Commission Regulation (EC) No 900/2007 of 27 July 2007 on a standing invitation to tender to determine refunds on exports of white sugar until the end of the 2007/2008 marketing year

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THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 318/2006 of 20 February 2006 on the common organisation of the markets in the sugar sector[(1)], and in particular Articles 23(4) and 40(1)(g) thereof,

Whereas:

(1) In view of the situation on the Community and world sugar markets, a standing invitation to tender should be opened for the export of white sugar until the end of the 2007/2008 marketing year which, having regard to possible fluctuations in world prices for sugar, must provide for the determination of export refunds.

(2) The general rules governing invitations to tender for the purpose of determining export refunds for sugar established by Article 32 of Regulation (EC) No 318/2006 should be applied.

(3) In order to prevent any abuse associated with the re-import or re-introduction into the Community of sugar sector products that have qualified for export refunds, no export refund should be fixed for the countries of the western Balkans.

(4) In line with Articles 32 and 33 of Council Regulation (EC) No 318/2006, export refunds may be set to cover the competitive gap between Community and third countries' exports. 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. Therefore, refunds for exports to those destinations should be abolished.

(5) In view of the specific nature of the operation, appropriate provisions should be laid down with regard to export licences issued in connection with the standing invitation to tender, in particular as regards the deadline for the issue of the licences, their period of validity, the amount of the security and the quantity for which the obligation to export resulting from the licence is met. However, Commission Regulation (EC) No 1291/2000 of 9 June 2000 laying down common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products[(2)] and 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[3] must continue to apply.

(6) The provisions of this Regulation replace, as regards the partial invitations to tender as from August 2007, those of Commission Regulation (EC) No 958/2006 of 28 June 2006 on a standing invitation to tender to determine refunds on exports of white sugar for the 2006/2007 marketing year[4]. For the sake of transparency and legal clarity, therefore, that Regulation should be repealed with effect from 1 August 2007.

(7) 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

[[F1]1 A standing invitation to tender shall be opened in order to determine export refunds on white sugar covered by CN code 1701 99 10 for all destinations excluding:

a third countries: Andorra, Liechtenstein, the Holy See (Vatican City State), Croatia, Bosnia and Herzegovina, Serbia[5], Montenegro, Albania and the former Yugoslav Republic of Macedonia;

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.

During the period of validity of this standing invitation referred to in the first subparagraph, partial invitations to tender shall be issued.**]**

2 The standing invitation to tender shall be open until 25 September 2008.

Textual Amendments

F1 Substituted by Commission Regulation (EC) No 148/2008 of 20 February 2008 amending Regulations (EC) No 900/2007 and 1060/2007 in order to clarify the status of the destinations excluded from the refunds on export of sugar.

Article 2

1 The notice of invitation to tender shall be published in the *Official Journal of the European Union*. On this basis, the Member States shall draw up a notice of invitation to tender which they may publish or have 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 3

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

a begin on 1 August 2007;

b end on 9 August 2007 at 10.00, Brussels local time.

2 The periods during which tenders may be submitted in response to the second and subsequent partial invitations shall:

a begin on the first working day following the end of the preceding period;

b end at 10.00, Brussels local time, on:

— 30 August 2007,

— 13 and 27 September 2007,

— 11 and 25 October 2007,

— 8 and 22 November 2007,

— 6 and 20 December 2007,

— 10 and 31 January 2008,

— 14 and 28 February 2008,

— 13 and 27 March 2008,

— 10 and 24 April 2008,

— 8 and 29 May 2008,

— 12 and 26 June 2008,

— 10 and 24 July 2008,

— 7 and 28 August 2008,

— 11 and 25 September 2008.

Article 4

1 Tenders in connection with this tendering procedure shall be addressed to the competent authority in a Member State by fax or electronic mail provided the competent agency accepts these forms of transmission.

The competent authorities of the Member State 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[(6)].

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

a Tenders shall indicate:

(i) the procedure to which the tender relates (No 1/2007) and the partial invitation;

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

(iii) the quantity of white sugar to be exported;

(iv) the amount of the export refund, per 100 kilograms of white sugar, expressed in euro to three decimal places;

(v) the amount of the security to be lodged in accordance with Article 5(1) covering the quantity of sugar indicated in (iii), expressed in the currency of the Member State in which the tender is submitted;

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 the quantity to be exported is not less than 250 tonnes of white sugar;

d tenders include a declaration by the tenderer that if their tender is successful they will, within the period laid down in the second subparagraph of Article 11(2), apply for an export licence or licences in respect of the quantities of white sugar to be exported;

e tenders include a declaration by the tenderer that the product for exports is white sugar of fair, sound and marketable quality, falling within CN code 1701 99 10;

f tenders include a declaration by the tenderer that if their tender is successful they will:

(i) where the obligation to export resulting from the export licence referred to in Article 11(2) is not fulfilled, supplement the security by the payment of the amount referred to in Article 12(3);

(ii) 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.

3 A tender which is not submitted in accordance with paragraphs 1 and 2, or which contains conditions other than those indicated in the present invitation to tender, shall not be considered.

4 Once submitted, a tender may not be withdrawn.

5 A tender may stipulate that it is to be regarded as having been submitted only if one or both of the following conditions is/are met:

a 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.

Article 5

1 A security of EUR 11 per 100 kilograms of white sugar to be exported under this invitation to tender must be lodged by each tenderer.

Without prejudice to Article 12(3), where a tender is successful this security shall become the security for the export licence at the time of the application referred to in Article 11(2).

2 The security referred to in paragraph 1 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 The security referred to in paragraph 1 shall be released:

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

b in the case of successful tenderers who have not applied for the relevant export licence within the period referred to in the second subparagraph of Article 11(2), at a rate of EUR 10 per 100 kilograms of white sugar;

c in the case of successful tenderers for the quantity for which they have fulfilled, within the meaning of Articles 31(b) and 32(1)(b)(i) of Regulation (EC) No 1291/2000, the export obligation resulting from the licence referred to in Article 11(2) of this Regulation in accordance with the terms of Article 35 of Regulation (EC) No 1291/2000.