COMMISSION REGULATION (EC) No 879/2008

of 9 September 2008

opening a standing invitation to tender for the resale for export of sugar held by the intervention agencies of Belgium, the Czech Republic, Ireland, Italy, Hungary, Slovakia and Sweden for the marketing year 2008/09

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products [1], and in particular Article 43(d) in conjunction with Article 4 thereof,

Whereas:

(1) Article 39(1) of Commission Regulation (EC) No 952/2006 of 29 June 2006 laying down detailed rules for the application of Council Regulation (EC) No 318/2006 as regards the management of the Community market in sugar and the quota system [2] provides that the intervention agencies may sell sugar only after a decision to that effect has been adopted by the Commission.

(2) Such a decision was taken by Commission Regulation (EC) No 1060/2007 of 14 September 2007 opening a standing invitation to tender for the resale for export of sugar held by the intervention agencies of Belgium, the Czech Republic, Spain, Ireland, Italy, Hungary, Slovakia and Sweden [3]. Under that Regulation, tenders may be submitted for the last time between 11 and 24 September 2008.

(3) It is foreseeable that intervention stocks of sugar will continue to exist in most of the Member States concerned after expiry of that last possibility to submit tenders. In order to respond to the continued market needs, it is, therefore, appropriate to open a further standing invitation to tender to make these stocks available for export.

(4) Community exports to certain close destinations and to third countries granting Community products a preferential import treatment are currently in a particular favourable competitive position. In order to prevent any abuse associated with the reimport or reintroduction into the Community of sugar sector products that have qualified for export, sugar made available under the above standing invitation to tender should not be made available for export to those destinations.

(5) For the marketing year 2008/09, no budget has been allocated to export refunds for sugar. Therefore, it is necessary to derogate from the procedures laid down under Regulation (EC) No 952/2006 insofar as they were designed for a situation in which export refunds would be paid.

(6) To allow comparison of tender prices for sugar of different qualities, the tender price should refer to sugar of the standard quality as defined in Part B of Annex IV to Regulation (EC) No 1234/2007.

(7) The intervention agencies of Belgium, the Czech Republic, Ireland, Italy, Hungary, Slovakia and Sweden should communicate the tenders to the Commission. The tenderers should remain anonymous.

(8) Pursuant to Article 42(2)(c) of Regulation (EC) No 952/2006, it is appropriate to fix a minimum quantity per tenderer or per lot.

(9) To take account of the situation on the Community market, provision should be made for the Commission to fix a minimum selling price for each partial invitation to tender.

(10) The minimum selling price refers to sugar of the standard quality. Provision should be made to adjust the selling price in cases where the sugar is not of this quality.

[1] OJ L 299, 16.11.2007, p. 1.
[2] OJ L 178, 1.7.2006, p. 39.
[3] OJ L 242, 15.9.2007, p. 8.

(11) The quantities available for a Member State that can be awarded when the Commission fixes the minimum selling price should take into account the quantities awarded pursuant to Commission Regulation (EC) No 877/2008 of 9 September 2008 opening a standing invitation to tender for the resale on the Community market of sugar held by the intervention agencies of Belgium, the Czech Republic, Ireland, Italy, Hungary, Slovakia and Sweden [1] and Commission Regulation (EC) No 878/2008 of 9 September 2008 opening a standing invitation to tender for the resale for industrial use of sugar held by the intervention agencies of Belgium, the Czech Republic, Ireland, Italy, Hungary, Slovakia and Sweden [2].

(12) For the same reason as the one set out in recital 5 above, the export licence issued in accordance with Article 48(2)(a) of Regulation (EC) No 952/2006 cannot specify the export refund.

(13) Pursuant to Article 42(2)(e) of Regulation (EC) No 952/2006, it is appropriate to determine the period of validity of the export licences.

(14) To ensure that the quantities awarded pursuant to this Regulation are exported, the security to be lodged when applying for an export licence should be set at a dissuasive level to avoid any risk of these quantities being used for other purposes.

(15) In order to ensure proper management of sugar in storage, provision should be made for a communication from the Member States to the Commission on the quantities actually sold and exported.

(16) The second paragraph of Article 59 of Regulation (EC) No 952/2006 provides that Commission Regulation (EC) No 1262/2001 [3] continues to apply to sugar accepted into intervention before 10 February 2006. However, for the resale of intervention sugar, this distinction is unnecessary and its implementation would create administrative difficulties for the Member States. It is therefore appropriate to exclude the application of Regulation (EC) No 1262/2001 to the resale of intervention sugar pursuant to this Regulation.

(17) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for the Common Organisation of Agricultural Markets,

HAS ADOPTED THIS REGULATION:

Article 1

The intervention agencies of Belgium, the Czech Republic, Ireland, Italy, Hungary, Slovakia and Sweden listed in Annex I shall offer for sale a total quantity of 345 539 tonnes of sugar by standing invitation to tender for export to all destinations, excluding the following:

(a) third countries: Andorra, Liechtenstein, the Holy See (Vatican City State), Croatia, Bosnia and Herzegovina, Montenegro, Albania, the former Yugoslav Republic of Macedonia, and Serbia, as well as Kosovo under UNSC Resolution 1244/99;

(b) territories of EU Member States not forming part of the customs territory of the Community: the Faeroe Islands, Greenland, Heligoland, Ceuta, Melilla, the communes of Livigno and Campione d'Italia, and the areas of the Republic of Cyprus in which the Government of the Republic of Cyprus does not exercise effective control;

(c) European territories for whose external relations a Member State is responsible not forming part of the customs territory of the Community: Gibraltar.

The maximum quantities involved per Member State are set out in Annex I.

The tendering procedure shall determine the selling price.

Article 2

1. The period during which tenders may be submitted in response to the first partial invitation to tender shall begin on 1 October 2008 and shall end on 15 October 2008 at 15.00 Brussels time.

The periods during which tenders may be submitted in response to the second and subsequent partial invitations shall begin on the first working day following the end of the preceding period. They shall end at 15.00 Brussels time on:

— 29 October 2008,

— 12 and 26 November 2008,

— 3 and 17 December 2008,

[1] See page 3 of this Official Journal.
[2] See page 8 of this Official Journal.
[3] OJ L 178, 30.6.2001, p. 48. Regulation repealed by Regulation (EC) No 952/2006.

— 7 and 28 January 2009,

— 11 and 25 February 2009,

— 11 and 25 March 2009,

— 15 and 29 April 2009,

— 13 and 27 May 2009,

— 10 and 24 June 2009,

— 1 and 15 July 2009,

— 5 and 26 August 2009,

— 9 and 23 September 2009.

2. The purpose of the tendering procedure shall be to determine the minimum price which tenderers are willing to pay for the sugar referred to in Article 1. Since that sugar will not benefit from export refunds, this price shall not take account of any export refund, by way of derogation from Article 42(1)(d) of Regulation (EC) No 952/2006.

3. The tender price shall refer to white sugar and raw sugar of the standard quality as defined in Part B of Annex IV to Regulation (EC) No 1234/2007.

4. The minimum quantity of the tender per lot in accordance with Article 42(2)(c) of Regulation (EC) No 952/2006 shall be 250 tonnes unless the available quantity for that lot is less than 250 tonnes. In such cases the available quantity must be tendered.

5. Tenders shall be lodged with the intervention agency holding the sugar as set out in Annex I to this Regulation.

6. Tenders shall include a declaration by the tenderer undertaking, for any quantity of sugar awarded, to apply for an export licence.

Article 3

The intervention agencies concerned shall communicate to the Commission tenders submitted within two hours after the expiry of the deadline for the submissions laid down in Article 2(1).

The tenderers shall not be identified.

Tenders submitted shall be communicated in electronic form according to the model set out in Annex II.

When no tenders are submitted, the Member State shall communicate this to the Commission within the time limit fixed in the first paragraph.

Article 4

1. The Commission shall fix per Member State concerned the minimum selling price or decide not to accept the tenders in accordance with the procedure referred to in Article 195 of Regulation (EC) No 1234/2007.

2. For intervention sugar which is not of the standard quality, Member States shall adjust the actual selling price by way of application *mutatis mutandis* of, respectively, Article 32(6) and Article 33 of Regulation (EC) No 952/2006. In this context, the reference, in Article 32 of Regulation (EC) No 952/2006, to Annex I to Council Regulation (EC) No 318/2006 [1] shall be interpreted as a reference to Part B of Annex IV to Regulation (EC) No 1234/2007.

3. The available quantity for a lot shall be reduced by the quantities awarded the same day for that lot by Regulations (EC) No 877/2008 and (EC) No 878/2008.

Where an award at a minimum selling price set pursuant to paragraph 1 would result in that reduced available quantity for a lot being exceeded, that award shall be limited to that reduced available quantity.

Where awards for a Member State to all tenderers offering the same selling price for one lot would result in that reduced available quantity for that lot being exceeded, that reduced available quantity shall be awarded as follows:

(a) by division among the tenderers concerned in proportion of the total quantities in each of their tenders; or

(b) by apportionment among the tenderers concerned by reference to a maximum tonnage fixed for each of them; or

(c) by drawing of lots.

Article 5

1. By way of derogation from Article 48(2)(a) of Regulation (EC) No 952/2006, the export licence issued shall not show an export refund.

2. Export licence applications and licences shall contain in box 20 one of the entries listed in Annex III.

3. Export licence applications shall be accompanied by a proof that the applicant has lodged a security of EUR 400 per tonne of the quantity awarded.

[1] OJ L 58, 28.2.2006, p. 1. Regulation (EC) No 318/2006 is to be replaced by Regulation (EC) No 1234/2007 as from 1 October 2008.

4. 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.

5. At the request of the successful tenderer, the competent authority of the Member State where the export licence was issued may permit a quantity, in white sugar equivalent, of sugar produced under quota to be exported in place of the same quantity, in white sugar equivalent, of intervention sugar awarded. The competent authorities of the Member States concerned shall coordinate checks and monitoring of such an operation.

6. The security referred to in paragraph 3 shall be released in accordance with Article 34 of Commission Regulation (EC) No 376/2008 [1] for the quantity for which the applicant has fulfilled, within the meaning of Articles 30(b) and 31(b)(i) of Regulation (EC) No 376/2008, the export obligation resulting from the licences issued in accordance with paragraph 4 and for which the following three documents are presented:

(a) a copy of the transport document;

(b) a declaration that the product has been unloaded, drawn up by an official authority of the third country in question, by the official authorities of a Member State established in the country of destination, or by an international supervisory agency approved under Articles 16a to 16f of Commission Regulation (EC) No 800/1999 [2], certifying that the product has left the unloading site or at least that, to the knowledge of the authority or agency issuing the declaration, the product has not subsequently been reloaded with a view to being re-exported;

(c) a bank document issued by approved intermediaries established in the Community certifying that payment corresponding to the export in question has been credited to the account of the exporter opened with them, or proof of payment.

Article 6

1. On the fifth working day at the latest after the Commission fixes the minimum selling price, the intervention agencies involved shall communicate to the Commission, according to the model set out in Annex IV, the exact quantity sold by partial invitation to tender.

2. Not later than the end of each calendar month in respect of the preceding calendar month, Member States shall notify to the Commission the quantities of sugar of the export licences returned to the competent authorities and the corresponding quantities of sugar exported, taking account of the tolerances permitted by Article 7(4) and (5) of Commission Regulation (EC) No 376/2008.

Article 7

By way of derogation from the second paragraph of Article 59 of Regulation (EC) No 952/2006, Regulation (EC) No 1262/2001 shall not apply to the resale, as referred to in Article 1 of this Regulation, of sugar accepted into intervention before 10 February 2006.

Article 8

This Regulation shall enter into force on the seventh day following its publication in the *Official Journal of the European Union*.

It shall apply from 1 October 2008. It shall expire on 31 March 2010.

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

Done at Brussels, 9 September 2008.

For the Commission
Mariann FISCHER BOEL
Member of the Commission

[1] OJ L 114, 26.4.2008, p. 3.
[2] OJ L 102, 17.4.1999, p. 11.

ANNEX I

Member States holding intervention sugar

Member State	Intervention agency	Quantities held by the intervention agency and available for the sale on the internal market (in tonnes)
Belgium	Bureau d'intervention et de restitution belge Rue de Trèves, 82 B-1040 Bruxelles Tél. (32-2) 287 24 11 Fax (32-2) 287 25 24 Belgisch Interventie- en Restitutiebureau Trierstraat 82 B-1040 Brussel Tel. (32-2) 287 24 11 Fax (32-2) 287 25 24	9 360
Czech Republic	Státní zemědělský intervenční fond Oddělení pro cukr a škrob Ve Smečkách 33 110 00 PRAHA 1 Tel.: (420) 222 87 14 27 Fax: (420) 222 87 18 75	30 687
Ireland	Intervention Section On Farm Investment Subsidies & Storage Division Department of Agriculture & Food Johnstown Castle Estate Wexford Tel. (353) 5363437 Fax (353) 9142843	12 000
Italy	AGEA — Agenzia per le erogazioni in agricoltura Ufficio ammassi pubblici e privati e alcool Via Palestro, 81 I-00185 Roma Tel. (39) 06 49 49 95 58 Fax (39) 06 49 49 97 61	225 014
Hungary	Mezőgazdasági és Vidékfejlesztési Hivatal (MVH) Soroksári út 22–24. H-1095 Budapest Tel. (36-1) 219 45 76 Fax: (36-1) 219 89 05 vagy (36-1) 219 62 59	21 650
Slovakia	Pôdohospodárska platobná agentúra Oddelenie cukru a ostatných komodit Dobrovičova, 12 SK – 815 26 Bratislava Tel. (421-2) 57 512 415 Fax (421-2) 53 412 665	34 000
Sweden	Statens jordbruksverk Vallgatan 8 S-551 82 Jönköping Tfn (46-36) 15 50 00 Fax (46-36) 19 05 46	12 762

ANNEX II

FORM

Model for the communication to the Commission as referred to in Article 3

Standing invitation to tender for the resale of sugar held by the intervention agencies

Regulation (EC) No 879/2008

Member State selling intervention sugar	Numbering of tenderers	Lot No	Quantity (t)	Tender price EUR/100 kg
1	2	3	4	5
	1			
	2			
	3			
	etc.			

ANNEX III

Entries referred to in Article 5(2):

in Bulgarian:	Износ в съответствие с Регламент (ЕО) № 879/2008
in Spanish:	Exportado de conformidad con el Reglamento (CE) nº 879/2008
in Czech:	Vyvezeno v souladu s nařízením (ES) č. 879/2008
in Danish:	Eksporteret i henhold til forordning (EF) nr. 879/2008
in German:	Ausgeführt gemäß der Verordnung (EG) Nr. 879/2008
in Estonian:	Eksporditud vastavalt määrusele (EÜ) nr 879/2008
in Greek:	Εξάγεται κατ'εφαρμογή του κανονισμού (ΕΚ) αριθ. 879/2008
in English:	Exported pursuant to Regulation (EC) No 879/2008
in French:	Exporté conformément aux dispositions du règlement (CE) nº 879/2008
in Italian:	Esportato a norma del regolamento (CE) n. 879/2008
in Latvian:	Eksportēts saskaņā ar Regulu (EK) Nr. 879/2008
in Lithuanian:	Eksportuota pagal Reglamentą (EB) Nr. 879/2008
in Hungarian:	A 879/2008/EK bizottsági rendelet szerint exportálva
in Maltese:	Esportat skont ir-Regolament (KE) Nru 879/2008
in Dutch:	Uitgevoerd in het kader van Verordening (EG) nr. 879/2008
in Polish:	Wywiezione zgodnie z rozporządzeniem (WE) nr 879/2008
in Portuguese:	Exportado em conformidade com o Regulamento (CE) n.º 879/2008
in Romanian:	Exportat în conformitate cu Regulamentul (CE) nr. 879/2008
in Slovak:	Vyvezené podľa nariadenia (ES) č. 879/2008
in Slovenian:	Izvoženo v skladu z Uredbo (ES) št. 879/2008
in Finnish:	Viety asetuksen (EY) N:o 879/2008 mukaisesti
in Swedish:	Exporterat i enlighet med förordning (EG) nr 879/2008

ANNEX IV

FORM

Model for the notification to the Commission as referred to in Article 6(1)

Partial invitation to tender of … for the resale of sugar held by the intervention agencies

Regulation (EC) No 879/2008

Member State selling intervention sugar	Quantity actually sold (in tonnes)
1	2