COMMISSION REGULATION (EEC) No 1077/81

of 22 April 1981

on a standing invitation to tender for levies and/or refunds on export of white sugar to Poland

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 3330/74 of 19 December 1974 on the common organization of the market in sugar [1], as last amended by Regulation (EEC) No 3455/80 [2], and in particular Articles 12 (2), 17 (5), 19 (4) and 34 thereof,

Having regard to Council Regulation (EEC) No 608/72 of 23 March 1972 laying down rules to be applied in the case of considerable price rises on the world sugar market [3], and in particular Article 1 (1) thereof,

Whereas the European Council, at its meeting on 23 March 1981 in Maastricht, agreed that steps should be taken to facilitate the purchase by Poland of certain agricultural products from the Community; whereas in view of the availability of Community sugar it is possible to put at the disposal of Poland some 50 000 tonnes of sugar;

Whereas for this purpose, and in view of developments on the world sugar market, a standing invitation to tender should be issued to determine the amounts of the levies or refunds necessary for the export of the said quantity to Poland, account being taken of certain conditions regarding sales to that country at reduced prices;

Whereas, in order to ensure that the sugar is not diverted to another destination, provision should be made for the lodging of an appropriate security and for its release when the sugar has reached its destination according to the relevant Community rules;

Whereas the general rules governing invitations to tender for the determination of export refunds for sugar were laid down in Council Regulation (EEC) No 766/68 of 18 June 1968 laying down general rules for granting export refunds on sugar [4], as last amended by Regulation (EEC) No 1489/76 [5]; whereas these rules should also be applied in respect of an export levy;

Whereas, in view of the specific nature of the transactions in question, special detailed rules of application should be laid down in this Regulation, and those provided for in Commission Regulation (EEC) No 394/70 of 2 March 1970 on detailed rules for granting export refunds on sugar [6], as amended by Regulation (EEC) No 1467/77 [7], should not be applied; whereas, for the same reason, appropriate provisions should be laid down concerning export licences issued in connection with the invitation to tender and to derogate from Commission Regulation (EEC) No 2990/76 of 9 December 1976 on special detailed rules for the application of the system of import and export licences for sugar [8], as last amended by Regulation (EEC) No 342/81 [9], from Commission Regulation (EEC) No 3183/80 of 3 December 1980 laying down common detailed rules for the application of the system of import and export licences and advance-fixing certificates for agricultural products [10], and from Commission Regulation (EEC) No 645/75 of 13 March 1975 laying down common detailed rules for the application of the export levies and charges on agricultural products [11], as amended by Regulation (EEC) No 1607/80 [12];

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. A standing invitation to tender shall be issued for the determination of the export levies or export refunds on a quantity of white sugar of 50 000 tonnes destined for Poland. During the period of validity of this standing invitation there shall be issued partial invitations.

(1) OJ No L 359, 31. 12. 1974, p. 1.
(2) OJ No L 360, 31. 12. 1980, p. 17.
(3) OJ No L 75, 28. 3. 1972, p. 5.
(4) OJ No L 143, 25. 6. 1968, p. 6.
(5) OJ No L 167, 26. 6. 1976, p. 13.
(6) OJ No L 50, 4. 3. 1970, p. 1.
(7) OJ No L 162, 1. 7. 1977, p. 6.
(8) OJ No L 341, 10. 12. 1976, p. 14.
(9) OJ No L 38, 11. 2. 1981, p. 8.
(10) OJ No L 338, 13. 12. 1980, p. 1.
(11) OJ No L 67, 14. 3. 1975, p. 16.
(12) OJ No L 160, 26. 6. 1980, p. 42.

2. Tenders shall relate to the export levy and/or export refund necessary to ensure this exportation under the conditions laid down in this Regulation.

Article 2

1. The standing and partial invitations to tender shall be conducted in accordance with Regulation (EEC) No 766/68 and the following provisions. Regulation (EEC) No 394/70 shall not apply.

2. The standing invitation shall be closed *ipso facto* on the date of the partial invitation to tender at which awards are made which completely account for the quantity referred to in Article 1 (1).

Article 3

1. The Member States shall issue an invitation to tender which shall be published in the *Official Journal of the European Communities*. Member States may also publish the notice, or have it published, elsewhere.

2. The notice shall indicate in particular the conditions applying to the tenders.

3. The notice shall be published only for the purpose of opening the standing invitation to tender. It may be amended during the period in which the invitation remains open. It shall be so amended if the terms of the invitation are changed.

Article 4

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

(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*;

(b) shall end on 6 May 1981 at 10 a.m.

2. The periods during which tenders may be submitted in respect of each of the subsequent partial invitations :

(a) shall begin on the first working day following the end of the preceding period ;

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

3. The times specified in this Regulation are Belgian times.

Article 5

1. The contractual selling price, including the levy or refund offered, may not exceed 50·71 ECU per 100 kilograms of white sugar.

If, however, the average of the closing selling prices for the July 1981 position on the Paris futures market as quoted on the two days preceding the partial invitation to tender in question, multiplied by a coefficient of 0·90, is less than the amount referred to in the first subparagraph then the contractual selling price may not exceed that average as so adjusted.

2. The sugar must be delivered in jute sacks containing 50 kilograms net, fob European ports of the Community, on dates to be agreed between the contracting parties.

Article 6

1. Offers, which must be in writing, shall be either delivered by hand to the competent authority of a Member State, against a receipt, or addressed to that authority by registered letter, telex or telegram.

2. Each offer must indicate :

(a) the reference number of the invitation to tender ;

(b) the name and address of the tenderer ;

(c) the quantity to be exported ;

(d) the amount of the export levy or, where appropriate, of the export refund on the quantity of sugar referred to under (c) per 100 kilograms of sugar, expressed in the currency of the Member State in which the tender is submitted ;

(e) the amount of the tendering security to be lodged covering the quantity of sugar referred to under (c), expressed in the currency of the Member State in which the tender is submitted.

3. An offer shall be valid only if :

(a) it relates to a quantity of 5 000 tonnes of sugar or to a multiple of that quantity ;

(b) proof is furnished before expiry of the time limit for the submission of tenders that the tenderer has lodged the security indicated in the tender ;

(c) it includes a declaration by the tenderer that if his tender is successful he will, within the period laid down in Article 12 (b), apply for export licences in respect of the quantities of sugar to be exported ;

(d) it includes a declaration by the tenderer certifying that the product for export is white sugar of sound, fair and merchantable quality, falling within subheading 17.01 A of the Common Customs Tariff ;

(e) it includes a declaration by the tenderer that, if his tender is successful, he will abide by the maximum price referred to in the first or second subparagraph of Article 5 (1) and that he will furnish the proof referred to in Article 12 (c) within the period laid down ;

(f) it contains all the particulars required under paragraph 2.

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

(a) the minimum export levy or, where applicable, the maximum export refund, is fixed on the day of expiry of the period for the submission of the tenders in question ;

(b) the award relates to all or a specific part of the quantity tendered for.

5. An offer which is not submitted in accordance with the provisions of this Regulation, or which contains conditions other than those indicated in the notice of invitation to tender, shall not be considered.

6. Once submitted, a tender may not be withdrawn.

Article 7

1. The security for tenders shall be 15 ECU per 100 kilograms of sugar to be exported under this invitation to tender.

For successful tenderers, and by way of derogation from the first indent of Article 8 (1) (d) of Regulation (EEC) No 2990/76, this security shall constitute the security for the export licence when the application referred to in Article 12 (b) is made.

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

3. Except in case of *force majeure,* the security for the tender shall be released only :

(a) in respect of any quantity for which no award has been made ;

(b) if a successful tenderer has, within the period laid down in Article 12 (b), applied for an export licence and only in respect of a quantity for which proof is provided of its importation into Poland. This proof shall be furnished in accordance with the provisions of Article 20 of Regulation (EEC) No 2730/79 (1).

4. In case of *force majeure,* the competent authority of the Member State concerned shall take such action as it considers necessary having regard to the circumstances invoked by the party concerned.

Article 8

1. Tenders shall be examined in private by the competent authority concerned. Subject to 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 forthwith and in such manner that the tenderers remain anonymous.

Article 9

1. Account being taken of the current state and foreseeable development of the Community and world sugar markets and the conditions governing the sale as laid down in Article 5, there shall be fixed for each lot either :

— a minimum export levy, or

— a maximum export refund.

2. Nevertheless, a decision may be taken to make no award under a specific partial invitation to tender.

Article 10

1. Where a minimum export levy is fixed an award shall made to the tenderer or tenderers quoting the highest levy. If the whole of the quantity referred to in Article 1 (1) is not covered by that award then awards shall be made to other tenderers in descending order of their quoted levies until the entire quantity has been accounted for.

2. Where a maximum export refund is fixed an award shall be made in accordance with paragraph 1 ; if after such awards a quantity is still outstanding, or if there are no tenders quoting a levy, then awards shall be made to tenderers in ascending order of their quoted refunds until the entire quantity referred to in Article 1 (1) has been accounted for.

3. Where, however, an award made under the rules laid down in paragraphs 1 and 2 would result in the quantity referred to in Article 1 (1) being exceeded, that award shall be made to the tenderer in question only in respect of a quantity which allows the former quantity to be entirely accounted for. Where two or more tenderers quote the same levy or the same refund and awards to all of them would result in the same quantity being exceeded awards shall be made *pro rata* to the tendered quantities.

Article 11

1. The competent authority of the Member State concerned shall immediately notify applicants of the result of their participation in the invitation to tender.

In addition, that authority shall send successful tenderers a statement of award.

(1) OJ No L 317, 12. 12. 1979, p. 1.

2. The statement of award shall indicate :

(a) the reference number of the invitation to tender ;

(b) the quantity to be exported ;

(c) the export levy to be charged or, where applicable, the export refund to be granted, per 100 kilograms of white sugar of the quantity referred to in (b).

Article 12

Every successful tenderer shall have :

(a) the right to be issued in respect of the quantity awarded, and subject to the conditions in (c), with an export licence indicating as appropriate the export levy or the export refund quoted in the tender ;

(b) the obligation to lodge in accordance with the relevant provisions of Regulation (EEC) No 3183/80 an application for an export licence in respect of that quantity, Article 12 (2) of that Regulation and Article 10 of Regulation (EEC) No 645/75 not applying in such a case. The application shall be lodged not later than 15 days following the day on which the partial invitation was held.

(c) the obligation to provide the authority of the Member State to which the tender was submitted, and this within the period referred to in (b), proof that the maximum selling price referred to in the first or second subparagraph of Article 5 (1) has not been exceeded ; such proof shall be provided in the form of a certified copy of the contract of sale entered into by the successful tenderer and the competent authority in Poland.

This right and these obligations shall not be transferable.

Article 13

1. Article 9 of Regulation (EEC) No 2990/76 and Article 8 (4) and (5) of Regulation (EEC) No 3183/80 shall not apply to white sugar to be exported in accordance with this Regulation.

2. Export licences issued in connection with this standing invitation to tender shall be valid from the day of issue to 30 September 1981.

3. In addition to the endorsements required under Article 2 (2) and (3) of Regulation (EEC) No 2990/76, section 13 of the application for licences and of the export licences issued in connection with this invitation to tender shall include one of the following endorsements :

— 'Poland',
— 'Pologne',
— 'Polen',
— 'Polen',
— 'Polonia',
— 'Polen',
— 'Πολωνία'.

4. The licence carries the obligation to export to Poland.

Article 14

This Regulation shall enter into force on 24 April 1981.

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

Done at Brussels, 22 April 1981.

For the Commission

Poul DALSAGER

Member of the Commission