REGULATION (EEC) No 3062/74 OF THE COMMISSION

of 3 December 1974

on a standing invitation to tender to determine subsidies for imports of white and raw 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 organization of the market in sugar, as last amended by Regulation (EEC) No 2476/74 [2], and in particular Articles 11 (2), 16 (5) and 38 thereof;

Having regard to Regulation (EEC) No 608/72 [3] of 23 March 1972 laying down rules to be applied in cases of considerable rises in the prices of sugar on the world market, and in particular Article 3 thereof;

Having regard to Council Regulation (EEC) No 974/71 [4] of 12 May 1971 on certain measures of conjunctural policy to be taken in agriculture following the temporary widening of the margins of fluctuation in the currencies of certain Member States, as last amended by Regulation (EEC) No 2497/74 [5], and in particular Article 6 thereof;

Whereas the decision to subsidise imports of 200 000 metric tons of sugar, together with the terms of the import procedure, were announced in Council Regulation (EEC) No 2931/74 [6] of 18 November 1974 on the introduction of a subsidy for imports of white and raw sugar; whereas the procedure will be one of tendering, in which the tenderer will be authorized to export from the start of the processing of the 1975 beet harvest a quantity of sugar corresponding to that imported under the said tendering procedure;

Whereas, having regard to the price levels of sugar on the world market and to the situation in respect of the Community's sugar supplies, it is appropriate to provide certain measures of a technical nature to ensure that the tendering system operates as effectively as possible; whereas, for the same reasons, it is appropriate to provide for derogations from, or adaptations of Commission Regulation (EEC) No 2637/70 [7] of 23 December 1970 on detailed rules for applying the system of import licences and export licences and of prefixation for agricultural products, as last amended by Regulation (EEC) No 2858/74 [8];

Whereas, having regard in particular to the fact that this tendering system concerns both imports of sugar from, and subsequent exports of corresponding quantities of sugar to third countries it would not be appropriate to apply monetary compensatory amounts to the said system;

Whereas the Opinion of the Finance Committee has been sought;

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

HAS ADOPTED THIS REGULATION:

Article 1

The Member States shall issue a standing invitation to tender in respect of subsidies for imports from third countries of white and raw sugar, and during the period of validity of the standing invitation to tender they shall issue partial invitations to tender.

Article 2

The standing invitation to tender and the partial invitations to tender shall be issued in accordance with the provisions of Regulation (EEC) No 2931/74 and the provisions of this Regulation.

Article 3

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

2. The invitation to tender shall indicate in particular the terms of the invitation.

(1) OJ No 308, 18. 12. 1967, p. 1.
(2) OJ No L 264, 1. 10. 1974, p. 70.
(3) OJ No L 75, 28. 3. 1972, p. 5.
(4) OJ No L 106, 12. 5. 1971, p. 1.
(5) OJ No L 268, 3. 10. 1974, p. 5.
(6) OJ No L 311, 22. 11. 1974, p. 8.
(7) OJ No L 283, 29. 12. 1970, p. 15.
(8) OJ No L 305, 15. 11. 1974, p. 27.

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

Article 4

1. The period during which tenders may be submitted in response to the first partial invitation :

(a) shall begin on the day on which the standing invitation to tender is published in the *Official Journal of the European Communities*, and

(b) shall expire on 11 December 1974 at 10 a.m.

2. The period during which tenders may be submitted in response to the second and subsequent partial invitations :

(a) shall begin on the first working day following the day on which the preceding period comes to an end, and

(b) shall expire on the Wednesday of the following week at 10 a.m.

3. Notwithstanding the provision in paragraph 2 (b) the time limits for the submission of tenders which would otherwise expire on Wednesday, 25 December 1974 or Wednesday, 1 January 1975, shall be Wednesday, 8 January 1975.

4. During the period of Summer Time in Italy, the time limits laid down in the preceding paragraphs shall be extended by one hour in that Member State. Outside the periods of Summer Time in Ireland and in the United Kingdom, the time limits laid down in the preceding paragraphs shall be brought forward by one hour in those Member States.

Article 5

1. Tenderers must either lodge a tender in writing, against a receipt, with the competent authority of the Member State in which the imported sugar will be put into free circulation, or address the tender to that authority by registered letter, telex or telegram.

2. The tender must indicate :

(a) the invitation to which the tender relates ;

(b) the name and address of the tenderer ;

(c) the quantity of white sugar or raw sugar, as appropriate, to be imported. In the case of raw sugar the quantity to be imported must also be expressed as a corresponding quantity of white sugar by reference to a yield calculated by doubling the degree of polarization of the raw sugar and subtracting 100 ;

(d) the amount of import subsidy sought per 100 kilogrammes of sugar expressed in white value, in the currency of the Member State of the authority to which the tender is submitted ;

(e) the Member State in whose territory the imported sugar will be put into free circulation and, where appropriate, the anticipated port or ports of importation.

3. A tender shall be valid only if :

(a) the total quantity of sugar to be imported is not less than 500 metric tons ;

(b) proof is furnished before the expiry of the time limit for the submission of tenders that the tenderer has lodged the security required for the invitation to tender provided for in Article 6 ;

(c) it includes a declaration by the tenderer that if his tender is successful he will apply for an import licence in respect of the quantity of product to be imported.

4. A tender may stipulate that it is to be regarded as having been submitted only if :

(a) the maximum amount of the subsidy provided for in Article 8 (1) is fixed on the day on which the time limit for the submission of tenders expires ;

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

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

6. Once submitted a tender may not be withdrawn.

Article 6

1. The security required for the invitation to tender shall be 25 units of account per 100 kilogrammes of white sugar. In the case of raw sugar the subsidy shall be 25 units of account per 100 kilogrammes of the white sugar equivalent of the raw sugar.

2. The amount to be used in calculating that part of the security which is forfeited shall be three units of account plus the difference between the maximum amount of the subsidy fixed in connection with the partial invitation in response to which the tender was accepted and the maximum amount of the subsidy fixed for the last partial invitation prior to the date on which the validity of the licence expires, where the latter is the greater.

3. The tenderer may lodge the security either in cash or in the form of a guarantee by an establishment complying with criteria laid down by the Member State in which the tender is submitted.

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

(a) for which the tenderer:
- has not withdrawn his tender, and
- has completed the customs import formalities under the import licence issued following the award of the tender, in which case the provisions of Article 16 of Regulation (EEC) No 1373/70 [1], as last amended by Regulation (EEC) No 2111/74 [2], shall apply *mutatis mutandis*;

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

The deposit shall be released without delay.

5. In a case of *force majeure*, the competent authority of the Member State concerned shall determine the measures necessary in view of the circumstances invoked by the interested party.

Article 7

1. Tenders shall be examined in private by the competent authority concerned. Subject to paragraph 2, persons present at the examination shall be sworn to secrecy.

2. Tenders shall be communicated to the Commission without delay and in a manner which respects anonymity.

Article 8

1. After examining the tenders received and having regard in particular to the Community's position with regard to sugar supplies and to the levels of sugar prices in the Community and on the world market, the Commission shall fix, in accordance with the procedure laid down in Article 40 of Regulation No 1009/67/EEC, a maximum subsidy for the partial invitation to tender in question. It may also decide to discontinue a partial invitation to tender.

2. After examination of the tenders, a maximum tonnage may be fixed for each partial invitation in accordance with the procedure referred to in paragraph 1.

3. In order to achieve comparability between tenders, and for the award of tenders by Member States, the amount proposed for the subsidy expressed in a national currency shall be converted into units of account by applying the relevant conversion rate currently in operation with the common agricultural policy, weighted by the coefficient referred to in Article 4 (3) of Regulation (EEC) No 1463/73 [3], as last amended by Regulation (EEC) No 2521/74 [4], and applicable in the Member State in which the sugar will be put into free circulation on the day on which the maximum amount of the subsidy is fixed.

[1] OJ No L 158, 20. 7. 1970, p. 1.
[2] OJ No L 220, 10. 8. 1974, p. 5.
[3] OJ No L 146, 4. 6. 1973, p. 1.
[4] OJ No L 270, 5. 10. 1974, p. 70.

Article 9

1. Except where a decision is taken to discontinue a partial invitation to tender, and without prejudice to the provisions of paragraphs 2 and 3, the award shall be made to every tenderer whose tender does not exceed the maximum amount of the subsidy.

2. Where a maximum tonnage has been fixed for a partial invitation to tender, the award shall be made to the tenderer whose tender quotes the lowest subsidy. If the maximum tonnage is not fully used up by that tender, awards shall be made to those applicants whose tenders quote the next lowest subsidies until the maximum tonnage has been accounted for.

3. Where, however, awards under the provisions of paragraph 2 would lead to the maximum tonnage being exceeded as a result, taking a particular tender into consideration, an award shall be made to that tenderer in respect only of the tonnage which would allow the maximum tonnage to be accounted for. Tenders quoting the same subsidy and whose aggregate tonnage exceeds the maximum tonnage will be considered in proportion to the individual quantities in such tenders.

Article 10

1. The competent authority of the Member State concerned shall immediately notify all applicants of the result of their participation in the invitation to tender. That authority shall also send successful tenderers without delay a statement of award.

2. Statement of awards shall, *inter alia*, indicate:

(a) the invitation to which the tender relates;

(b) the tonnage, in respect of which the subsidy has been awarded, expressed in white value, and in the case of raw sugar expressed also in *tel quel* value;

(c) the subsidy to be granted per 100 kilogrammes of sugar, expressed in white value;

(d) the Member State where the imported sugar will be put into free circulation.

Article 11

1. The tenderer shall have:

(a) the right to the issue, in respect of the quantity of product to be imported, of an import licence showing the subsidy specified in the tender;

(b) the obligation:
- to import that quantity into the Member State indicated in the statement of award,
- where the sugar is sold for consumption in the Community, to abide by the undertakings, prescribed in Article 12;

(c) the right to the issue of an export licence in respect of a quantity of sugar corresponding to that put into free circulation under the licence referred to in (a) and in respect of which the subsidy has been paid in accordance with Article 13, provided this licence, is applied for between 15 October 1975 and 31 March 1976. Within the meaning of Article 8 (1) (a) of Regulation (EEC) No 1373/70, this export licence shall be valid for six months from the date of issue ;

(d) the right to export the quantity of sugar referred to in (c) without the provisions of Article 16 (1) of Regulation No 1009/67/EEC being applied to that quantity.

The obligations arising from an award shall not be transferable.

2. The licence referred to in paragraph 1 (a) shall be issued by the competent authority of the Member State in which the statement of award was issued. Applications for licences must be submitted within 10 days following the day on which the time limit for the submission of tenders expires. In respect of partial invitations to tender issued before 1 January 1975, however, the application must be submitted in the first 10 days of January 1975.

3. By way of derogation from Article 32 (1) of Regulation (EEC) No 2637/70, import licences issued under this tendering procedure shall be valid from the date of issue until the end of the second month following that date within the meaning of Article 8 (1) of Regulation (EEC) No 1373/70.

4. At the request of the tenderer a licence issued in respect of white sugar under the provision in paragraph 1 (a) may be replaced before the customs import formalities have been completed by a licence in respect of raw sugar, and vice versa. The new licence shall be issued only by the authority which issued the original licence and only upon presentation of the statement of award provided for in Article 10. The new licence shall contain the same information as that shown on the original licence except in respect of the nature and quantity of the product to be imported.

Where the new licence relates to :

— white sugar, the quantity to be indicated in the licence shall be the quantity of raw sugar expressed in white value as indicated in the statement of award,

— raw sugar, the quantity to be indicated in the licence shall be expressed in white value and shall be equal to the quantity of white sugar as indicated in the original licence.

5. An application for the export licence referred to in paragraph 1 (c) must be submitted to the authority which issued the corresponding import licence.

"Article 12

1. The undertakings referred to in the second indent of Article 11 (1) (b) shall be the following :

(a) where a successful tenderer sells the imported white sugar, the price in the contract of sale shall not exceed 32·40 units of account per 100 kilogrammes of products, exclusive of packaging, delivered at the cif stage in the Member State in which the sugar is to be put into free circulation ;

(b) where the successful tenderer is himself to manufacture products containing the imported white sugar, he may declare an undertaking that such products will be manufactured his own premises. In the absence of such a declaration the provision of subparagraph (a) shall apply ;

(c) where the successful tenderer sells the imported raw sugar to a refinery or factory for refining, the price in the contract of sale shall not exceed 27·82 units of account per 100 kilogrammes of standard quality raw sugar, exclusive of packaging, delivered at the cif stage in the Member State in which the refined sugar is to be put into free circulation. The contract shall also contain a clause whereby the refiner or the producer who purchases the sugar for refining undertakes to sell the refined sugar at a price not exceeding 32·40 units of account per 100 kilogrammes of product, exclusive of packaging, ex-refinery or ex-factory, no account being taken of any transport costs between the frontier of the Member State in which the sugar is to be put into free circulation and the place of refining ;

(d) where the successful tenderer is a refiner, or producer, refining the imported sugar he shall declare an undertaking to sell the refined sugar at a price not exceeding 32·40 units of account per 100 kilogrammes of product, exclusive of packaging, ex-refinery or ex-factory, no account being taken of any transport costs between the frontier of the Member State in which the sugar is to be put into free circulation and the place of refining.

2. Furthermore, in the cases referred to in paragraph 1 (c) and (d), where a refiner or producer intends to sell the refined sugar at a mixed price determined by reference to the refining of raw sugar imported from several origins and at various prices, he shall declare an undertaking that, when calculating the mixed selling price he will abide by the maximum price referred to in paragraph 1 (d) in respect of that part of the quantity of refined white sugar corresponding to the raw sugar imported under the tendering procedure.

3. Where appropriate, the maximum price of 32·40 units of account referred to in paragraph 1 shall be increased by the difference between the threshold price applying on the day which the imported white sugar is put into free circulation and the threshold price applying on the day on which is fixed the maximum subsidy for the partial invitation to tender in question.

In that case the maximum price of 27·82 units of account referred to in paragraph 1 (c) shall be increased by 92 % of the difference referred to in the preceding paragraph.

Article 13

1. The subsidy in respect of the quantity put into free circulation shall be paid without delay to the tenderer by the competent authority in the Member State which issued the invitation to tender, in the currency of that Member State, upon the production :

(a) of proof that the obligation referred to in the first indent of Article 11 (1) (b) has been complied with. This proof shall require the presentation of copy No 1 of the import licence and, where appropriate, of copy No 1 of the extract or extracts from licences bearing attributions entered by the Member State in which the product is to be put in free circulation as indicated in the tender, in accordance with the provisions of Article 8 of Regulation (EEC) No 1373/70 ;

(b) of the contract or of the declaration referred to in Article 12.

For the purposes of payment of the subsidy in respect of raw sugar the imported quantity of such sugar shall be expressed as a quantity of white sugar, taking into account the effective yield.

2. The right to the subsidy shall be acquired only after the relevant obligations have been fulfilled.

Article 14

Monetary compensatory amounts shall not apply to the imports and exports made under this tendering system.

Article 15

Where the maximum price has been increased under the provisions of Article 12 (3), the subsidy to which entitlement is conveyed by Article 13 shall be reduced by an amount equal to the increase in the maximum price in respect of the product concerned.

Article 16

Where appropriate, and at the request of a person entitled to a subsidy, the Member State referred to in Article 13 shall pay him without delay a supplementary amount equal to the difference per 100 kilogrammes between the target price for white sugar applying on the day on which the time limit for the submission of tenders in response to the partial invitation in question expires, and the target price for white sugar on the day on which the customs export formalities are completed following the exercise of the right conveyed by Article 11 (1) (c).

Article 17

1. The provisions of Article 33a of Regulation (EEC) No 2637/70 shall not apply to white sugar or raw sugar which the tenderer can export in accordance with Article 11 (1) (c).

2. By way of derogation from Article 33 (1) (a) of Regulation (EEC) No 2637/70, the rate of the deposit in connection with import licences shall be zero unit of account per 100 kilogrammes net.

Article 18

An Article 30a, as follows, shall be inserted in Regulation (EEC) No 2637/70 :

'*Article 30a*

1. For the purposes of applying Article 11 (1) (a) of Regulation (EEC) No 3062/74, Section 20 of the import licence shall specify the rate of import subsidy, expressed in the currency of the Member State issuing the licence and contained in one of the following endorsements :

"import subsidy applicable : ..... per 100 kg, to be adjusted as appropriate" ;

"Einfuhrsubvention : ..... je 100 kg, gegebenenfalls anzupassen" ;

"subvention à l'importation applicable : ..... par 100 kg, à adapter le cas échéant" ;

"sovvenzione all'importazione applicabile : ..... per 100 kg, da adattare se necessario" ;

"invoersubsidie..... per 100 kg, eventueel aan te passen" ;

"tilskud til indførsel..... pr. 100 kg, tilpasses i givet fald".

2. For the purpose of applying Article 11 (1) (b) of Regulation (EEC) No 3062/74 Section 18 of the export licence shall contain one of the following endorsements :

"for export without levies" ;

"ohne Abschöpfungen auszuführen" ;

"à exporter sans prélèvements" ;

"da esportare senza prelievi" ;

"uit te voeren zonder heffingen" ;

"udføres uden afgifter".'

Article 19

Member States shall take all measures necessary to facilitate the supervision of the application of this Regulation and the recovery of all or part of the subsidy if the undertakings entered into by the parties are not observed.

Article 20

This Regulation shall enter into force on 4 December 1974.

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

Done at Brussels, 3 December 1974.

For the Commission

The President

François-Xavier ORTOLI