas it is essential, so as not to distort competition between tenderers, that Member States should examine tenders in private session;

Whereas, in certain market situations, the economic aspects of proposed exports might make it preferable

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[1] OJ No 308, 18.12.1967, p. 1.
[2] OJ No L 314, 15.12.1969, p. 6.
[3] OJ No L 143, 25.6.1968, p. 6.
[4] OJ No L 314, 15.12.1959, p. 12.
[5] OJ No L 151, 30.6.1968, p. 47.
[6] OJ No L 250, 4.10.1969, p. 24.

to discontinue the invitation to tender rather than fix a maximum amount of the refund;

Whereas refunds are generally fixed by one type of legally binding instrument for all products of a given category; whereas, however, it would be appropriate in certain cases for refunds to be fixed by legally binding instruments of different kinds;

Whereas candy sugar manufactured from white sugar or from refined raw sugar often has a degree of polarisation of less than 99·5°; whereas, in view of the high degree of purity of the raw material used, provision should be made for granting a refund on candy sugar which should be as close as possible to the refund on white sugar; whereas there is a need for a precise definition of candy sugar;

Whereas there is a need for a more precise definition of the spot price which may lead to the basic amount of the refund referred to in Article 7 of Regulation (EEC) No 766/68 being altered between monthly fixings;

Whereas to ensure equal treatment for all interested parties in the Community it is necessary to define a standard method for determining the sucrose content of certain products; whereas special provision must be made to deal with cases in which that method does not make it possible to determine total sucrose content;

Whereas, in the case of syrups with a relatively low degree of purity, the sucrose content referred to in Article 8 (1) of Regulation (EEC) No 766/68 should be fixed at a flat rate on the basis of the extractable sugar content; whereas, in the case of syrups with a particularly low degree of purity, it is justifiable to invoke the provisions of Article 7 (5) of Regulation (EEC) No 766/68 and to grant no refund;

Whereas, by reason of the amendments made to the detailed rules hitherto applicable, Commission Regulation (EEC) No 1965/69[1] of 3 October 1969 on a standing invitation to tender to determine the export refund on white sugar, as amended by Regulation (EEC) No 2444/69[2] and Commission Regulation (EEC) No 224/70[3] of 5 February 1970 on a standing invitation to tender to determine the export refund on raw beet sugar should be adapted;

Whereas the measures provided for in this Regulation are in accordance with the Opinion of the Management Committee for Sugar;

[1] OJ No L 250, 4.10.1969, p. 24.
[2] OJ No L 310, 11.12.1969, p. 13.
[3] OJ No L 29, 6.2.1970, p. 27.

HAS ADOPTED THIS REGULATION:

TITLE I

Tendering procedure

Article 1

1. Each Member State shall draw up an invitation to tender. The invitation shall be published in the *Official Journal of the European Communities*. The Member State may also publish the invitation to tender, or have it published, elsewhere.

2. The invitation shall be published in the *Official Journal of the European Communities* at least ten days before the time limit for the submission of tenders expires. Special invitations to tender shall be published not later than one month after the legally binding Community instrument providing for the invitation to tender enters into force.

3. The invitation to tender shall indicate the terms of the invitation, including the period for which export licences will be valid for the invitation concerned and, where appropriate, the maximum amount of the refund and the maximum tonnage of the product in question.

Article 2

1. If the situation on the sugar market in the Community so requires, a standing invitation to tender may be opened. During the period of validity of the standing invitation to tender, partial invitations shall be issued.

2. The standing invitation to tender shall be published only for the purpose of opening it. The invitation as published may be amended or replaced during the period of validity of the standing invitation to tender. It shall be amended or replaced if the terms of the invitation to tender are changed during that period of validity.

3. In the case of a standing invitation to tender, the provisions of the following Articles shall apply to all partial invitations to tender.

Article 3

1. Tenderers shall either lodge a tender in writing, against a receipt, with the competent authority appointed by the Member State in question, or address the tender to that authority by registered letter, telex or telegram.

2. The tender shall indicate:

(a) the invitation to which the tender relates;

(b) the name and address of the tenderer;

(c) the nature and quantity of the product to be exported; in the case of raw sugar, the quantity to be exported shall be expressed as a quantity of standard quality raw sugar;

(d) the amount of the refund proposed per 100 kilogrammes.

Tenderers may be required to furnish additional information.

3. A tender shall be valid only if:

(a) proof is furnished before the time limit for the submission of tenders expires that the tenderer has lodged the deposit required for the invitation to tender;

(b) it includes a declaration by the tenderer that, if his tender is successful, he will apply for an export licence, and lodge the deposit required in this connection, in respect of any quantity of product to be exported awarded to him.

4. A tender may stipulate that it may be treated as submitted only if:

(a) the maximum amount of the refund is decided upon on the day on which the time limit for the submission of tenders expires;

(b) the award relates to all or a specified part of the quantity indicated in the tender.

5. A tender which is not submitted in accordance with the provisions of this Article, or which contains terms other than those indicated in the invitation to tender, shall not be taken into consideration.

6. Once a tender has been submitted it may not be withdrawn.

Article 4

1. The deposit required for the invitation to tender shall be:

(a) 1·00 units of account per 100 kilogrammes of white or raw sugar;

(b) 0·20 units of account per 100 kilogrammes of molasses.

2. The tenderer may lodge the deposit either in cash or in the form of a guarantee by an establishment complying with criteria laid down by each Member State.

Each Member State shall notify the Commission of the criteria referred to in the preceding paragraph and the Commission shall in turn inform the other Member States.

Article 5

Tenders shall be examined in private session by the competent authorities of the Member States. Persons present at the examination shall be sworn to secrecy.

Article 6

1. A decision may be taken to discontinue the invitation to tender or a given partial invitation to tender.

2. Except where the provisions of paragraph 1 apply and without prejudice to the provisions of paragraphs 3 and 4, the award shall be made to any tenderer whose tender does not exceed the maximum amount of the refund.

3. Where a maximum tonnage has been fixed for the invitation to tender the award shall be made to the tenderer whose tender contains the lowest refund. If the maximum tonnage is not completely accounted for by that tender awards shall be made to the tenderers whose tenders contain the next lowest refunds until the tonnage has been accounted for.

4. However, where the procedure provided for in paragraph 3 would lead to the maximum tonnage being exceeded by virtue of a tender being taken into consideration, the award shall be made to the tenderer in question only in respect of the quantity which would allow the maximum quantity to be accounted for.

Tenders which contain the same refund and which would lead to the maximum tonnage being exceeded if the aggregate tonnage they represent were accepted shall be considered in proportion to the quantity indicated in each tender.

Article 7

1. An award shall:

(a) confer the right to the issue, in respect of the quantity awarded, of an export licence showing the refund specified in the tender;

(b) entail the obligation to apply for an export licence in respect of that quantity.

2. Rights and obligations arising from awards shall not be transferable. Rights shall be exercised and obligations shall be fulfilled within eighteen days after the time limit for the submission of tenders has expired.

Article 8

1. The competent authority of the Member State concerned shall immediately notify all tenderers of the outcome of their participation in the invitation to tender. That authority shall also send a statement of the award to the successful tenderers.

2. Statements of awards shall at least indicate:

(a) the invitation to which the tender relates;

(b) the quantity awarded;

(c) the refund to be granted per 100 kilogrammes in respect of the quantity referred to in (b).

Article 9

1. Except in cases of *force majeure,* the deposit required for the invitation to tender shall only be released in respect of the quantity:

(a) for which the tenderer:

— has not withdrawn his tender; and

— has, within the time limit laid down and following compliance with terms stipulated, applied for an export licence as the result of the award; or

(b) for which the tender has not been pursued.

The deposit shall be released immediately.

In the cases of *force majeure,* the competent authority of the Member State concerned shall determine the measures necessary in view of the circumstances invoked.

TITLE II

General provisions

Article 10

In special cases the amount of the refund may be fixed by legally binding Community instruments of different kinds.

Article 11

For the purposes of applying Article 17 of Regulation No 1009/67/EEC, candy sugar means sugar which:

(a) is made up of crystals of at least 5 millimetres in length, obtained by the slow cooling and crystallisation of a sufficiently concentrated sugar solution; and

(b) contains, in the dry state, 96% or more by weight of sucrose, determined by the polarimetric method.

Article 12

The spot price referred to at the beginning of the first subparagraph of Article 7 (4) of Regulation (EEC) No 766/68 shall be the latest known to the Commission.

Article 13

1. For the purposes of applying the provisions of paragraph 1 of Article 8 of Regulation (EEC) No 766/68, and without prejudice to the provisions of paragraphs 2 and 3, the sucrose content including where appropriate other sugars expressed as sucrose, shall be the total sugar content resulting from the application of the Lane and Eynon method (copper reduction method) to the solution inverted according to Clerget-Herzfeld. The total sugar content determined in this manner shall be expressed as sucrose by multiplying by 0·95.

2. In the case of syrups which are 85% or more but less than 94·5% pure, the sucrose content including where appropriate other sugars expressed as sucrose shall be fixed at a flat rate of 73% by weight in the dry state. The percentage purity of the syrups shall be calculated by dividing total sugar content by dry matter content and multiplying the result by one hundred. Total sugar content shall be determined in accordance with the method referred to in paragraph 1 and the dry matter content according to the areometric method.

3. In the case of caramel obtained exclusively from sugar falling within heading No 17.01 B of the Common Customs Tariff, the sucrose content including where appropriate other sugars expressed as sucrose, shall be determined on the basis of dry matter content. Dry matter content shall be determined on the basis of the density of the solution diluted in a ratio of 1:1 by weight. The result of the determination of dry matter content shall be expressed as sucrose by multiplying it by 1.

However, if the caramel in question was manufactured under customs control or was subjected to an administrative inspection offering equivalent guarantees, the sucrose actually used, including where appropriate other sugars expressed as sucrose, may, on request, be determined and taken into account.

4. The basic amount referred to in Article 7 (1) of Regulation (EEC) No 766/68 shall not apply to syrups which are less than 85% pure.

Article 14

1. Regulation (EEC) No 839/68 is hereby repealed.

2. Regulation (EEC) No 839/68 shall, however, continue to apply to tenders and, in the case of standing invitations to tender, to partial invitations to tender issued during the period of validity of that Regulation.

3. In Article 2 of Regulations (EEC) Nos 1965/69 and 224/70 'Regulation (EEC) No 394/70' shall be substituted for 'Regulation (EEC) No 839/68'.

Article 15

This Regulation shall enter into force on 5 March 1970.

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

Done at Brussels, 2 March 1970.

For the Commission

The President

Jean REY