COMMISSION REGULATION (EEC) No 963/91

of 18 April 1991

on a standing invitation to tender to determine levies and/or refunds on exports of white sugar and amending Regulation (EEC) No 983/90

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 markets in the sugar sector (1), as last amended by Regulation (EEC) No 464/91 (2), and in particular Articles 13 (2), 18 (5), 19 (4) and (7) and the second subparagraph 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 markets (3), and in particular Article 1 (1) thereof,

Whereas, in view of the situation on the Community and world sugar markets, a standing invitation to tender should be issued as soon as possible for the export of white sugar in respect of the 1991/92 marketing year 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 (4), as last amended by Regulation (EEC) No 1489/76 (5);

Whereas, in view of the specific nature of the transactions involved, special detailed rules 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 last amended by Regulation (EEC) No 1714/88 (7), 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 2630/81 of 10 September 1981 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 1714/88; whereas, however, the provisions of Commission Regulation (EEC) No 3719/88 of 16 November 1988 laying down common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products (9), as last amended by Regulation (EEC) No 1599/90 (10), and those of Commission Regulation (EEC) No 120/89 of 19 January 1989 laying down common detailed rules for the application of the export levies and charges on agricultural products (11), should remain applicable;

Whereas the second subparagraph of Article 3 (1) of Commission Regulation (EEC) No 3155/85 of 11 November 1985 providing for the advance fixing of monetary compensatory amounts (12), as last amended by Regulation (EEC) No 3247/89 (13), provides that, where the levy or refund is fixed in advance by means of tenders, applications to fix the monetary compensatory amount in advance shall be accepted only if the party concerned has declared in writing at the time of submission of the tender that he will also apply to fix the monetary compensatory amount in advance if the tender is accepted in whole or in part; whereas, in such cases, the obligation to lodge an application to fix the levy or refund in advance following acceptance of the tender involves an obligation to request at the same time advance fixing of the monetary compensatory amount; whereas, for reasons peculiar to the market in sugar, when an operator intends to make use of the facility of fixing a monetary compensatory amount in advance in connection with an export levy or refund fixed in advance under a tendering procedure he only makes up his mind to do so at the moment when the application for the export licence is made; whereas it is only after he has been declared successful in respect of a levy or refund for the quantity of sugar indicated in his tender that the said monetary compensatory amount can be fixed in advance; whereas, in consequence, a derogation should be made from the said provision in the case of this tendering procedure, so that

(1) OJ No L 177, 1. 7. 1981, p. 4.
(2) OJ No L 54, 28. 2. 1991, p. 22.
(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 152, 18. 6. 1988, p. 23.
(8) OJ No L 258, 11. 9. 1981, p. 16.
(9) OJ No L 331, 2. 12. 1988, p. 1.
(10) OJ No L 151, 15. 6. 1990, p. 29.
(11) OJ No L 16, 20. 1. 1989, p. 19.
(12) OJ No L 310, 21. 11. 1985, p. 22.
(13) OJ No L 314, 28. 10. 1989, p. 51.

application for advance fixing of the monetary compensatory amount at the time when the application for the export licence is made should be possible;

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

2. The standing invitation to tender shall remain open until 20 May 1992.

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 notice of the invitation to tender 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.

3. The notice 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 modified during that period.

Article 4

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

(a) shall begin on 20 April 1991;

(b) shall end on 2 May 1991 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. Notwithstanding paragraph 2 (b), the period for the submission of tenders which was to end on:

— Wednesday 8 May 1991 shall end on Tuesday 7 May 1991 at 10.30 a.m.,

— Wednesday 15 May 1991 shall end on Tuesday 14 May 1991 at 10.30 a.m.,

— Wednesday 20 November 1991 shall end on Tuesday 19 November 1991 at 10.30 a.m.

4. Notwithstanding paragraph 2, no partial invitations to tender will be issued on Wednesday 25 December 1991 and Wednesday 1 January 1992

5. 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, telegram or fax message.

2. An offer must indicate:

(a) the reference number of the invitation to tender 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 minimum 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 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 an export licence or licences in respect of the quantities of white sugar to be exported;

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

— where the obligation to export resulting from the export licence referred to in Article 12 (b) 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. A tender 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 the expiry of the period for the submission of the tenders in question;

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

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

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

Article 6

1. A security of ECU 9 per 100 kilograms of white sugar to be exported under this invitation to tender must be lodged by each tenderer. Without prejudice to Article 13 (4), this security shall in the case of 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 cases of *force majeure* the security referred to in paragraph 1 will be released:

(a) to unsuccessful tenderers in respect of the quantity for which no award has been made;

(b) to successful tenderers who have not applied for the relevant export licence within the period referred to in Article 12 (b), to the extent of ECU 8 per 100 kilograms of white sugar.

However, this part of the releasable security shall be reduced by the amount representing the difference existing, as applicable:

— between the maximum amount of the export refund fixed for the partial invitation concerned and the maximum amount of the export refund fixed for the following partial invitation when the latter amount is higher than the former,

or

— between the minimum amount of the export levy fixed for the partial invitation concerned and the minimum amount of the export levy fixed for the following partial invitation when the latter amount is lower than the former;

(c) to successful tenderers for the quantity for which they have fulfilled, within the meaning of Article 29 (b) and the first subparagraph of Article 30 (1) (b) (i) of Regulation (EEC) No 3719/88, the export obligation resulting from the licence referred to under Article 12 (b) in accordance with the terms of Article 33 of that Regulation.

The part of the security or the security which is not released shall be forfeit in respect of the quantity of sugar for which the corresponding obligations have not been fulfilled.

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 7

1. Tenders shall be examined in private by the competent authority concerned. The 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 a manner that the tenderers remain anonymous.

Article 8

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

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 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 of refund equal to or greater than such minimum levy.

3. 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 quoted 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 an export 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 receive in the circumstances referred to under (b), in respect of the quantity awarded, an export licence indicating, as appropriate, the export levy or the export refund quoted in his tender;

(b) the obligation to lodge, in accordance with the relevant provisions of Regulation (EEC) No 3719/88, an application for an export licence in respect of that quantity, the application not being revocable and Article 12 of Regulation (EEC) No 120/89 not applying in such a case. The application shall be lodged in accordance with the relevant provisions of Regulation (EEC) No 3719/88, not later than:

— the last working day preceding the date of the partial invitation to tender to be held the following week,

or

— if no partial invitation to tender is due to be held that week, the last working day of the following week;

(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 are not transferable.

Article 13

1. The first paragraph of Article 9 of Regulation (EEC) No 2630/81 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 issue until the end of the fifth calendar month following that in which the partial invitation was issued.

However, export licences issued in respect of the partial invitations held after 1 May 1992 will be valid only until 30 September 1992.

3. The export licences issued in respect of the partial invitations held between 2 May and 11 September 1991 will be usable only from 12 September 1991.

4. Except in cases of *force majeure*, if the obligation to export resulting from the export licence referred to under Article 12 (b) 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 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, 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 (1).

Article 14

If the tenderer intends to apply for advance fixing of the monetary compensatory amount under this standing invitation to tender, the provisions of the second paragraph of Article 3 (1) of Regulation (EEC) No 3155/85 shall not apply.

Article 15

1. If the terms of Article 12 of Regulation (EEC) No 766/68 apply, the export refunds and export levies fixed in advance under the terms of the present invitation to tender:

(a) before 1 July 1991 for the sugar exported as from that date;

(b) before 1 July 1992 for the sugar exported as from that date,

shall be adjusted.

2. For the adjustment referred to in paragraph 1 (a):

(a) in the event of the fixing of an intervention price for white sugar applicable with effect from 1 July 1991 which is greater than that in force on 30 June 1991, the export refund and the export levy shall be adjusted by an amount equal to the difference expressed in ecus per 100 kilograms existing between the intervention price for white sugar applicable with effect from 1 July 1991 and the intervention price for that sugar in force on 30 June 1991;

(b) in the event of the fixing of an intervention price for white sugar applicable with effect from 1 July 1991 which is lower than that in force on 30 June 1991, the export refund and the export levy shall be adjusted by an amount equal to the difference expressed in ecus per 100 kilograms existing between the intervention price for white sugar in force on 30 June 1991 and the intervention price for that sugar applicable with effect from 1 July 1991.

3. For the calculation of the differences referred to in paragraph 2, the intervention prices in question shall be increased by the corresponding storage levy referred to in the second subparagraph of Article 8 (2) of Regulation (EEC) No 1785/81.

4. For the purpose of applying this Article, the Member State issuing the relevant export licence shall at the time of issue complete section 'special particulars' by adding the following:

'to be adjusted in accordance with adjudication Regulation (EEC) No 963/91 for exports which take place after 30 June ...' (1991 or 1992 as applicable).

5. Upon presentation by the holder of the export licence concerned, or by the assignee when the licence has been transferred, to the Member State that issued it and before the customs formalities for the quantities concerned have been carried out, that Member State shall enter the adjustment to be made in section 'special particulars' and shall duly certify and stamp that section.

6. For the adjustment referred to in paragraph 1 (b) the provisions of paragraphs 2 to 5 shall be applicable *mutatis mutandis.*

7. The Member States shall inform the Commission as quickly as possible of the quantities of sugar for which an adjustment under this Article has been made.

Article 16

The following indents shall be added to Article 4 (3) of Regulation (EEC) No 983/90 of 19 April 1990 on a standing invitation to tender to determine levies and/or refunds on exports of white sugar [1]:

'— Wednesday 1 May 1991 shall end on Thursday 2 May 1991 at 10.30 a.m.,

— Wednesday 8 and Wednesday 15 May 1991 shall end on Tuesday 7 and Tuesday 14 May 1991 respectively at 10.30 a.m.'

Article 17

This Regulation shall enter into force on 20 April 1991.

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

Done at Brussels, 18 April 1991.

For the Commission

Ray MAC SHARRY

Member of the Commission

[1] OJ No L 100, 20. 4. 1990, p. 9.