THE SUGAR PROTOCOL OF THE LOME CONVENTION

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It is important for me to begin with the historical origins of the Sugar Protocol. It is the child of Protocol 22 of the United Kingdom's Treaty of Accession to the EEC. As a condition of Britain's entry, the Community agreed to take to heart - the famous 'aura a coeur' statement - the interests of those developing countries which had special links with the EEC and whose economies depended on agriculture, particularly sugar. Words referred to by one Caribbean Minister as 'bankable assurances'. As a consequence, the developing country signatories to the Commonwealth Sugar Agreement which enjoyed guaranteed status as traditional suppliers of sugar to the UK of 1.8m. tonnes, were to have their position safeguarded. Hence the Sugar Protocol signed as Protocol No. 3 of the first Lomé Convention, on 28 February 1975, and retained in Lomé 2 as Protocol No. 7.

It has been widely argued and recently the Commonwealth Secretary-General, Shridath Ramphal, himself a founding father of Lomé, recalled in the first issue of an interesting bulletin, 'the Lomé briefings for preparations for the successor arrangement to Lomé 2', which I see the non-government organisations are putting out, that without the Sugar Protocol there might never have been a Lomé Convention, so important was this basic instrument on sugar.

It comprises 10 Articles and parts of at least 3 are inoperative due to the passage of time - Articles 2, 2.1, 2.2, about re-examining the Protocol before the end of the seventh year, Article 3.3 regarding the supply of quantities between February and June 1975, Article 4 on undertakings to deliver by 1975, and even Article 4.2 on the tolerance level for sugar en route in June 1975. The rest is intact after eight years. Article 1, by far the most important, provides an undertaking by the EEC, for an indefinite period, to purchase and import from the ACP at guaranteed prices, specific quantities of cane sugar, raw or white, which the ACP undertake to supply. There is thus a legally binding undertaking of indefinite duration to purchase and import specific quantities of cane sugar at guaranteed prices and a legally binding undertaking by the ACP to deliver the sugar.

You will recall that in 1973/74 there was a particular conjunction of commodity history, a massive shortfall of sugar in the UK. The timing of the Protocol negotiations, coinciding with this situation, gave the suppliers of sugar an extremely strong hand. But among them were some men of wisdom, and without in any way wishing to embarrass him, there was Sir Guy Sauzier.

was Sir Guy Sauzier. He kept saying 'let us not seek an arrangement which could hold only in a period of extremely rare commodity buoyancy, which will stick out like a sore thumb after the period has passed, and thereafter no matter what the politicians say, the commercial conditions would be unviable and the agreement would collapse'.

Against that background we were able to get a commitment in 37 words which carried all those dimensions I have identified.

I have gone through this historical background to help those who may not have been party to the historical developments of the Protocol, to recognise that it was negotiated when we were 'at the top of the hill'. In any attempt to re-open or re-negotiate this instrument we had better make sure which part of the hill we are on.

Apart from the factors in Article 1, the Protocol provides further protection. The usual safeguard clause, which applies to the rest of the Lomé Convention - notwithstanding all provisions, whenever there is market disruption, the EEC can impose certain restrictions on our exports to them - does not apply to the Protocol.

It specifies the agreed quantities to be supplied and those totalled 1,221,500 tonnes for the initial 13 ACP states. To this must be added 58,200 tonnes for three overseas countries and territories, at that time Belize, Surinam and St. Kitts, giving a grand total of 1,279,700 tonnes, popularly referred to as 1.3m. This does not include India's 25,000 which is outside the ACP arrangement. This figure compares with 1.8m. under the CSA. By way of breakdown, 51% was to be from Africa and the Indian Ocean, Mauritius being the dominant supplier, 35% from the Caribbean with important suppliers being Barbados, Guyana, Jamaica and Trinidad, and from the Pacific 13% from Fiji.

The Protocol also provides for marketing these quantities in the EEC market at prices freely negotiated between buyers and sellers. We must thank the major buyers, Tate & Lyle, who over the years have formed the bridge for our sugar to cross into the consumers' market. But the Protocol goes on to say 'that any quantity within the agreed quantities which cannot be marketed in the Community at a price equivalent to or in excess of the guaranteed price will be purchased by the Community in accordance with the commitment in Article 1'. It is very important to notice that the guaranteed price provides the floor price and it is vital for us to see how this price is reached. The Protocol provides, before May each year the price to be applied for the next year starting on 1 July and running to 30 June of the following year, shall

be negotiated within the range of prices obtaining in the Community. All relevant economic factors are to be taken into account. The range of prices covers the different parts of the Community, some in surplus, some in deficit.

Article 7, the next significant part, deals with what happens if the ACP do not supply, or under-supply, the sugar they are committed to deliver. If there are reasons of force majeure, there is no penalty and the shortfall is distributed to other signatories. Where however force majeure is deemed not to have applied, the state which failed to complete its delivery is to have its agreed quantity reduced by the amount of the shortfall, and that reduced quantity will be its quota for the subsequent delivery period, unless it receives a reallocation from shortfalls of other member states. The Protocol provides for consultation at the request of an ACP state or of the Community, and also for a life independent of the Convention, so that if that no longer exists, the Protocol will continue, which is consistent with indefinite duration. Finally, it provides for denunciation on the basis of juridical security, with two years notice. I hope an eminent lawyer can explain to me what that means.

What has happened? Overall, I think the Protocol has served the ACP reasonably well. Generally, the ACP have supplied, and have received the guaranteed price which was not always satisfactory, but never insignificant. As an example, in 1975/76 the world price was a little above the guaranteed price, a ratio of 107. But in 1976/77 the ratio was 63, in 1977/78 47.9 and in 1978/79 43.9. The lower the figure, the higher the guaranteed price over the world price and the greater our benefit under the Protocol. These facts however are not conclusive since the world price relates to a very small and highly volatile market which is greatly affected by the EEC's excess production and exports. Therefore the Community can influence that ratio not only by the price we negotiate but also by the amount of sugar it puts on the world market, which can depress the price and give a distorted picture of the benefits of the Protocol.

Secondly, after 1977 the EEC restricted its price arrangements so that although the Protocol says that the price is to be negotiated within the Community's range of prices, there is hardly a range any more. I remember my teacher saying to me, lines have length not breadth. I was also taught that ranges have ceilings and floors. This range seems to have a single point. So there haven't been effective negotiations. In February 1977 the Community argued they couldn't give us a higher price than they give their own producers. We said that sounded reasonable. But we also said we would not accept a guaranteed price lower

than the intervention price that they gave their own people. So they give us and their own producers the same price though in one year they tried to give us a little less. Thus because we had arguments as to whether a certain price was within or outside the range, the Community's response was one which ensured that the guaranteed price should henceforth be neither within nor outside, just on the one point in the 'range'. In essence they have destroyed the range!

Thirdly, we have had difficulties about what constitutes relevant economic factors. The Convention states that prices would be CIF European port. Now anyone would know that freight cost is a vital factor in delivering sugar to European ports from distant ACP states. But unfortunately, and rather strangely, freight is not included when arriving at the price. So our price though CIF is the same as that of the EEC suppliers which is farm gate or some such basis, or to make a comparison, at best FOB. This remains a heated matter at present and we hope it can be resolved sometime very soon. We are convinced - and I have it on good legal authority - that our position is in strict conformity with the Protocol's basic provisions. The net result is that the ACP guaranteed price has gone up by about 26% between 1975 and 1982 and cost of production by nearly 150%.

Finally, a very important little mechanism - retroactivity - seems to have dropped out of the price arrangement. Through this, the price applicable from July could be applied before July of a calendar year. This was because in 1975 when we negotiated the Protocol, we settled the price on 1 February. It applied virtually immediately, instead of July. Article 4.2 says similar arrangements can be made for subsequent periods. We obtained a retroactive price twice after this and then it was forgotten.

So much for the price problem. There has also been a problem of insufficient supply. But here I think there is a clear case of misuse of the provision's intent. Article 7, as I understood it, was to provide against diversion of supply to more lucrative markets when the EEC was in need of the sugar. The provision is now being used to reduce the quotas of countries which have been unable to produce the sugar. Some of us consider the ultimate force majeure case is when one cannot produce.

The Community has expanded its own production to an embarrassing degree, over 50% since 1975, and finds itself faced with a massive surplus, and also with increasing demands for entry into the Protocol. To ease the situation, it seems to have distorted the basic intention of the Article to reduce the effective sugar it must import. In an EEC Commission information press document, DE of 19 February 1983, it is stated "There can be no question of the Community

letting any more countries join the Sugar Protocol". This should be read alongside Annex 13 of the Protocol which commits the Community to examine any applications for access to the Protocol from members of the ACP group who are not signatories to it. If this is so, but it is also committed not to accept new members, then it must refuse every case regardless of its merits. Zimbabwe joined the ACP recently, demanded a quota, and received 25,000 tonnes. But this was not said to be additional to the 1.3m. or out of shortfalls of much more than 25,000 tonnes of those who could not supply. We have done the arithmetic and it is quite clear that given the amount of shortfall and including India which has forfeited its entire 25,000 tonnes at present, Zimbabwe's 25,000 tonnes could be added to the supplies of existing ACP countries without exceeding the 1.3m. However, Article 7.4 provides for re-allocation of quotas which have been reduced. If this had been done, Zimbabwe's quota then added, the 1.3m. would have been exceeded. Would the Community, therefore ever re-allocate when quotas are reduced?

There are also certain problems external to the Protocol, threats to access or to its continued existence. They emerge from legal interpretation of Community policy by the Commission. They are threats from competing interests, from beet. When the Protocol was signed, the major destination of ACP sugar for the EEC was understood to be the UK, which then produced 641,000 tonnes and consumed 2,307m. By 1981 production had increased by 80% to 1.125m. tonnes and has since probably gone further. But UK consumption is down to 2.28m. tonnes. So production is up by 80%, consumption more or less constant if not a bit down, and preferential imports down by some 13% from 1.291m. to 1.13m. In 1975/76 UK domestic consumption was supplied 27.8% locally. In 1980/81 it was supplied domestically 49.3%. So there is a real threat to the place of cane sugar.

If this were only in the UK there might be comfort elsewhere in the Community. In 1974/75 EEC consumption as a percentage of production was 111.6% but by 1975/76 this had gone down to 98.3. So consumption was below production. Since then the slide has been very rapid, 1976/77 - 90.3, 1977/78 - 82.2, 1978/79 - 81, 1979/80 - 76 and 1980/81 - 76.4, or put the other way round, the EEC was 89.6% self-sufficient in 1974/75 and by 1980/81, 130.8%. This change has occurred mainly because of the massive increase in production, not because of stagnation in consumption. Production has grown not only through greater efficiency and better yields, but by large acreage increases, from 1.4m. ha. in 1968 to 1.7m. in 1980. Against this background, ACP exports have remained constant, if anything, diminished. The threat of EEC production affects our exports to the Community

and to third markets which it is supplying. For many of us these exports are very important. For Mauritius, Fiji, Barbados, Guyana, Swaziland, and many others, sugar exports are large contributors to their foreign exchange earnings.

It is my view that the Protocol provides a basis for a positive aggressive policy by the ACP states in many areas in the 1980s I believe the ACP countries must begin to move from a posture of protection under the Protocol to one of aggression, using it for this. First, they should start looking for other ACP markets. For instance, Nigeria imports 429,000 - 500,000 tonnes from the EEC whereas Mauritius sells 487,000 tonnes. It isn't easy, as we all know, but it isn't impossible. This is an example: there are other cases.

Secondly, I think we have to use other instruments in the Lomé Convention to re-inforce the Protocol. It has mechanisms for developing sugar industries. I have the impression we do not always link the Protocol's guarantee with other instruments which are there for the industry's development. I think we should start to study it more comprehensively. We should go a bit beyond just meeting each year to negotiate the price, go back and prepare memoranda, and so on.

Thirdly, we should look more clearly at industrial uses of sugar.

We should do this and protect the Protocol as best we can, making the minor adjustments which are necessary, like fighting to secure quota reallocation between ACP suppliers. For instance, Guyana is expanding in sugar, Trinidad is contracting. Why can't there be a transfer of part of the quota before a shortfall not acceptable as force majeure occurs and results in the amount of sugar being lost to the Caribbean and the ACP as a whole?

Adjusting in this way what is already a very good instrument, and adopting a positive approach in the three areas of the search for other markets, including in other ACP countries, more industrialised uses of sugar and greater use of other instruments in the Lomé Convention for the development of the industry itself. These in my view provide an approach to the 80s which, when complimented with a forward looking International Sugar Agreement, should permit us to come here again in the future to discuss not just sugar, but sugar and sugar based industrial development of the ACP countries dependent on sugar.