COMMISSION REGULATION (EC) No 675/94

of 25 March 1994

laying down detailed rules for the application of Council Regulations (EC) No 3640/93 and (EC) No 3670/93 as regards the special arrangements for imports of maize and sorghum into Spain and of maize into Portugal

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3640/93 of 17 December 1993 on special arrangements for imports of maize and sorghum into Spain for the year 1993 [1], and in particular Article 8 thereof,

Having regard to Council Regulation (EC) No 3670/93 of December 1993 on special arrangements for imports of maize into Portugal [2], and in particular Article 7 thereof,

Whereas, pursuant to the agreements between the European Economic Community and the United States of America within the GATT framework, the Community has undertaken, as from in the 1993/94 marketing year, to open a reduced-tariff quota for imports into Portugal of 500 000 tonnes of maize and, in respect of 1993, to import into Spain a minimum quantity of two million tonnes of maize and 300 000 tonnes of sorghum, minus the quantities of certain other products imported into that counry during the same year;

Whereas, to ensure that the agreements are implemented, provision is made under the two import schemes, either for the direct purchase of cereals on the world market or alternatively, for a levy reduction on importation, licences being valid only in Portugal or in Spain; whereas, however, imports on preferential terms may create didiculties for the Community market;

Whereas, in the case of direct purchase on the world market, and with a view to enabling the operation to be carried out under optimum conditions and in particular at the lowest purchase and transport costs, an invitation to tender should be organized for supply and delivery to warehouse designated by the intervention agency concerned; whereas provision should be made for tenders to be lodged for individual lots in line with storage capacities availabl in certain areas of the Member State concerned and published in the notice of invitation to tender;

Whereas detailed rules should be adopted on the organization of the invitations to tender for the import levy reduction and for direct purchase on the world market, and conditions should be defined for submitting tenders and lodging and releasing securities guaranteeing compliance with the successful tenderer's obligations;

Whereas, with a view to sound economic and financial mangement of the purchasing operations in question and in particular to avoid disproportionate and excessive risks for operators in view of foreseeable prices on the Spanish and Portuguese markets, provision should be made for importing onto the market, subject to a reduced levy, cereals which do not meet the quality requirements laid down in the invitation to tender; whereas in that case however, the levy reduction may not be greater than the last maount fixed pursuant to Article 3 of Regulation (EC) No 3640/93 of Article 2 of Regulation (EC) No 3670/93;

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

HAS ADOPTED THIS REGULATION:

CHAPTER I

Imports with levy reduction

Article 1

The import levy reduction provided for in Article 3 of Regulation (EC) No 3640/93 and Article 2 of Regulation (EC) No 3670/93 shall be granted on importation into Spain of maize falling within CN code 1005 90 00 and sorghum falling within CN code 1007 00 90 and on importation into Portugal of maize falling within CN code 1005 90 00, covered by licences issued by the Spanish and Portuguese authorities as provided for in this Regulation.

Article 2

1. Where a tendering procedure is orgnized for the import levy reduction, interested parties shall reply to the invitation to tender either by lodging a written tender in exchange for an acknowledgement of receipt with the Spanish intervention agency or the General Directorate for Trade in Portugal or by forwarding the same to the latter by registered letter, telex, telefax or telegram.

[1] OJ No L 333, 31. 12. 1993, p. 13.
[2] OJ No L 338, 31. 12. 1993, p. 35.

2. Tenders must give :

— the reference of the invitation to tender,

— the tenderer's name and exact addresses, together with the telex or telefax number,

— the nature and quantity of the product to be imported,

— the amount per tonne of the import levy reduction proposed in ecus,

— the country of origin of the cereals to be imported.

3. Tenders must be accompanied :

(a) by evidence that the tenderer has lodged a security, the amount of which, per tonne, must be equal to the amount of the reduction proposed in the tender ;

(b) a written undertaking by the tenderer that, within two days of receipt of notification of the award of contract, he will lodge with the competent body concerned a application for an import licence for the quantity awarded, together with an application for advance fixing of the import levy corresponding to the reduction proposed in the tender, and that he will import from the country of origin specified in the tender.

4. Tenders must specify only one country of origin ; they may not exceed the maximum quantity available for each tendering deadline.

5. Tenders not submitted in accordance with paragraphs 1 to 4 or containing conditions other than those laid down in the invitation to tender shall not be considered.

6. Tenders may not be withdrawn.

7. Tenders must be forwarded to the Commission by the competent body not later than two hours after the deadline for the lodging of tenders as specified in the invitation to tender. They must be forwarded in the form shown in Annex 1.

Where no tenders are submitted, the Member State concerned shall inform the Commission within the same time-limit.

Article 3

1. On the basis of the tenders lodged and forwarded under a tendering procedure for the import levy reduction the Commission shall decide, in accordance with the procedure laid down in Article 23 of Council Regulation (EEC) No 1766/92 [1] :

— to fix a maximum import levy reduction, or

— not to pursue the tendering procedure.

Where it is decided to fix a maximum import levy reduction, any tender(s) for an amount equal to or less than the maximum recuction shall be accepted. However, where the maximum reduction fixed under the tendering procedure for a given week leads to the acceptance of quantities exceeding the quantities remaining for importation pursuant to Regulations (EC) No 3640/93 and No 3670/93, the tenderer having lodged the tender corresponding to the accepted maximum reduction shall be awarded a quantity equal to the difference between the quantities applied for in the other accepted tenders and the quantity available. Where the maximum reduction fixed corresponds to several tenders, the quantity to be awarded shall be shared between the tenderers in proportion to the respective quantities for which they have tendered.

2. The amount of the import levy reduction awarded pursuant to paragraph 1 shall be increased by the difference between the threshold price applicable on the day of importation and the corresponding price applicable on the date of expiry of the deadline for submission of tenders.

3. The competent authorities of Spain or Portugal shall notify in writing all tenders of the outcome of their tenders as soon as the Commission has taken the decision referred to in paragraph 1.

Article 4

1. Licence applications shall be lodged on forms printed and/or drawn up in accordance with Article 16 of Commission Regulation (EEC) No 3719/88 [2]. Where a flatrate reduction is adopted by the Commission, applications shall be lodged on the first two working days of each week. Where the levy reduction is awarded under a tendering procedure, applications shall be lodged, for the awarded quantity, within two days of receipt of the notice of award, together with an application for advance fixing of the import levy corresponding to the reduction proposed in the tender.

2. Licence applications and the licences themselves shall carry one of the following entries in section 24 :

'levy reduction : licence valid only in Spain (Regulation (EC) No 675/94)', in the case of applications lodged with the Spannish authority.

'levy reduction : licence valid only in Portugal (Regulation (EC) No 675/94)', in the case of applications lodged with the Portuguese authority.

3. Where a flat-rate reduction is applied, licence applciations shall be taken into consideration only where evidence is provided that a security of ECU 16 per tonne has been lodged in favour at the competent body concerned.

[1] OJ No L 181, 1. 7. 1992, p. 21.

[2] OJ No L 331, 2. 12. 1988, p. 1.

Article 5

1. Licence applications shall be accompanied :

— in the case of a flat-rate reduction, by a written undertaking from the applicant to lodge, by the date of issue of the licence at the latest, a performance guarantee of an amount per tonne qual to the levy reduction granted ;

— in the case of a reduction agreed under a tendering procedure, evidence that the tenderer has lodged a security of an amount per tonne equal to the reduction proposed in the tender.

2. The level of security provided for in Article 12 (b) of Commission Regulation (EEC) No 891/89 [1] shall apply to import licences issued under this Regulation.

3. Where a flat-rate reduction is adopted by the Commission, the advance fixing of the levy shall entail application of the levy reduction and import levy in force on the day on which the licence application is lodged.

4. Where the reduction is fixed under a tendering procedure, the advance fixing of the levy shall entail application of the levy in force on the day of award of contract.

5. Wher the levy is fixed in advance :

— the net amount to be charged shall be shown in section 23 of the licence,

— the reduction granted shall be shown in section 24.

6. Applications shall be valid only if :

— they do not exceed the maximum quantity available for each deadline for lodging applications, and

— they are accompanied by evidence that the applicant's business activity includes international cereals trading in the importing Member State. For the purpos of this Article the provision of such evidence shall consist in presentation to the competent authority of either a copy of a certificate of payment of value added tax in the Member State concerned or a copy of either a customs clearance certificate issued by the Member State concerned in respect of an import or export licence or an invoice relating to intra-Community trade in the applicant's name for an operation conducted in any of the three preceding years.

Article 6

1. Where a flat-rate reduction is adopted by the Commission, licences shall be issued, within the quantities available, na later than the Friday following the last day for submission as specified in article 4. If the Friday is not a working day, they shall be issued on the first working day thereafter.

Should the applications made in respect of a week be for quantities exceeding those still available for import under Regulations (EC) 3640/93 and (EC) No 3670/93, the quantities for which licences are issued shall be the quantities indicated in the applications, reduced by a uniform percentage. The security for the quantities not covered by a licence shall be released immediately.

2. Where a levy reduction is fixed under a tendering procedure, licences shall be issued, on condition that the tenderer has lodged an application for an import licence as referred to in Article 2 (3) (c) before the specified deadline, for the quantities awarded not later than the third working day following the final date for submitting licence applications as set out in Article 4 (1).

3. The comptent authorities shall notify the Commission of the quantities for which licences have been issued each week no later than the third working day of the following week.

4. By way of derogation from Article 21 (1) of Regulation (EEC) No 3719/88 import licences shall, for the purpose of determinig their period of validity, be deemed to have been issued on the day of expiry of the deadline for lodging tenders or applications.

Article 7

1. The period of validity of licences shall be :

— the period specified in Article 8 of Regulation (EEC) No 891/89, in cases where a flat-rate reduction has been adopted by the Commission,

— the period specified in the Regulation opening the invitation to tender, in the case of licences issued under a tendering procedure for the levy reduction.

2. In section 8 of the import licence, a cross must be marked against the word 'yes'. Notwithstanding Article 2 (2) of Regulation No 891/89, the quantity released for free circulation shall be neither greater nor less than the quantity specified in sections 17 and 18 of the import licence. The figure 0 must be entered in section 19 of the licence.

3. By way at derogation from Article 9 of Regulation (EEC) No 3719/88, the rights arising from import licences under this Regulation shall not be transferable.

[1] OJ No L 94, 7. 4. 1989, p. 13.

Article 8

1. The security referred to in Article 5 (1) shall be released in the following cases:

(a) where the tender is not accepted;

(b) where the tenderer provides evidence:

— that the imported product has been processed or utilized in the importing Member State; such evidence may consist in a bill of sale to a processor or consumer with headquarters in the importing Member State, or

— that the countervailing duty referred to in Article 7 of Regulation (EC) No 3640/93 or Article 6 of Regulation (EC) No 3670/93 has been paid, or

— that the product could not be imported, processed or utilized for reasons of force majeure, or

— that the product has become unsuitable for any use whatsoever.

For quantities in respect of which the abovementioned evidence is not produced within 18 months of the date of acceptance of the declaration of release for free circulation the security shall be forfeit as levy.

The processing or utilization of the imported product shall be considered to have been effected if 95 % of the quantity released for free circulation has been processed or used.

2. Securities shall be subject to the provisions of Article 33 of Regulation (EEC) No 3719/88, except for the provision on the six-month time limit referred to in paragraph 3 (b) of the said Article.

3. Where the undertaking referred to in Article 2 (3) (b) is not fulfilled, the security referred to in Article 5 (1) shall be forfeit.

Article 9

1. Maize and sorghum released for free circulation with a reduced levy shall remain under customs surveillance or under administrative surveillance of equivalent effect until such time as it is used or processed.

2. The Member State concerned shall, if need be, take all necessary measures to ensure that the surveillance referred to in paragraph 1 is carried out. These measures shall include requiring importers to submit to any check considered necessary by the competent authorities and to keep specific records enabling the authorities to make such checks.

3. The Member State concerned shall immediately notify the Commission of the measures adopted pursuant to paragraph 2.

CHAPTER II

Direct purchase on the world market

Article 10

1. Where Article 4 of Regulation (EC) No 3640/93 or Article 3 of Regulation (EC) No 3670/93 is applied, the Spanish or Portuguese intervention agency shall arrange for the product to be bought on the world market by the award of a supply contract under a tendering procedure. The supply shall consist in the purchase of the product on the world market and the delivery, not unloaded, to warehouses designated by the abovementioned intervention agency for placing under the customs warehousing procedure provided for in Council Regulation (EEC) No 2503/88 [1].

The decision to purchase on the world market shall specify in particular the quantity of cereals to be imported, the dates of opening and closing of the invitation to tender and the final date for delivery of the goods.

2. A notice of invitation to tender drawn up in accordance with Annex 2 shall be published in the 'C' series of the *Official Journal of the European Communities*. The invitation shall relate to one or more lots. 'Lot' shall be understood as meaning the quantities to be delivered as specified in the invitation.

3. The intervention agency of the Member State concerned shall adopt, as required, additional measures for implementing the purchasing operations in question.

The agency shall notify the Commission immediately of such measures and shall inform operators thereof.

Article 11

1. Interested parties shall reply to the invitation to tender either by lodging a written tender in exchange for an acknowledgment of receipt with the intervention agency indicated in the notice of invitation to tender, or by forwarding the same to the latter by registered letter, telex, telefax or telegram.

Tenders must reach the intervention agency before 12 noon (Brussels time) on the day on which the deadline for the submission of tenders indicated in the notice of invitation to tender expires.

2. Tenders may not only be submitted in respect of whole lots. They shall give:

— the reference of the invitation to tender,

— the tenderer's name and exact address, together with the telex or telefax number,

— details of the lot concerned,

— the tender price proposed, per tonne of product, in the currency of the Member State concerned,

[1] OJ No L 225, 15. 8. 1988, p. 1.

— the country of origin of the cereals to be imported,

— separately, if the cif price, per tonne of product, in the currency of the Member State concerned, corresponding to the tender.

3. Tenders must be accompanied by evidence that the security referred to in Article 12 (1) has been lodged before expiry of the deadline for the submission of tenders.

4. Tenders not submitted in accordance with the Article or containing conditions other than those laid down in the invitation to tender shall not be considered.

5. Tenders may not be withdrawn.

Article 12

1. Tenders submitted shall be considered only where there is evidence that a security of ECU 20/tonne has been lodged.

2. Securities shall be lodged in accordance with the criteria laid down in the invitation to tender referred to in Article 10 (2) by the Member State concerned, in accordance with Commission Regulation (EEC) No 2220/85 [1].

3. Securities shall be released immediately in the following cases:

(a) where the tender is not accepted;

(b) where the tenderer provides evidence that the supply contract has been performed in accordance with the conditions laid down in Article 15 for the accepted tender;

(c) where the tenderer provides evidence that the goods could not be imported for reasons of *force majeure*.

Article 13

Tenders shall be opened and in read in public. This shall be done by the intervention agency immediately after the expiry of the deadline for the submission of tenders.

Article 14

1. Without prejudice to the application of paragraphs 2 and 3, the decision to award the contract to the tenderer submitting the most favourable tender shall be notified in writing to all the tenderers not later than the second working day following the day on which the tenders are opened and read.

2. Where the tender judged most favourable is submitted simultaneously by more than one tenderer, the intervention agency shall draw lots to decide which tenderer is to be selected.

3. If the tenders submitted seem not to reflect the conditions normally applying on the markets, the intervention agency may decide to make no award. Invitations to tender shall be renewed within one week until all the lots are awarded.

Article 15

1. At the time of supply the intervention agency shall check the quantity and quality of the goods.

Subject to the application of the price reductions provided for in the notice of invitation to tender, the goods shall be rejected if the quality is below the minimum quality laid down. However the goods may be imported with a reduced levy, obtained by applying a flat-rate reduction in accordance with Chapter I.

2. Where, pursuant to paragraph 1, delivery does not take place, the security referred to in Article 12 shall be forfeit without prejudice to any other financial consequences for breach of the supply contract.

CHAPTER III

Final provisions

Article 16

This Regulation shall enter into force on the third day following 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, 25 March 1994.

For the Commission

René STEICHEN

Member of the Commission

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

ANNEX I

Weekly tendering procedure for the levy reduction on imports of maize from third countries

(Regulation (EC) No 675/94)

Deadline for submission of tenders (date/hour)

1	2	3	4	5
Number of tenderer	Quantity (in tonnes)	Amount of import levy reduction	Advance fixing of green rate (yes/no)	Origin of cereal
1				
2				
3				
4				
etc.				

ANNEX II

MODEL FOR NOTICE OF INVITATION TO TENDER

'Invitation to tender for the purchase of ... tonnes of ... on the world market by the intervention agency ...'

(Article 10 (2) of Commission Regulation (EC) No 675/94)

1. Product to be mobilized .....
2. Total quantity .....
3. List of warehouses for a lot .....
   .....
   .....
4. Characteristics of goods (quality required, minimum quality, price reductions) .....
   .....
   .....
5. Packaging (bulk) .....
6. Delivery period .....
7. Deadline for submission of tenders .....