COMMISSION REGULATION (EEC) No 2858/85

of 11 October 1985

on the sale of pigmeat held by the Belgian intervention agency pursuant to Regulations (EEC) No 772/85, (EEC) No 978/85 and (EEC) No 1477/85

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2759/75 of 29 October 1975 on the common organization of the market in pigmeat (1), as last amended by Regulation (EEC) No 2966/80 (2), and in particular Article 20 thereof,

Whereas, in the light of the health situation in the stockfarming sector in Belgium, provision is made in Commission Regulation (EEC) No 772/85 (3), as last amended by Regulation (EEC) No 978/85 (4), (EEC) No 978/85 itself, as amended by Regulation (EEC) No 1086/85 (5), and (EEC) No 1477/85 (6), as last amended by Regulation (EEC) No 2209/85 (7), for exceptional support measures for the market in pigmeat in that Member State ;

Whereas the abovementioned measures provide, *inter alia,* for the buying in of meat stored by the Belgian intervention agency at the request of the interested party if the national health authorities decide that such meat can be released for consumption only when it has undergone sufficient heat treatment and according to the conditions provided for in the abovementioned Regulations ;

Whereas the national health authorities have so determined and the Belgian intervention agency has duly bought in meat pursuant to the aforesaid Regulations ; whereas it is now intended to offer the said meat for sale subject to certain stringent obligations as regards the storage, treatment and final disposal of the meat ;

Whereas, in order to avoid disturbing the market and to ensure equality of treatment between purchasers and equal access to the products as required by Article 6 (1) of Regulation (EEC) No 2759/75, it is appropriate to fix the selling price by means of an invitation to tender to be held on a monthly basis ; whereas it is intended that any quantities of meat not sold in a given invitation to tender should be offered for sale at the minimum price fixed for the tender for a limited period ;

Whereas this Regulation is applicable both to meat which bears the Community health mark as defined in Article 5a of Council Directive 72/461/EEC (8), as last amended by Directive 85/322/EEC (9), and also to meat bearing the national health mark as applied by the competent national services ;

Whereas, to prevent the transmission of any further infection or contamination in other Member States, it is not intended that meat bearing the national health mark should leave the territory of Belgium ; whereas to take account of the current trading situation in the pigmeat sector between the Community on the one hand and the United States of America, Canada and Australia on the other hand, it is not intended that meat bearing the Community sanitary stamp should be exported to the aforesaid countries ;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Pigmeat,

HAS ADOPTED THIS REGULATION :

Article 1

The Belgian intervention agency shall put up for sale products bought in pursuant to Regulations (EEC) No 772/85, (EEC) No 978/85 and (EEC) No 1477/85. Sale shall be subject to the obligations set out in Article 12.

TITLE I

Sale by invitation to tender

Article 2

1. The Belgian intervention agency shall draw up a monthly notice of invitation to tender stating in particular :

(a) the description of the products and the week of initial private storage ;

(1) OJ No L 282, 1. 11. 1975, p. 1.
(2) OJ No L 307, 18. 11. 1980, p. 5.
(3) OJ No L 86, 27. 3. 1985, p. 20.
(4) OJ No L 105, 17. 4. 1985, p. 6.
(5) OJ No L 114, 27. 4. 1985, p. 36.
(6) OJ No L 145, 4. 6. 1985, p. 17.
(7) OJ No L 204, 2. 8. 1985, p. 31.
(8) OJ No L 302, 31. 12. 1972, p. 24.
(9) OJ No L 168, 28. 6. 1985, p. 41.

(b) the name and address of the cold store or stores where the products are held;

(c) for each cold store the quantities of each product offered for tender, indicating the type of health mark used;

(d) the time limit and place for the submission of tenders;

(e) the formalities regarding provision of the security for tender and the obligations regarding storage, treatment and disposal;

(f) where appropriate a statement that tenders may be submitted by telex.

2. Each invitation to tender shall relate to specific quantities which shall be determined in accordance with the procedure laid down in Article 24 of Regulation (EEC) No 2759/75.

For the first invitation to tender, that quantity is fixed at 4 969,513 tonnes.

3. Invitations to tender shall be published in the *Official Journal of the European Communities* at least 14 days before the expiry of the period for the submission of tenders.

The Belgian intervention agency shall also publish the notice of invitation to tender in the *Moniteur Belge* and wherever else considered appropriate.

Article 3

1. The time limit for submission of tenders shall expire each last Tuesday of the month at 12 noon. If the last Tuesday falls on a public holiday, the time limit shall be extended to the following working day at 12 noon.

Tenders shall be submitted in writing to the Belgian intervention agency against acknowledgement or by registered letter addressed to that intervention agency. The intervention agency may allow a tender to be submitted by telex.

2. A tender shall not be valid unless it includes the following particulars:

(a) the name and address of the tenderer;

(b) the address of the plant where it is intended to process the meat;

(c) a description of the product, the type of health mark used and the quantity for which the tender is made;

(d) the price offered per tonne expressed in ECU;

(e) a statement by the tenderer waiving all claims against the Belgian intervention agency in respect of the quality and characteristics of a product awarded to him;

(f) an undertaking either to store, treat and dispose of, pursuant to Article 12 and within the time limit laid down in Article 12 (1), the quantity of product tendered for or to ensure that such storage, treatment and disposal as laid down in Article 12 take place.

3. Tenders shall not be considered for quantities of less than 10 tonnes, except in cases where the total quantity of a given product available is less than 10 tonnes.

4. A tender shall further not be valid unless the following conditions are met:

(a) proof must be supplied that before the expiry of the time limit for the submission of tenders, in response to the invitation to tender in question, the tenderer has lodged the security for the tender referred to in Article 4;

(b) it must not contain any conditions and/or reservations that are not expressly authorized.

5. A tender may not be withdrawn.

Article 4

1. The security for tender shall be 100 ECU per tonne.

2. The security shall be lodged at the option of the tenderer in cash or in the form of a guarantee provided by an establishment meeting the criteria fixed by the Belgian intervention agency, which may equally accept a banker's cheque as security.

Article 5

In the light of the tenders received, minimum selling prices shall be fixed for the products in question in accordance with the procedure laid down in Article 24 of Regulation (EEC) No 2759/75.

Article 6

1. Tenders for less than the minimum selling price shall be refused.

2. Subject as provided in paragraph 1, contracts shall be awarded to the highest tenderers. Where more than one tender at the same price is received for the same quantity and where the quantities applied for exceed the quantity available, the Belgian intervention agency may apportion the quantity available, where appropriate, in agreement with the tenderers, or hold a ballot.

Article 7

Each tenderer shall be notified by the Belgian intervention agency of the result of his participation in the invitation to tender not later than five working days after the decision fixing the minimum price.

TITLE II

Sale at fixed price

Article 8

1. Where insufficient effective demand in response to a given invitation to tender results in quantities of meat remaining unsold, quantities remaining shall be offered for sale subject to the obligations listed in Article 12 for a period of five working days commencing on the second Monday of the month at a price equal to the minimum selling price fixed in accordance with Article 5, increased by 50 ECU per tonne.

2. The quantities of meat to be sold in accordance with paragraph 1 shall be published in the *Official Journal of the European Communities* at the same time as the results of the invitation to tender relating thereto.

Article 9

1. The purchase application shall be submitted to the Belgian intervention agency in writing.

2. An application shall not be valid unless it includes the following particulars :

(a) the name and address of the applicant ;

(b) the address of the plant where it is intended to process the meat ;

(c) a description of the product, the type of health mark used and the quantity for which the application is made ;

(d) a statement by the applicant waiving all claims against the Belgian intervention agency in respect of the quality and characteristics of a product awarded to him ;

(e) an undertaking to either store, treat and dispose of, pursuant to Article 12 and within the time limit laid down in Article 12 (1), the quantity of product applied for or to ensure that such storage, treatment and disposal as laid down in Article 12 take place.

3. Applications shall not be considered for quantities of less than 10 tonnes except in cases where the total quantity of a given product is less than 10 tonnes.

4. An application shall further not be deemed valid for consideration unless the following conditions are met :

(a) proof must be supplied that within three working days of the submission of the application the applicant has lodged the security for the application referred to in Article 10 ;

(b) it must not contain any conditions and/or reservations that are not expressly authorized.

Article 10

1. The security required for the application shall be 100 ECU per tonne.

2. The security shall be lodged at the option of the applicant in cash or in the form of a gurantee provided by an establishment meeting the criteria fixed by the Belgian intervention agency, which may equally accept a banker's cheque as security.

Article 11

1. On the day on which all the requirements of Article 9 are fulfilled, an application shall be deemed valid for consideration.

2. All applications deemed valid on any given day shall be considered as having been submitted simultaneously.

3. Save in exceptional circumstances applications shall be accepted within five working days of their consideration in accordance with paragraph 1 until stocks are exhausted. Where, taken together, applications deemed valid on the same day exceed the quantity available, the Belgian intervention agency may apportion the quantity available, where appropriate, in agreement with the applicants concerned, or hold a ballot.

4. The Belgian intervention agency shall, within five working days of the decision on an application being taken, notify the applicant of the outcome of his application.

5. Should a complete application which would be deemed valid for consideration reach the Belgian intervention agency on a day that is not a working day, it shall be deemed to become valid on the first working day following.

TITLE III

Obligatory treatment of meat sold

Article 12

1. Within five months of the date on which the outcome of the relevant procedure is notified either to the tenderer as specified in Article 7 or to the applicant as specified in Article 11 (4), the successful tenderer or applicant shall either himself treat or else ensure that treatment is carried out on the quantity of meat specified in the tender or application and further that the obligations as regards storage and disposal listed below are respected.

2. The obligations incumbent upon the purchaser shall be as follows :

The purchaser shall himself process and dispose of, or if the meat is sold to a third party shall ensure that the third party processes the meat in the following fashion :

(a) the meat shall undergo treatment as specified in the Annex ;

(b) the meat shall be stored, transported and processed separately from all other meat products ; such activities shall, in any event, comply with national rules governing the disposal of this meat and shall take place within the territory of Belgium ;

(c) all waste products shall be collected and destroyed under the supervision specified in paragraph 5.

3. In the case of meat bearing the Community health mark, the purchaser shall further undertake to ensure that the final products from the meat will not be exported to the United States of America, Canada or Australia, irrespective of whether or not he himself processes and disposes of the meat.

4. In the case of meat bearing the national health mark the purchaser shall further undertake to ensure that the final products from the meat will not leave the territory of Belgium, irrespective of whether or not he himself processes and disposes of the meat.

5. The control of the obligations set out in paragraph 2 shall include a permanent control on site of the treatment and processing of the meat. This control shall be carried out by the Belgian veterinary services without prejudice to any further controls provided for by national legislation.

Article 13

1. In order to guarantee that the products awarded are processed and disposed of in accordance with Article 12, the purchaser shall lodge the following security :

— in respect of products classified under subheadings ex 02.01 A III a) 1, 3 and 5 of the Common Customs Tariff : 2 000 ECU per tonne of product purchased,

— in respect of all other products : 3 000 ECU per tonne of product purchased.

2. The security must be lodged prior to taking delivery of the product in accordance with Article 17 and may be in any of the forms specified in Article 4 (2).

TITLE IV

General provisions

Article 14

After checking that the processing of the meat has been effected in accordance with this Regulation the Belgian veterinary services shall issue to the person concerned a certificate specifying the quantity of meat that has been properly processed and treated.

Article 15

1. Save in cases of *force majeure,* the various securities referred to in this Regulation shall be released only in accordance with this Article.

2. The security for tender referred to in Article 4 and the security for application referred to in Article 10 shall be released only for that quantity of meat in respect of which :

(a) the tender or application was not accepted, or

(b) delivery has been taken in accordance with Article 17.

3. The security for treatment referred to in Article 13 shall be released only for that quantity of meat in respect of which a certificate, as referred to in Article 14, has been issued.

4. In the case of any failure to comply with any obligation incumbent upon a purchaser under this Regulation, the Belgian intervention agency shall declare the relevant security totally or partially forfeit depending on the seriousness of the breach involved.

All cases where the preceding subparagraph is applied shall be notified to the Commission giving full details of the circumstances involved and the action taken.

Article 16

The selling price shall apply to gross weight in the case of unboned meat and to net weight in the case of boned meat, exclusive of domestic taxation, free at the loading bay of the cold store where the products are in store. For boned meat, net weight shall be regarded as the difference between the gross weight ascertained at the loading bay of the cold store and the average weight of packaging determined before its use.

Article 17

The purchaser shall take delivery of the product within 10 working days of the date on which the outcome of the relevant procedure is notified either to the tenderer as referred to in Article 7 or to the applicant as

referred to in Article 11 (4). The costs and risks in respect of additional storage for all quantities not taken over within this period shall be borne by the purchaser.

Article 18

The price shall be paid as and when the goods are taken over and in proportion to the quantities to be withdrawn, at the latest the day before each removal. Any necessary adjustments shall be made within five working days of the date of receipt of the final invoice.

Article 19

This Regulation shall enter into force on the day of 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, 11 October 1985.

For the Commission

Frans ANDRIESSEN

Vice-President

ANNEX

Obligations on the disposal of the meat held by the Belgian intervention agency pursuant to Regulations (EEC) No 772/85, (EEC) No 978/85 and (EEC) No 1477/85

The pigmeat shall be fully deboned and the major lymphatic nodes removed.

The portion of pigmeat for heat treatment shall not exceed five kilograms in weight.

Before heating, each portion of the meat mentioned above shall be enclosed in a hermetically sealed container.

The meat in its container shall be subject to a heat treatment according to the following criteria :

— the product shall retain a temperature of at least 60 °C for a minimum of four hours during which time the temperature shall be raised to at least 70 °C for a minimum of 30 minutes,

— the temperature of a representative number of samples of each batch of the product shall be monitored continuously by means of an automatic temperature recording device which records the temperature in the centre of the product and in the interior of the heating apparatus.

At all times during its processing, measures shall be taken to prevent any possible recontamination.

In the case of meat bearing the Community health mark, the products shall be marked beside the health mark with the special additional mark '3-85'.