Commission Implementing Regulation (EU) No 634/2011 of 29 June 2011 opening a standing invitation to tender for the 2010/2011 marketing year for imports of sugar of CN code 1701 at a reduced customs duty

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

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 (Single CMO Regulation)[(1)] and in particular Article 187, in conjunction with Article 4 thereof,

Whereas:

(1) The world market prices for sugar have been at a constant high level during the first months of the 2010/2011 marketing year, which has slowed down the pace of imports in particular from third countries benefiting from certain preferential agreements.

(2) Confronted with this situation, the Commission recently adopted a series of measures with the purpose to bring additional supply to the Union market. Those measures included Commission Regulation (EU) No 222/2011 of 3 March 2011 laying down exceptional measures as regards the release of out-of-quota sugar and isoglucose on the Union market at reduced surplus levy during marketing year 2010/2011[(2)], which increased the combined availability of sugar and isoglucose on the Union market by 526 000 tonnes, and Commission Implementing Regulation (EU) No 302/2011 of 28 March 2011 opening an exceptional import tariff quota for certain quantities of sugar in the 2010/11 marketing year[(3)], which suspended the import duties for sugar falling within CN 1701 for a quantity of 300 000 tonnes.

(3) Imports of sugar under Inward Processing in accordance with chapter 3 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code[(4)] have been reduced and the processing industry has increased the use of quota sugar in exported products. Those developments have maintained the tight supply situation on the Union market, which threaten to cause undersupply during the last months of the marketing year, until the arrival of the new harvest.

(4) The high prices on the world market for sugar therefore threaten the availability of supply on the Union market. For that reason and with the view to increasing the supply, it is necessary to make imports easier through the reduction of the import duty for certain quantities of sugar. That quantity and the reduction of the duty should be assessed in

the light of the current state and foreseeable development of the Union and world sugar market. The quantity and reduction should therefore be based on a tendering system.

(5) The minimum eligibility requirements to tender should be specified.

(6) A security should be lodged for each tender. That security should become the security for the import licence application in the case of a successful tender and be released when a tender is unsuccessful.

(7) The competent authorities of the Member States should notify the Commission of the admissible tenders. In order to simplify and standardise those notifications, models should be made available.

(8) For each partial invitation to tender, provision should be made for the Commission to fix a minimum customs duty and, if appropriate, an allocation coefficient in order to reduce the quantities accepted, or to decide not to fix a minimum customs duty.

(9) Member States should inform the tenderers of the result of their participation in the partial invitation to tender within a short period.

(10) The competent authorities should notify the Commission of the quantities for which import licenses have been issued. For this purpose, models should be made available by the Commission.

(11) The Management Committee for the Common Organisation of Agricultural Markets has not delivered an opinion within the time limit set by its Chair,

HAS ADOPTED THIS REGULATION:

Article 1

A tendering procedure is opened for the 2010/2011 marketing year for imports of sugar of CN code 1701 at a reduced customs duty pursuant to Article 187 of Regulation (EC) No 1234/2007 and bearing reference number 09.4314.

That customs duty shall replace the common customs tariff duty and the additional duties referred to in Article 141 of Regulation (EC) No 1234/2007 and Article 36 of Commission Regulation (EC) No 951/2006[(5)].

Commission Regulation (EC) No 376/2008[(6)] shall apply save as otherwise provided for in this Regulation.

Article 2

1 The period during which tenders may be submitted in response to the first partial invitation to tender shall end on 13 July 2011 at 12 noon, Brussels time.

2 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 12 noon., Brussels time, on 27 July 2011, 24 August 2011, 14 September 2011 and 28 September 2011.

3 The Commission may suspend the submission of tenders for one or several partial invitations to tender.

Article 3

1 Tenders in connection with this tendering procedure shall be addressed to the competent authority in a Member State by fax or electronic mail.

The competent authorities of the Member States may require that electronic tenders be accompanied by an advance electronic signature within the meaning of Directive 1999/93/EC of the European Parliament and of the Council[(7)].

2 Tenders shall be admissible only if the following conditions are met:

a tenders shall indicate:

(i) the name, address and VAT number of the tenderer;

(ii) the quantity of sugar tendered, which shall at least be 20 tonnes and shall not exceed 45 000 tonnes;

(iii) the proposed amount of the customs duty, in euros per tonne of sugar, rounded to no more than two decimal places;

(iv) the eight digit CN code of the sugar;

b proof is furnished before expiry of the time limit for the submission of tenders that the tenderer has lodged the security referred to in Article 4(1);

c the tender is accompanied by an application for an import licence for the tendered quantities and customs duty, containing the entries provided for Article 8(2);

d the tender is presented in the official language, or one of the official languages of the Member State in which the tender is lodged;

e the tender indicates a reference to this Regulation and the expiry date for the submission of the tenders;

f the tender does not include any additional conditions introduced by the tenderer other than those laid down in this Regulation.

3 A tender which is not submitted in accordance with paragraphs 1 and 2 shall not be admissible.

4 Applicants shall not submit more than one tender per eight digit CN code for the same partial invitation to tender.

5 A tender may not be withdrawn or amended after its submission.

Article 4

1 In accordance with the provisions of Title III of Commission Regulation (EEC) No 2220/85[(8)] each tenderer shall lodge a security of EUR 150 per tonne of sugar to be imported under this Regulation.

Where a tender is successful, that security shall become the security for the import licence.

2 The security referred to in paragraph 1 shall be released in the case of unsuccessful tenderers.

Article 5

1 The competent authorities of the Member States shall decide on the validity of tenders on the basis of the conditions set out in Article 3.

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) No 634/2011. (See end of Document for details)*

Persons authorised to receive and examine the tenders shall be under an obligation not to disclose any particulars relating thereto to any unauthorised person.

Where the competent authorities of the Member States decide that a tender is invalid they shall inform the tenderer.

2 The competent authority concerned shall notify the Commission, by fax, of the admissible tenders submitted within 2 hours after the expiry of the time limit for the submissions laid down in Article 2(1) and (2). That notification shall not contain the data referred to in Article 3(2)(a)(i).

3 The form and content of the notifications shall be defined on the basis of models made available by the Commission to the Member States. When no tenders are submitted, the competent authority shall notify the Commission thereof by fax within the same time limit.

Article 6

In the light of the current state and foreseeable development of the Union and world sugar markets, the Commission shall, for each partial invitation to tender and eight digit CN code, either fix a minimum customs duty or decide not to fix a minimum customs duty by adopting an Implementing Regulation in accordance with the procedure referred to in Article 195(2) of Regulation (EC) No 1234/2007.

With that Regulation, the Commission shall also fix, where necessary, an allocation coefficient applicable to the tenders which have been introduced at the level of the minimum customs duty. In this case, the security referred to in Article 4 shall be released in proportion to the quantities allocated.

Article 7

1 Where no minimum customs duty has been fixed all tenders shall be rejected.

The competent authorities of the Member States shall not accept tenders that have not been notified as provided for in Article 5.

2 The competent authority concerned shall notify applicants within three working days after the day of publication of the Regulation referred in Article 6 of the result of their participation in the partial invitation to tender. It shall send statements of award to any tenderer whose tender quotes a customs duty for the eight digit CN code equal to or more than the minimum customs duty fixed for that eight digit CN code. The quantities awarded for a specific customs duty and eight digit CN code shall be the quantities tendered for that customs duty and eight digit CN code.

3 Statements of award shall indicate at least:

a the procedure to which the tender relates;

b the quantity of sugar awarded;

c the amount, expressed in euros rounded to no more than two decimal places, of the customs duty to be paid per tonne of sugar of the quantity referred to in point (b);

d the eight digit CN code of the sugar.

Article 8

1 No later than the last working day of the week following the week during which the Regulation referred in Article 6 was published, the competent authority shall issue an import licence to every successful tenderer covering the quantity awarded.

2 Import licence applications and import licences shall contain the following entries: