COMMISSION REGULATION (EC) No 1978/97

of 10 October 1997

issuing a standing invitation to tender in order to determine refunds on exports of olive oil for the 1997/98 marketing year

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation No 136/66/EEC of 22 September 1966 on the establishment of a common organization of the market in oils and fats [1], as last amended by Regulation (EC) No 1581/96 [2], and in particular Article 3 thereof,

Whereas the export refunds for olive oil cannot be fixed solely 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, provision should be made for amending certain conditions 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 decisions fixing refunds are to be made in particular on the basis of information on tenders forwarded by the Member States; whereas, in order to ensure the arrangements are administered properly, the possibility that the award may be made to tenderers whose bids have not been duly communicated should be ruled out;

Whereas Commission Regulation (EEC) No 3665/87 [3], as last amended by Regulation (EC) No 815/97 [4], lays down common detailed rules for the application of the system of export refunds on agricultural products; whereas Commission Regulation (EEC) No 3719/88 [5], as last amended by Regulation (EC) No 1404/97 [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 those Regulations apply to olive oil; whereas those 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. A standing invitation to tender is hereby issued 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 1998. During its period of validity partial invitations to tender shall be issued.

Article 2

Pursuant to this invitation to tender 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 (specific invitations to tender) 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 an 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 January, February, March, April, May, June, July, September, October and November: from the fifth day to 12 noon on the ninth day of each month and from the 19th day to 12 noon on the 23rd day of each month,
— for August: from the 19th day to 12 noon on the 24th day of the month,
— for December: from the 10th day to 12 noon on the 15th day of the month.

That deadline shall be in Belgian time. Where the day on which the deadline expires in a Member State is a holiday for the authority responsible for receiving the tenders, the deadline shall be 12 noon on the last preceding working day.

[1] OJ 172, 30. 9. 1966, p. 3025/66.
[2] OJ L 206, 16. 8. 1996, p. 11.
[3] OJ L 351, 14. 12. 1987, p. 1.
[4] OJ L 116, 6. 5. 1997, p. 22.
[5] OJ L 331, 2. 12. 1988, p. 1.
[6] OJ L 194, 23. 7. 1997, p. 5.

2. Tenders in response to 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, fax or telegram.

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

3. Tenders must indicate:

(a) the reference number of the Regulation issuing the invitation to tender, and of 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 varies with the country of destination;

(e) the amount of the export refund per 100 kilograms of olive oil, expressed in ecus;

(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. Tenders 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. Tenders and the proof and declarations referred to in paragraphs 3 and 4 shall be drafted in the official language or one of the official languages of the Member State to whose competent authority the tender is addressed.

7. Tenders which are not submitted in accordance with this Regulation or which contains terms other than those indicated herein shall not be considered.

8. Once submitted, tenders may not be withdrawn.

Article 4

1. A security of ECU 12 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. 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 shall 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 to export conferred by the licence referred to in Article 9, Article 33 of Regulation (EEC) No 3719/88 remaining applicable,

— for the quantity relating to applications withdrawn pursuant to Article 8 (3),

— 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 authority of the Member State concerned. Subject to paragraph 2, persons present at the examination shall be under an obligation not to disclose any particulars relating thereto.

2. Tenders shall be communicated by telex or by fax to the Commission not later than 24 hours after expiry of the deadline for submission of tenders and in such a manner that the tenderers remain anonymous.

Article 6

1. In the light, in particular, of the current situation and foreseeable development of the Community and world olive-oil markets and on the basis of the tenders received, a maximum refund shall be fixed, in accordance with the procedure laid down in Article 38 of Regulation No 136/66/EEC, for exports of each of the products falling within the CN codes 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 L 205, 3. 8. 1985, p. 5.

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

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

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

3. The refunds shall vary depending on 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 refunds vary with the destination, they shall be fixed in the light of the specific situation in each country of destination.

5. Without prejudice to the first indent of paragraph 2, in cases where a maximum export refund is fixed, a contract shall be awarded to the tenderer or tenderers whose tender has been communicated in accordance with Article 5 (2) and quotes a rate of refund equal to or less than such maximum refund for the quantity stated in the tender.

Article 7

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 the successful tenderers, not later than the third working day following publication of the maximum refund in the *Official Journal of the European Communities*, an export licence for the quantity awarded, indicating in box 22 the export refund quoted in the tender and stating the quality, presentation and, where appropriate, destination of the oil.

2. The export licence shall be valid from the actual date of issue until the end of the third month following the month of publication of the maximum refund in the *Official Journal of the European Communities.*

Article 8

1. Where a maximum quantity is fixed in respect of a partial invitation to tender, a contract shall be awarded to the tenderer quoting the lowest export refund and, if necessary, to the tenderer quoting 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 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 to the tenderers concerned:

— either in proportion to the total quantities in each of their tenders, or

— up to a maximum tonnage to be determined for each of them.

3. Notwithstanding Article 7, where the quantity awarded, pursuant to paragraph 2, is less than 80 % of the quantity applied for, the licence shall be issued not later than the 11th working day following publication of the award in the *Official Journal of the European Communities.* Within 10 working days of publication, applicants may:

— either withdraw the application, in which case the security shall be released immediately,

— or request immediate issue of the licence, in which case the competent authority shall issue it immediately.

Article 9

During the term of validity of the export licences awarded to them, successful tenderers shall be under an obligation to export the quantity of olive oil of the quality and presentation specified in the tender, where applicable, to the country indicated in their tenders.

Such rights and obligations are not transferable.

Article 10

1. Within 15 days of publication of the award in the *Official Journal of the European Communities,* Member States shall notify the Commission of the quantities covered by export licence applications withdrawn pursuant to Article 8 (3).

2. Each month, following the expiry of the term of validity of export licences, Member States shall notify the Commission of the quantities covered by and the refunds relating to unused exports licences.

3. All notifications referred to in paragraphs 1 and 2, including 'nil' notifications, shall be made in accordance with the model set out in the Annex.

Article 11

Additional quantities exported within the tolerance referred to in Article 8 (4) of Regulation (EEC) No 3719/88 shall not be eligible for the refund.

At least one of the following shall be entered in box 22:

— Restitución válida por ... toneladas (cantidad por la que se expida el certificado)

— Restitutionen omfatter ... tons (den mængde, licensen vedrører)

— Erstattung gültig für ... Tonnen (Menge, für welche die Lizenz ausgestellt wurde)

— Επιστροφή ισχύουσα για ... τόνους (ποσότητα για την οποία έχει εκδοθεί το πιστοποιητικό)

— Refund valid for ... tonnes (quantity for which the licence is issued)

— Restitution valable pour ... tonnes (quantité pour laquelle le certificat est délivré)

— Restituzione valida per ... t (quantitativo per il quale il titolo è rilasciato)

— Restitutie geldig voor ... ton (hoeveelheid waarvoor het certificaat wordt afgegeven)

— Restituição válida para ... toneladas (quantidade relativamente à qual é emitido o certificado)

— Tuki on voimassa ... tonnille (määrä, jolle todistus on myönnetty)

— Ger rätt till exportbidrag för ... ton (den kvantitet för vilken licensen utfärdats).

This Article shall only apply to licences for the export on which a refund is payable.

Article 12

The provisions of Commission Regulation (EC) 2543/95 [1] shall apply, except where otherwise indicated in this Regulation.

Article 13

This Regulation shall enter into force on the 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, 10 October 1997.

For the Commission

Franz FISCHLER

Member of the Commission

[1] OJ L 260, 31. 10. 1995, p. 33.

ANNEX

Application of Regulation (EC) No 1978/97

COMMISSION OF THE EUROPEAN COMMUNITIES — DG VI/C.4 — olive oil sector

Export licence applications — olive oil sector

Applicant: .....

Date: .....

Member State: .....

Person to contact: .....

Telephone: .....

Fax: .....

Addressee: DG VI/C.4 — Fax: (32 2) 296 60 09 — Telex: 22037 — AGREC B

— Part A: Notification concerning invitation to tender of ...

Category	Total quantities in each category withdrawn pursuant to the first subparagraph of Article 8 (3)

— Part B: Monthly notification

Category	Unused quantities	Date of issue of certificate	Refund fixed in advance	Total amount refunds fixed in advance