REGULATION (EEC) No 3389/73 OF THE COMMISSION

of 13 December 1973

laying down the procedure and conditions for the sale of tobacco held by intervention agencies

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community;

Having regard to Council Regulation (EEC) No 727/70 [1] of 21 April 1970 on the common organization of the market in raw tobacco, as last amended by the Act [2] concerning the Conditions of Accession and the Adjustments to the Treaties, and in particular Articles 7 (4) and 15 thereof;

Whereas Article 3 of Council Regulation (EEC) No 327/71 [3] of 15 February 1971 laying down certain general rules relating to contracts for first processing and market preparation, to storage contracts and to the disposal of tobacco held by intervention agencies provides that such tobacco is to be sold on price terms determined on the basis of norm prices and premiums, of the costs of first processing and market preparation, and of market trends and demand;

Whereas, since tobacco is not by nature a homogeneous product, it should be put up for sale in complete lots made up by the intervention agency concerned;

Whereas the invitations to tender and sales by auction required to enable intervention agencies to dispose of the stocks held by them should not, however, interfere with the normal marketing arrangements provided for in Articles 3 and 4 of Regulation (EEC) No 727/70; whereas each proposed remarketing operation must therefore be subject to examination at Community level, in particular as regards the minimum selling price;

Whereas the contract should be awarded to the tenderer offering the most favourable terms;

Whereas all tenderers should be required to give security for performance of the obligations arising out of their participation in the invitation to tender; whereas, in the case of an invitation to tender with a view to exportation, the purpose of the security should also be to guarantee that the tobacco purchased is actually exported from the Community; whereas purchasers of tobacco at sales by public auctions should also be required to give such security;

Whereas, to take account of administrative facilities currently existing in the Member States, it should be provided that the customs formalities on exportation are to be carried out in the Member State where the contracts are awarded;

Whereas the tobacco remarketed should be described by reference to the list of varieties of packaged tobacco classified by quality given in Annex II to Regulation (EEC) No 1727/70 [4] of 25 August 1970 on intervention procedure for raw tobacco; as last amended by Regulation (EEC) No 715/73 [5];

Whereas a successful tenderer may, for reasons of *force majeure* find himself in a position where he is unable to fulfil his obligations; whereas measures should be laid down to prevent such person suffering unfair loss; whereas, to ensure that such measures are applied uniformly and in conformity with the Community notion of *force majeure* as defined in Judgments Nos 4/68 [6] and 11/70 [7] of the Court of Justice of the European Communities, the Commission must be informed of each case of *force majeure* accepted as such by Member States;

Whereas the measures provided for in this Regulation are in accordance with the Opinion of the Management Committee for Raw Tobacco,

HAS ADOPTED THIS REGULATION:

Article 1

1. Baled tobacco held by intervention agencies shall be remarketed by invitation to tender or by sale by public auction.

2. 'Invitation to tender' means a procedure whereby all prospective buyers are invited to submit offers and the contract is awarded to the person making the best offer being on offer in accordance with this Regulation.

3. For the purposes of this Regulation, 'public auction' means public proceedings open to all prospective buyers in the course of which the products

(1) OJ No L 94, 28. 4. 1970, p. 1.
(2) OJ No L 73, 27. 3. 1972, p. 5.
(3) OJ No L 39, 17. 2. 1971, p. 3.
(4) OJ No L 191, 27. 8. 1970, p. 5.
(5) OJ No L 68, 15. 3. 1973, p. 16.
(6) Receuil (1968), 549.
(7) Recueil (1970), 1125.

concerned, having been previously placed on display, are sold to the person making the highest offer in excess of a specified minimum starting price.

4. Invitations to tender, and the dates, times, places and terms and conditions for sales by public auction, shall be published in such a way as to secure the widest possible publicity, and shall in particular be published in the *Official Journal of the European Communities.*

Article 2

The Commission shall be responsible for deciding, on the basis of all the information at its disposal, when and if any invitation to tender or sale by public auction, for the purposes of sale on the Community market or for export, should be arranged. For this purpose the Member States shall communicate to the Commission full particulars of the varieties, qualities, quantities and storage depots concerned, together with all other data relevant to the issue of an invitation to tender.

The Member States concerned may, in respect of a specified quantity of tobacco, request the Commission to issue an invitation to tender or to arrange for its sale by public auction. In such a case, the Commission shall give a ruling on the request within ten days following its receipt thereof.

Article 3

1. Invitations to tender shall be published in the *Official Journal of the European Communities* not less than sixty days before the closing date for the submission of the tenders.

2. Tenders shall relate to specific, indivisible lots of baled tobacco, which shall be made up from the lots in store, by the intervention agency in the manner most suitable for their commercial distribution, either by presenting them as they were when bought in or by splitting or rearranging them.

3. The tobacco offered for sale shall be described by reference to the classification of baled tobacco set out in Annex II to Regulation (EEC) No 1727/70. The quantity in each lot shall be given in terms of its net weight as determined in accordance with Article 6 (1) of the said Regulation. The intervention agencies shall supply all necessary information as to the characteristics of the various lots.

4. Intervention agencies shall make all necessary arrangements to enable prospective buyers, before submitting their tenders, to examine, on conditions set out in the notice of invitation to tender, samples of the tobacco to be sold.

5. Prospective buyers may obtain samples of the tobacco to be sold on payment of an amount equal to the derived intervention price.

Article 4

1. Tenders shall be submitted by registered letter addressed to the Commission, which shall give an acknowledgment of receipt.

2. Tenders shall indicate :

(a) the name and address of the person submitting the tender ;

(b) the lot tendered for and the price offered per kilogramme of net weight in the currency of the Member State in which the sale by tender is taking place.

3. Tenders shall be valid only of accompanied by proof that the security referred to in Article 5 has been duly constituted.

4. Tenders may not be withdrawn.

5. A list of the tenders received, on which the names of tenderers shall not be disclosed, shall be sent by the Commission to the Member States.

Article 5

1. Every tenderer shall provide the intervention agency concerned with security in an amount of 0·28 unit of account per kilogramme of raw tobacco.

2. Such security shall be given in the form of a guarantee from an establishment which meets criteria laid down by the Member State in which it is situated.

The Member States shall notify the Commission of the types of establishment empowered to give guarantees, and of the criteria referred to in the preceding subparagraph.

Article 6

1. Within fifteen days following the closing date for submission of tenders, a decision shall be taken, on the basis of the tenders received and under the procedure laid down in Article 17 of Regulation (EEC) No 727/70, either fixing a minimum selling price for each lot or awarding no contract.

2. Minimum prices 'free loaded for dispatch' shall be fixed, by reference *inter alia* to the norm price, the premium and the costs of first processing and market preparation of the tobacco in question, and to the market situation, at a level such as not to hinder the distribution of such tobacco through normal commercial channels.

3. A successful tenderer shall be designated for each lot in accordance with the procedure referred to in paragraph 1. Should two or more offers be made at identical prices and on identical terms, the contract shall be awarded by drawing lots.

4. In no case may the tobacco purchased be resold to the intervention agencies.

5. Every tenderer shall be informed forthwith of the result of his tender.

Article 7

Save in cases of *force majeure*, the security referred to in Article 5 may be released only if :

(a) the tender was not validly submitted ;

(b) the tender was unsuccessful ;

(c) the successful tenderer has paid the price at which the contract was awarded, and, in the case of an invitation to tender with a view to exportation, has furnished proof, in the same manner as required for export refunds, that the tobacco has actually been exported. Customs formalities in connection with the exportation shall be completed in the Member State in which the tobacco is sold.

Article 8

1. Notices of sale by public auction shall be published in the *Official Journal of the European Communities* not less than sixty days before the date set for the sale.

2. Not later than one working day before the date set for the sale, there shall be fixed, in accordance with Article 6 (2) and under the procedure provided for in Article 17 of Regulation (EEC) No 727/70, a minimum selling price for each lot.

3. The provisions of Article 3 (2) to (5) shall apply *mutatis mutandis*.

4. In the case of sales by public auction for the purpose of exportation, the purchaser shall give security in accordance with Article 5. The security may be given either in the form stipulated in paragraph 2 of the said Article or by a cheque drawn on a bank or in cash. Release of the security shall be governed *mutatis mutandis* by the provisions of Article 7 (c).

5. The Member State concerned shall inform the Commission of the outcome of each sale.

6. In no case may the tobacco purchased be resold to the intervention agencies.

Article 9

If, save in cases of *force majeure*, the tobacco is removed more than thirty days after the date of publication of the outcome of the invitation to tender in the *Official Journal of the European Communities*, the price to be paid by the successful tenderer shall be increased by an amount calculated in accordance with Article 4 (1) (g) of Regulation No 1697/71 [1].

Article 10

The Member States shall notify the Commission of each case of *force majeure* accepted as such by them for the purposes of Articles 7 and 9.

Article 11

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, 13 December 1973.

For the Commission

The President

François-Xavier ORTOLI

(1) OJ No L 175, 4. 8. 1971, p. 8.