COMMISSION REGULATION (EEC) No 2042/81

of 16 July 1981

on a supplementary standing invitation to tender in order to determine levies and/or refunds on exports of white sugar

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the market in sugar [1], and in particular Articles 13 (2), 18 (5), 19 (4) and (7) and the second paragraph of Article 39 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 [2], and in particular Article 1 (1) thereof,

Whereas, in view of the situation on the Community and world sugar markets, a supplementary standing invitation to tender should be issued for the exportation of white sugar which, having regard to possible fluctuations in world prices for sugar, must provide for the determination of export levies and/or export refunds;

Whereas the general rules governing invitations to tender for the purpose of determining 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 [3], as last amended by Regulation (EEC) No 1489/76 [4];

Whereas, in view of the specific nature of the transactions involved, 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 [5], as last amended by Regulation (EEC) No 1467/77 [6], should not apply; whereas, for the same reasons, appropriate provisions should be laid down with regard to export licences issued in connection with the standing invitation to tender and there should be a derogation 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 [7], as last amended by Regulation (EEC) No 342/81 [8], 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 [9] 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 [10], as last amended by Regulation (EEC) No 1607/80 [11];

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. There shall be issued a supplementary standing invitation to tender in order to determine export levies and/or export refunds on white sugar, and during the period of validity of this standing invitation there shall be issued partial invitations to tender.

2. The standing invitation to tender shall remain open until 31 August 1982.

Article 2

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

Article 3

1. The Member States shall draw up a notice of 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 terms of the invitation to tender.

(1) OJ No L 177, 1. 7. 1981, p. 4.
(2) OJ No L 75, 28. 3. 1972, p. 5.
(3) OJ No L 143, 25. 6. 1968, p. 6.
(4) OJ No L 167, 26. 6. 1976, p. 13.
(5) OJ No L 50, 4. 3. 1970, p. 1.
(6) OJ No L 162, 1. 7. 1977, p. 6.
(7) OJ No L 341, 10. 12. 1976, p. 14.
(8) OJ No L 38, 11. 2. 1981, p. 8.
(9) OJ No L 338, 13. 12. 1980, p. 1.
(10) OJ No L 67, 14. 3. 1975, p. 16.
(11) OJ No L 160 26. 6. 1980, p. 42.

3. The notice shall be published only for the purpose of opening the standing invitation to tender. It 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 are modified.

Article 4

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

(a) shall begin on 1 March 1982,

(b) shall end on 18 March 1982 at 10.30 a.m.

2. The periods 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 end of the preceding period ;

(b) shall end at 10.30 a.m. on the Wednesday of the following week.

3. By way of derogation from paragraph 2 (b), the period for the submission of tenders which would otherwise end on :

(a) Wednesday, 17 March 1982 shall end on Thursday, 18 March 1982 at 10.30 a.m. ;

(b) Wednesday, 28 April 1982 shall end on Tuesday, 27 April 1982 at 10.30 a.m. ;

(c) Wednesday 14 and Wednesday, 21 July 1982 shall end on Tuesday 13 and Tuesday, 20 July 1982 respectively, at 10.30 a.m.

4. The time limits laid down in this Regulation are expressed in Belgian time.

Article 5

1. Offers in connection with this tender must be in writing, and must be either delivered by hand, against a receipt, to the competent authority in a Member State, or addressed to that authority by registered letter, telex or telegram.

2. An offer must indicate :

(a) the reference number of the invitation to which the offer relates ;

(b) the name and address of the tenderer ;

(c) the quantity of white sugar to be exported ;

(d) the amount of the export levy or, where applicable of the export refund per 100 kilograms of white sugar, expressed in the currency of the Member State in which the tender is submitted ;

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

3. An offer shall be valid only if :

(a) the quantity to be exported is not less than 250 tonnes of white sugar ;

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

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

(d) it includes a declaration by the tenderer that if his offer is successful he will :

— where the obligation to export created by the export licence referred to under (b) of Article 12 is not fulfilled, supplement the security by payment of the amount referred to in Article 13 (4) and,

— within 30 days following the expiry of the export licence in question, notify the agency which issued the licence of the quantity or quantities in respect of which the licence was not used ;

(e) it contains all the information required under paragraph 2.

4. An offer may stipulate that it is to be regarded as having been sumitted 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 offers in question ;

(b) the offer, if successful, relates to all or a specified part of the tendered quantity.

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

6. Once submitted, an offer may not be withdrawn.

Article 6

1. A security of 9 ECU per 100 kilograms of sugar to be exported under this invitation to tender must be lodged by each tenderer. Without prejudice to Article 13 (4) of this Regulation, this security shall in the case of the successful tenderers and at the time of the application referred to in Article 12 (b) become the security for the export licence.

2. The security may be lodged, at the tenderer's choice 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 shall be released :

(a) to tenderers only in respect of the quantity for which no award was made ;

(b) to successful tenderers only if they applied for their export licence within the period laid down under (b) of Article 12 and only for the quantity in respect of which they have fulfilled the obligation created by that licence, Article 33 of Regulation (EEC) No 3183/80 remaining applicable.

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

Article 7

1. Offers 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. Offers shall be communicated to the Commission forthwith and in such manner that the tenderers remain anonymous.

Article 8

1. After the offers received have been examined, a maximum quantity may be fixed for that partial invitation.

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

Article 9

1. In the light of the intervention price for white sugar for the 1981/82 marketing year and the current state and foreseeable development of the Community and world sugar markets, there shall be fixed either :

— a minimum export levy, or

— a maximum export refund.

2. Subject to Article 10, where a minimum export levy is fixed, a contract shall be awarded to every tenderer whose tender quotes a rate a levy equal to or greater than such minimum levy.

Subject to Article 10, where a maximum export refund is fixed, a contract shall be awarded to every tenderer whose tender quotes a rate of refund equal to or less than such maximum refund and to every tenderer who has tendered for an export levy.

Article 10

1. Where a maximum quantity has been fixed for a partial invitation to tender :

— if a minimum levy is fixed, a contract shall be awarded to the tenderer whose tender quotes the highest levy. If the maximum quantity is not fully covered by that award, awards shall be made to other tenderers in descending order of levies quotes until the entire maximum quantity has been accounted for ;

— if a maximum refund is fixed, contracts shall be awarded in accordance with the first indent ; if after such awards a quantity is still outstanding, or if there are no tenders quoting a levy, contracts shall be awarded in ascending order of refunds quoted until the entire maximum quantity has been accounted for, to tenderers quoting a refund.

2. However, where an award to a particular tenderer in accordance with the provisions of paragraph 1 would result in the maximum quantity being exceeded, that award shall be limited to such quantity as is still available. Where two or more tenderers quote the same levy or the same refund and awards to all of them would result in the maximum quantity being exceeded, then the quantity available shall be awarded as follows :

— by being divided among the tenderers concerned in proportion to the total quantities in each of their tenders, or

— by being apportioned among the tenderers concerned by reference to a maximum tonnage to be fixed for each of them, or

— by the drawing of lots.

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.

2. The statement of award shall indicate :

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

(b) the quantity of white sugar 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 claim in respect of the quantity awarded, an export licence indicating as appropriate the export levy or the export refund quoted in his offer ;

(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 the day preceding the date of the following partial invitation to tender. Where, however, the latter partial invitation to tender does not take place within the period referred to under (b) of Article 4 (2), the application for a licence shall be lodged within five days of the date of the partial invitation to tender in respect of which that application is lodged ;

(c) the obligation to export the tendered quantity and, if this obligation is not fulfilled, to pay, where necessary, the amount referred to in Article 13 (4).

This right and these obligations shall not be transferable.

Article 13

1. Article 9 of Regulation (EEC) No 2990/76 shall not apply to the white sugar to be exported in accordance with this Regulation.

2. Export licences issued in connection with a partial invitation to tender shall be valid from the day of issued until 30 September 1982.

3. Export licences issued in connection with a partial invitation to tender held between 18 March 1982 and 30 June 1982 may be used from 1 July 1982 only.

4. Except in case of *force majeure,* if the obligation to export created by the export licence referred to under (b) of Article 12 has not been fulfilled and if the security referred to in Article 6 is less than :

(a) the export levy indicated on the licence reduced by the levy referred to in the second subparagraph of Article 18 (1) of Regulation (EEC) No 1785/81 in force on the last day of validity of the said licence, or

(b) the sum of the export levy indicated on the licence and the export refund referred to in Article 2 of Regulation (EEC) No 766/68 in force on the last day of validity of the said licence, or

(c) the export refund referred to in Article 2 of Regulation (EEC) No 766/68 in force on the last day of validity of the licence reduced by the refund indicated on the said licence,

then, under the time limits and conditions laid down in Article 33 of Regulation (EEC) No 3183/80 and by way of a supplementary security for the quantity in respect of which the said obligation was not fulfilled, the licence holder shall be charged an amount equal to the difference between the result of the calculation made under (a), (b) or (c), as the case may be, and the security referred to in Article 6.

Article 14

1. In so far as the conditions set out in Article 12 of Regulation (EEC) No 766/68 are satisfied, any export refunds and export levies fixed in advance in connection with this invitation to tender before 1 July 1982 for sugar exported on or after that date shall, at the request of the party concerned, be adjusted in accordance with paragraph 2.

2. For purposes of the adjustment referred to in paragraph 1, the export refund shall be increased, and the export levy decreased, by the difference, expressed in ECU per 100 kilograms, between the intervention price of sugar applicable with effect from 1 July 1982 and the intervention price of that sugar applicable on 30 June 1982.

In calculating the difference referred to in the above subparagraph there shall be added to these intervention prices the relevant storage levy as referred to under (a) of the third subparagraph of Article 8 (2) of Regulation (EEC) No 1785/81.

Article 15

This Regulation shall enter into force on 21 July 1981.

It shall apply from 1 March 1982.

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

Done at Brussels, 16 July 1981.

For the Commission

The President

Gaston THORN