REGULATION (EEC) No 314/75 OF THE COMMISSION

of 7 February 1975

on a standing invitation to tender to determine subsidies on the importation of white and raw sugar without authorization to export subsequently free of levy a corresponding quantity

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

Having regard to Council Regulation (EEC) No 191/75 [4] of 21 January 1975 concerning an additional quantity in respect of the subsidized importation of sugar and amending Regulation (EEC) No 2931/74, and in particular Article 4 (2) thereof;

Having regard to Council Regulation (EEC) No 974/71 [5] of 12 May 1971 on certain measures of conjunctural policy to be taken in agriculture following the temporary widening of the margins of fluctuation for the currencies of certain Member States, as last amended by Regulation (EEC) No 3259/74 [6], and in particular Article 6 thereof;

Whereas Council Regulation (EEC) No 2931/74 [7] of 18 November 1974 on the introduction of a subsidy on imports of white and raw sugar, as amended by Regulation (EEC) No 191/75, makes provision for the grant of a subsidy on sugar imports and prescribes the procedure for such imports; whereas that procedure consists in an invitation to tender;

Whereas Regulation (EEC) No 2931/74 provides that tenders may be invited in respect of the import subsidy without any automatic entitlement to export subsequently free of levy a quantity equivalent to that imported; whereas in the light of experience it appears desirable to conduct such an invitation to tender concurrently with that provided for in Commission Regulation (EEC) No 3062/74 [8] on a standing invitation to tender to determine subsidies for imports of white and raw sugar, as last amended by Regulation (EEC) No 313/75 [9]; whereas, moreover, Article 4 of Regulation (EEC) No 191/75 provides that imports qualifying for a subsidy may be wholly or partly limited to the deficit regions of the Community; whereas it is therefore necessary, having regard to the provisional figures for the supply of sugar in the Community and its various regions, to limit imports under the standing invitation to tender to the deficit regions of the Community;

Whereas certain measures should be provided to ensure that the invitation to tender will operate as effectively as possible, and to derogate from or amend Commission Regulation (EEC) No 2637/70 [10] of 23 December 1970 on special detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products, as last amended by Regulation (EEC) No 38/75 [11];

Whereas the Opinion of the Monetary 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

1. Germany, Italy, the Netherlands and the United Kingdom shall open a standing invitation to tender in respect of a subsidy on the importation from third countries of white and raw sugar, and during the period of validity of such standing invitation to tender they shall issue partial invitations to tender.

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(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 20, 25. 1. 1975, p. 39.
(5) OJ No L 106, 12. 5. 1971, p. 1.
(6) OJ No L 349, 28. 12. 1974, p. 10.
(7) OJ No L 311, 22. 11. 1974, p. 8.
(8) OJ No L 324, 4. 12. 1974, p. 7.
(9) See page 8 of this Official Journal.
(10) OJ No L 283, 29. 12. 1970, p. 15.
(11) OJ No L 5, 9. 1. 1975, p. 8.

2. An import subsidy may be granted only in respect of sugar intended for free circulation and ultimate consumption in one of the Member States referred to in Article 1 and put up for tender in that State.
'Ultimate consumption' means utilization by the processing industry or retail sale.

3. If on the occasion of any partial invitation to tender it appears from the supply figures concerning a Member State not mentioned in paragraph 1 that, having regard to its production, imports and exports, its supply cannot be considered ensured, that Member State shall be added to paragraph 1 ; conversely, any Member State in the reverse situation shall be deleted.

Article 2

The standing invitation to tender and the partial invitations to tender shall be conducted in accordance with the provisions of Regulations (EEC) No 2931/74 and (EEC) No 191/75 and with the following provisions.

Article 3

1. The Member States concerned shall draw up a notice of the standing invitation to tender. This notice shall be published in the *Official Journal of the European Communities*. The Member States concerned may also publish the notice of the invitation to tender, or have it published, elsewhere.

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

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

Article 4

1. The period for the submission of tenders in response to the first partial invitation :

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

(b) shall expire on 12 February 1975 at 10 a.m.

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

(a) shall begin on the first working day following the day on which the preceding period expires, and

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

3. Notwithstanding paragraph 2 (b), the time limits for the submission of tenders which would normally expire on Wednesday 19 March and Wednesday 30 April 1975 shall expire at 10 a.m. on Tuesday 18 March and Tuesday 29 April 1975 respectively.

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. Tenders, which must be in writing, shall either be delivered by hand against a receipt to the competent agency of the Member State in which the imported sugar is to be put into free circulation, or addressed to that agency by registered letter, telex or telegram.

2. Every tender must indicate :

(a) the invitation to which the tender relates ;

(b) the name and address of the tenderer ;

(c) the quantity of white or raw sugar as the case may be to be imported. In the case of raw sugar, the quantity to be imported must also be expressed in white value 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 proposed per 100 kilogrammes of sugar expressed in white value, in the currency of the Member State of the agency to which the tender is submitted ;

(e) the Member State in whose territory the imported sugar is to be put into free circulation and ultimately consumed.

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 expiry of the time limit for the submission of tenders that the tenderer has lodged the security for tender required by 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 the contract awarded relates to the entire quantity indicated in the tender or to a specified part thereof.

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 notice of 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 or of raw sugar expressed in white value.

2. The amount to be used in calculating that part of the security which is to be forfeit shall be three units of account plus, where the maximum amount of the subsidy fixed in connection with the partial invitation for which the tender was accepted is less than the maximum amount of the subsidy fixed for the last partial invitation prior to the date on which the validity of the licence expires, the difference between those two maximum amounts.

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 that quantity :

(a) for which the tenderer :

— has not withdrawn his tender, and

— has completed customs import formalities under the import licence issued following the award of a contract, the provisions of Article 16 of Regulation (EEC) No 1373/70 [1] as last amended by Regulation (EEC) No 2111/74 [2] to apply *mutatis mutandis ;*

(b) in respect of which no award has been made.

The security shall be released without delay.

5. In 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 party concerned.

Article 7

1. Tenders shall be examined in private by the competent agency concerned. Subject as provided in paragraph 2, persons present at the examination shall be under an obligation not to disclose any particulars relating thereto.

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

Article 8

1. After examining the tenders received and having regard in particular to the Community's position in respect of 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 alternatively decide to make no award.

2. After examination of the tenders a maximum quantity for the partial invitation to tender may be fixed in accordance with the procedure laid down in paragraph 1.

3. In order to achieve comparability between tenders, and for the purpose of the award of contracts 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 applicable for purposes of the common agricultural policy, weighted by the coefficient as referred to in Article 4 (3) of Regulation (EEC) No 1463/73 [3] as last amended by Regulation (EEC) No 2521/74 [4] applicable in the Member State in which the sugar is to be put into free circulation on the day on which the maximum amount of the subsidy is fixed.

In addition, prior to such conversion the amount of the subsidy indicated in the tender shall be adjusted. To calculate the adjustment required, the maximum selling price referred in Article 12 (1) (a), minus the intervention price, shall be converted into the national currency :

(a) using the conversion rate currently applicable for purposes of the common agricultural policy in respect of the currency of the Member State concerned, and

(b) using the rate referred to in (a) weighted by the coefficient as referred to in Article 4 (3) of Regulation (EEC) No 1463/73 applicable on the day on which the maximum amount of the subsidy is fixed.

The amount of the adjustment shall be equal to the difference between the result obtained by method (a) and that obtained by method (b).

Article 9

1. Except where a decision is taken to make no award under a partial invitation to tender, and without prejudice to the provisions of paragraphs 2 and 3, a contract shall be awarded to every tenderer whose tender does not exceed the maximum amount of the subsidy.

(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.

2. Where a maximum tonnage has been fixed for a partial invitation to tender, a contract shall be awarded to the tenderer whose tender quotes the lowest subsidy. If the maximum tonnage is not fully covered by that award, awards shall be made to other tenderers in ascending order of tender until the entire maximum tonnage has been accounted for.

3. However, where an award to a particular tenderer under the provisions of paragraph 2 would result in the maximum tonnage being exceeded, that award shall be limited to such tonnage as is still available. Where two or more tenderers quote the same subsidy and awards to all of them would result in the maximum tonnage being exceeded, the tonnage available shall be divided among them in proportion to the quantities tendered for.

Article 10

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

2. Statements of award 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 in whose territory the imported sugar is to be put into free circulation and ultimately consumed.

Article 11

1. Every successful tenderer shall have :

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

(b) the duty :

— to import that quantity into the Member State in which it is to be put into free circulation as indicated in the statement of award,

— when the sugar is sold for consumption in the Member State in which it is to be put into free circulation, to comply with the obligations specified in Article 12.

The rights and obligations arising from the invitation to tender shall not be transferable.

2. The licence referred to in paragraph 1 (a) shall be issued by the competent agency 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.

3. By way of derogation from Article 32 (1) of Regulation (EEC) No 2637/70, import licences issued in connection with the present invitation to tender shall be valid from the date of issue within the meaning of Article 8 (1) of Regulation (EEC) No 1373/70 until the end of the second month following that date.

4. At the request of the tenderer a licence issued in respect of white sugar under paragraph 1 (a) may be replaced before the completion of customs import formalities by a licence in respect of raw sugar, and vice versa. Such new licence may be issued only by the agency 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 in 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.

Article 12

1. The obligations 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 35·81 units of account per 100 kilogrammes of product, exclusive of packaging, delivered cif in the Member State in which the sugar is to be put into free circulation ;

(b) where the successful tenderer is himself to process the imported white sugar, he may give an undertaking that such sugar will be processed in his own works. Failing such undertaking, subparagraph (a) shall apply ;

(c) where the successful tenderer sells imported raw sugar to a refinery or to a sugar producer for refining, the price in the contract of sale shall not exceed 30·96 units of account per 100 kilogrammes of standard quality raw sugar, exclusive

of packaging, delivered cif 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 35·81 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 a producer refining the imported sugar he shall give an undertaking to sell the refined sugar at a price not exceeding 35·81 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.

In addition, in the cases referred to in (a) and (c) above, the tenderer shall include in his contract of sale a clause stipulating that the imported sugar must be ultimately consumed in the Member State in which it is put into free circulation.

2. In addition, in the cases referred to in paragraph 1 (c) and (d), where a refiner or producer intends to sell the refined sugar at a price which is to vary according to the origin and price of the imported raw sugar concerned he shall give an undertaking that when calculating such selling price he will not exceed the maximum price referred to in paragraph 1 (d) in respect of that part of the refined white sugar corresponding to the raw sugar imported under the invitation to tender.

Article 13

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

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

(b) of the contract or of the undertaking 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 in white value by reference to the effective yield.

2. A successful tenderer shall not become finally entitled to the subsidy until he has fulfilled the relevant obligations.

Article 14

By way of derogation from Article 33 (1) (a) of Regulation (EEC) No 2637/70, the security required for purposes of the import licence shall be zero units of account per 100 kilogrammes net.

Article 15

An Article 30b as follows is inserted in Regulation (EEC) No 2637/70:

'*Article 30b*

For the purposes of Article 11 (1) (a) of Regulation (EEC) No 314/75, Section 20 of the import licence shall specify, by means of one of the following endorsements, the rate of import subsidy, expressed in the currency of the Member State issuing the licence:

"subvention a l'importation applicable ... par 100 kg"

"Einfuhrsubvention ... je 100 kg"

"import subsidy applicable: ... per 100 kg"

"sovvenzione all'importazione applicabile ... per 100 kg"

"invoersubsidie ... per 100 kg"

"tilskud til indforsel ... pr 100 kg".'

Article 16

Member States concerned shall take all measures to ensure the necessary supervision of the implementation of this Regulation and the recovery of all or part of the subsidy if the obligations entered into by tenderers are not complied with. The sums to be so recovered shall be determined by reference to the amount by which the maximum prices specified in Article 12 are exceeded.

Article 17

This Regulation shall enter into force on 8 February 1975.

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

Done at Brussels, 7 February 1975.

For the Commission

P. J. LARDINOIS

Member of the Commission