COMMISSION REGULATION (EEC) No 3421/88

of 3 November 1988

issuing a standing invitation to tender in order to determine refunds on exports of olive oil for the 1988/89 marketing year

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation No 136/66/EEC of of 22 September 1966 on the establishment of a common organization of the market in oils and fats [1], as last amended by Regulation (EEC) No 2210/88 [2],

Having regard to Council Regulation (EEC) No 1650/86 of 26 May 1986 on the refunds and levies applicable to exports of olive oil [3], and in particular Article 7 thereof,

Whereas the export refunds for olive oil cannot be fixed only in accordance with the standard procedure, since there is insufficient information available on the world market situation; whereas provision should therefore be made for issuing a standing invitation to tender so that the refunds can, in the coming months, be determined by tender;

Whereas, in view of the demand for olive oil on the world market in certain special cases, provisions should be adopted whereby certain conditions are laid down in the standing invitation to tender;

Whereas, in view of the specific nature of the tendering procedure, detailed rules should be laid down which will enable operators in the various Member States to take part on equal terms, while providing certain guarantees regarding the validity of the tenders;

Whereas, in order to ensure the smooth operation of the tendering procedure, the arrangements for determining the refunds and awarding the contract should be specified;

Whereas, given that the administrative burden of taking part in a tendering procedure tends to weigh more heavily on smaller undertakings, provision should be made for allowing operators to obtain export licences for quantities;

Whereas Commission Regulation (EEC) No 3665/87 [4] lays down common detailed rules for the application of the system of export refunds on agricultural products; whereas Commission Regulation (EEC) No 3183/80 [5], as last amended by Regulation (EEC) No 2082/87 [6], lays down common detailed rules for the application of the system of (import and) export licences and advance fixing certificates for agricultural products; whereas these Regulations apply to olive oil; whereas these common provisions should be supplemented by certain specific provisions;

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

HAS ADOPTED THIS REGULATION:

Article 1

1. There shall be issued a standing invitation to tender in order to determine export refunds on olive oil falling within the following CN codes:

— 1509 10 90

— 1509 90 00

— 1510 00 90

2. The standing invitation to tender shall remain open until 31 October 1989. During its period of validity there shall be issued partial invitations to tender.

Article 2

Pursuant to this tendering procedure the Commission may in accordance with the procedure laid down in Article 38 of Regulation No 136/66/EEC:

(a) issue invitations to tender in respect of specific destinations, in response to demand for olive oil in certain third countries;

(b) impose restrictions on the quantities and qualities of oil for which offers may be submitted;

(c) cancel one or more partial invitations to tender before the deadline for submitting tenders;

(d) exclude certain countries of destination from the invitation to tender or differentiate the refund according to the country of destination.

Article 3

1. The periods during which tenders may be submitted in response to the partial invitations to tender shall be as follows:

— for November, January, February, March, April, May, June, September, and October: from the fifth day to the ninth day of each month at 1 p.m. and from the 15th to the 23rd day of each month at 1 p.m,

— for July and August: from the 15th to the 23rd day of each month at 1 p.m,

— for December: from the fifth to the ninth day at 1 p.m.

[1] OJ No 172, 30. 9. 1966, p. 3025/66.
[2] OJ No L 197, 26. 7. 1988, p. 1.
[3] OJ No L 145, 30. 5. 1986, p. 8.
[4] OJ No L 351, 14. 12. 1987, p. 1.
[5] OJ No L 338, 13. 12. 1980, p. 1.
[6] OJ No L 195, 16. 7. 1987, p. 11.

That deadline shall be in Belgian time. Where the day on which the deadline expires in a Member State is a public holiday for the authority responsible for receiving the tenders, the deadline shall expire at 1 p.m. on the last preceding working day.

2. Offers in connection with this invitation to 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, telefax or telegram.

Separate tenders must be submitted where they relate to several qualities, presentations or, where applicable, several countries of destination.

3. An offer must indicate :

(a) the reference number of the Regulation issuing the invitation to tender, and the partial or specific invitation to tender in response to which the offer is being made ;

(b) the name and address of the tenderer ;

(c) the quantity, quality and subheadings of the olive oil to be exported and the presentation of the oil, specifying whether it is put up in immediate containers of a net capacity of five litres or less or whether it is otherwise presented ;

(d) the country of destination, where the refund is differentiated according to the country of destination ;

(e) the amount of the export refund per 100 kilograms of olive oil, expressed in the currency of the Member State in which the tender is submitted ;

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

4. An offer shall be valid only if :

(a) the quantity to be exported is not less than five tonnes of a single quality in the case of olive oil put up in immediate containers of a net capacity of five litres or less, and not less than 20 tonnes of a single quality in the case of olive oil otherwise presented ;

(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 contains all the information required under paragraph 3.

5. Tenders shall be valid in respect of only one partial invitation to tender or, where applicable, one specific invitation to tender. A tender may stipulate that it is to be regarded as having been submitted only if the quantity awarded represents all or a specified part of the tendered quantity.

6. The tender, the proof and the declarations referred to in paragraphs 3 and 4 above shall be expressed in the official language or one of the official languages of the Member State whose competent authority received the tender.

7. A tender which is not submitted in accordance with the provisions of this Regulation or which contains terms other than those indicated herein, shall not be considered.

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

Article 4

1. A security of 10 ECU per 100 kilograms of olive oil to be exported must be lodged by each tenderer. This security shall in the case of successful tenderers become the security for the export licence.

2. The provisions of Commission Regulation (EEC) No 2220/85 [1] shall apply to the securities referred to in this Regulation. The primary requirements within the meaning of Article 20 of Regulation (EEC) No 2220/85 shall be the obligations set out in paragraph 3 (b) and compliance with the time limit set.

3. Except in case of *force majeure*, the security will be released :

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

(b) to successful tenderers, only

— for the quantity in respect of which they have fulfilled the obligation created by the licence referred to in Article 9, the provisions of Article 33 of Regulation (EEC) No 3183/80 remaining applicable,

— if proof is furnished that the olive oil has reached its destination, in cases where the refund applicable in respect of the invitation to tender is valid for certain third countries only.

Article 5

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

2. Tenders shall be communicated by telex or by telefax to the Commission forthwith and in such a manner that the tenderers remain anonymous.

Article 6

The amount of the export refund expressed in national currency shall, for the purposes of comparing the tenders and awarding the contract, be converted into ECU on the basis of the green rates.

Article 7

1. In the light, in particular, of the current situation and foreseeable development of the Community and world olive oil markets, and the tenders received, a maximum refund shall, in accordance with the procedure laid down in Article 38 of Regulation (EEC) No 136/66/EEC, be fixed for exports of the product falling within the subheadings listed in Article 1. Refunds shall be fixed no later than the eighth working day after the expiry of each deadline for the submission of tenders.

[1] OJ No L 205, 3. 8. 1985, p. 5.

2. It may also be decided, in accordance with that procedure :

— to fix a maximum quantity in respect of each partial invitation to tender,

— not to award a contract in response to a partial specific invitation to tender.

3. The refunds are be differentiated according to whether the olive oil is put up in immediate containers of a net capacity of five litres or less or is otherwise presented.

4. Where the refund is differentiated according to destination it shall be fixed in the light of the specific situation of each country of destination.

5. Export refunds shall be adjusted during the period of validity of the export licences as referred to in Article 9, in the light of changes in the threshold price occuring between the day on which the export declaration is accepted.

6. Without prejudice to the provisions of the first indent of paragraph 2 a contract shall, in cases where a maximum export refund is fixed, be awarded to every tenderer whose tender quotes a rate of refund equal to or less than such maximum refund for the quantity stated in the tender.

Article 8

1. If a maximum quantity is fixed in respect of a partial invitation to tender, a contract shall be awarded to the tenderer whose tender quotes the lowest export refund and, if necessary, to the tenderer whose tender quotes the next lowest refund, and so on until the entire maximum quantity has been accounted for.

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

Article 9

1. The competent authority of the Member State concerned shall immediately notify the applicants of the result of their participation in the invitation to tender. In addition, the competent authority shall issue to successful tenderers an export licence for the quantity awarded, indicating in box 18 (a) the export refund quoted in his tender and also stating the quality and presentation of the oil and, where appropriate, the use to which it is to be put.

Article 10

Every successful tenderer shall have :

the obligation to export, during the period of validity of the export licence awarded to him and, where applicable, to the country indicated in the tender, the tendered quantity of olive oil of the quality and presentation stated in the tender.

This right and these obligations are not transferable.

Article 11

1. Before expiry of the timelimit for the submission of tenders, operators who are unable to take part in the invitation to tender on account of the minimum quantity referred to in Article 3 may apply each month for a special export licence for a total quantity of less than 20 tonnes in respect of each quality and presentation of olive oil. The said licence, which shall be subject to the provisions of Commission Regulation (EEC) No 2041/75 [1] as regards export licences with advance fixing of the refund, shall be issued by the competent authority of the Member State concerned, and shall indicate in box 18 (a) the maximum rate of refund accepted in respect of the last invitation to tender for that quality and presentation.

The rights and obligations arising from the said licence are not transferable.

2. The Member States shall communicate to the Commission on the 5th and 20th of each month, in respect of the previous fortnight, the number of licences issued and the quantities involved, broken down by quality and presentation.

Article 12

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, 3 November 1988.

For the Commission

Frans ANDRIESSEN

Vice-President

[1] OJ No L 213, 11. 8. 1975, p. 1.