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In accordance with Council Regulation (EEC, Euratom) No 354/83 of 1 February 1983 concerning the opening to the public of the historical archives of the European Economic Community and the European Atomic Energy Community (OJ L 43, 15.2.1983, p. 1), as amended by Regulation (EC, Euratom) No 1700/2003 of 22 September 2003 (OJ L 243, 27.9.2003, p. 1), this file is open to the public. Where necessary, classified documents in this file have been declassified in conformity with Article 5 of the aforementioned regulation.

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COMMISSION OF THE EUROPEAN COMMUNITIES

COM(83) 172 final

Brussels, 13 June 1983

Proposal for a
COUNCIL REGULATION (EEC)

on the conclusion of an Agreement in the form of an exchange of letters between the European Economic Community and the Republic of India on the restoration to the latter of an agreed quantity of preferential sugar

Proposal for a
COUNCIL REGULATION (EEC)

on the conclusion of an Agreement in the form of an exchange of letters between the European Economic Community and Barbados, Belize, the People's Republic of the Congo, Fiji, the Cooperative Republic of Guyana, Jamaica, the Republic of Kenya, the Democratic Republic of Madagascar, the Republic of Malawi, Mauritius, the Republic of Surinam, the Kingdom of Swaziland, the United Republic of Tanzania, Trinidad and Tobago, the Republic of Uganda, the Republic of Zimbabwe and the Republic of the Ivory Coast on the accession of the latter country to Protocol 7 on ACP sugar annexed to the Second ACP-EEC Convention

(submitted to the Council by the Commission)

COM(83) 172 final

PREFERENTIAL SUGAR: THE CASES OF INDIA AND THE IVORY COAST

This paper explains the nature of the two cases and the background to them and makes recommendations to the Council (1)

THE FACTS

India

1. The Agreement between the EEC and the Republic of India on cane sugar (hereinafter referred to as "the Agreement") (2) entered into force on 18 July 1975. It incorporates provisions similar to those contained in the ACP Sugar Protocol, and like that Protocol it is of indefinite duration.
2. Under the Agreement India's original agreed quantity (i.e. preferential sugar quota) was 25 000 tonnes. Acting under the provisions of Article 7(2) of the Agreement (3) the Commission decided to reduce this quota to zero tonnes with effect from 1 July 1981.
3. Having reached this decision the Commission took the following further considerations into account:
 - while Article 7(4) of the Sugar Protocol provides the possibility for all the ACP sugar suppliers (even those whose quotas have been reduced to zero tonnes) to benefit from permanent reallocations of quotas no such possibility is provided for India under the Agreement. This means that as long as India's quota remains at zero the Agreement has no practical effect, despite its indefinite duration;
 - the trade relations between the Community and India, of which the Agreement is a part, are a sensitive political issue, particularly because of the massive imbalance in EEC-India trade in the Community's favour.

(1) all tonnages in this paper are expressed in white value

(2) OJ No L 190, 23.7.1975, p.35

(3) Indian failure to supply, and Commission rejection of a claim for force majeure

4. Accordingly, in conveying its decision to the Indian authorities, the Commission said that it would be prepared to recommend to the Council at least the partial restoration of India's original quota with effect from 1 July 1983.
5. India is not ^{now} / contesting the Commission's decision to reject its claim for force majeure but it has requested a restoration of its original quota with effect from 1 July 1982(1).

The Ivory Coast

Council

6. With his letter dated 22 February 1982 to the President of the EEC ~~the~~ the ambassador of the Ivory Coast forwarded a request by his government for accession to the Sugar Protocol. This was accompanied by details of the structure, origins and future production programme of the sugar industry (2).
7. This request did not refer to a specific preferential quota, but it is understood that the Ivory Coast is seeking a quantity of at least 25 000 tonnes. It seems clear that the Ivory Coast has the capacity to export such a quantity on a permanent basis.
8. The Joint ACP-EEC Declaration annexed to the Sugar Protocol provides that any request from an ACP non-member of that Protocol to participate in its provisions "shall be examined" by the Contracting Parties to the Protocol. No criteria have been established for such examinations nor does the obligation to examine commit the Contracting Parties in advance to a particular outcome.
9. The ACP members of the Protocol have expressed their collective support for the request of the Ivory Coast (3). But they have repeatedly emphasized their view that the quota of any new participant country should be additional to the total of the quotas originally inscribed in the Protocol.

(1) see Annex I

(2) Doc.5139/82 of 25.2.1982

(3) Doc.ACP-CEE 2130/82 of 25.2.1982

10. It now remains for the Community, as the importing Contracting Party to the Sugar Protocol, to examine the request and to decide whether it can agree that the Ivory Coast should join the Protocol and, if so, with what quota. It should be noted that the Commission's facultative power under Article 7(4) of the Protocol to make permanent re-allocations of ACP sugar does not extend to non-members of the Protocol.

General

11. Of the original total quantity of preferential sugar (1.3047 mio tonnes), 12 000 tonnes are at present unallocated. This quantity has arisen as a result of decisions by the Commission on shortfalls.
12. Up to the present the Commission has made permanent re-allocations to Kenya (3 907 tonnes) and to the Congo (3 043 tonnes). In addition, the Council agreed in 1982 to admit Zimbabwe to the Sugar Protocol with a quota of 25 000 tonnes. All these quantities were found from within the total quantity referred to in the preceding paragraph.
13. When considering the accession of Zimbabwe to the Second ACP-EEC Convention the Council decided in an internal declaration on sugar (1) that the total quantitative undertakings provided for in the Sugar Protocol should not be exceeded. The Commission believes that this decision can validly be extended to the total quantity of preferential sugar referred to in paragraph 11. The remainder of this paper is therefore devoted to the question whether the unallocated quantity of 12 000 tonnes should now be redistributed and, if so, how.

DISCUSSION

Economic considerations

14. Given its large structural surplus of sugar production over consumption it is clear that the Community does not need any preferential sugar for the purpose of ensuring adequate supplies for its consumers.
15. It follows that every tonne of preferential sugar which is imported and consumed displaces an equivalent quantity of Community sugar which must then be disposed of other than on the internal market. In short, the displaced sugar has to be exported; and for most of the time this requires export refunds which are provided by the Community on the budget of the EAGGF.

(1) Doc 10328/80 of 17.10.1980

16. If the 12 000 tonnes are not redistributed, and if the world price were to remain at or about its present levels, then the annual rate of savings to the budget would be of the order of 4.5 million ECU. It should be noted, however, that a redistribution would not of itself require the existing budget provision to be increased (see paragraph 31 below).
17. But from the point of view of India and the Ivory Coast the economic considerations involved in redistributions assume an entirely different importance. For these countries preferential sugar confers two highly desirable advantages: a guaranteed price which for most of the time is significantly higher than the world price (1) and, equally important, a guaranteed market outlet.
18. This certainty of an income which can be calculated in advance helps the countries concerned in their forward economic planning. In contrast, their exports to the world market are at the mercy of the inherent instability of that market.
19. In this connection it is worth noting that the current world price levels are well below the production costs of even the large and efficient producers, such as Australia and Thailand. For the smaller developing country exporters the present world prices are little short of disastrous, and in these circumstances preferential sugar becomes more than ever attractive.

(1) In 1982/83 the guaranteed price for raw preferential sugar is 426.3 ECU/tonne compared with a world price (February 1983) of about 170 ECU/tonne.

Political considerations

20. In the case of India reference has been made in paragraph 3 to the imbalance in EEC-India trade. This situation has created political difficulties, and the Indian authorities have made it clear that in their view the willingness of the Community to take steps to redress the situation must include a readiness to restore preferential access for Indian sugar.
21. In the case of the Ivory Coast it is appropriate to recall the origins of the Sugar Protocol which are expressed in the following extract from Protocol 22 to the 1972 Act of Accession:
- " The Community will have as its firm purpose the safeguarding of the interests of all the countries referred to in this Protocol (1) whose economies depend to a considerable extent on the export of primary products, and particularly of sugar.
- The question of sugar will be settled within this framework, bearing in mind with regard to exports of sugar the importance of this product for the economies of several of these countries and of the Commonwealth countries in particular."
22. In the view of the Commission, the Community undertaking quoted in the preceding paragraph (which found its practical expression in the form of the Sugar Protocol) was not intended to apply to countries which developed a sugar-exporting capacity subsequent to the entry into force of the Sugar Protocol.
23. Nevertheless, this situation does not preclude the Community from examining the Ivory Coast request on its own merits in the circumstances which have developed since the Sugar Protocol entered into force.
24. It is clear from the documents accompanying the Ivory Coast request that the establishment of the sugar industry in that country and its rapid growth since 1978 have depended largely on finance, materials and expertise provided from industrial sources within the Community. In some cases guarantees were provided by the Member States concerned.

(1) i.e. the Associated African and Malagasy States and the independent developing Commonwealth countries listed in Annex VI to the Act

25. It can therefore reasonably be argued that the Community should be prepared to help the Ivory Coast to realise some economic benefit from its newly-established sugar industry and thereby to assist that country in its efforts to diversify its economy.

RECOMMENDATIONS

26. In the light of what has been said in the preceding paragraphs the Commission believes that the balance of the arguments supports the view that the 12 000 tonnes referred to in paragraph 11 should now be redistributed between India and the Ivory Coast.

27. In whatever way the quantity is divided there is bound to be an element of arbitrariness. But it seems reasonable to take the following factors into account:

- if the Ivory Coast is admitted to the Sugar Protocol it will become eligible not only for any temporary re-allocations under Article 7(2) of the Protocol but also for ^{any} permanent reallocations the Commission may decide to make in the future. In other words the Ivory Coast would have the possibility of increasing its original preferential quota, but India has no such possibility;

- even if the whole of the available quantity were restored to India the latter's new quota would be only 48% of the original quota whereas Kenya and the Congo have received re-allocations bringing their new quotas up to 80% of the originals.

28. If 10 000 tonnes were restored to India this would represent 40% of the original quota. Such a quantity represents a commercially feasible cargo for a single vessel.

29. This would leave 2 000 tonnes for the Ivory Coast. This is much less than the Ivory Coast is seeking but it would at least allow that country to become a member of the Sugar Protocol and to share in its benefits in the future.

30. Accordingly, the Commission recommends the Council:

- (i) to agree to restore to India 10.000 tonnes of preferential sugar with effect from 1 July 1983;

- (ii) to agree that the Ivory Coast should be included in Article 3(1) of the Sugar Protocol with effect from 1 July 1983 with an agreed quantity of 2 000 tonnes;
- (iii) to approve the attached draft Regulation on the conclusion of an Agreement in the form of an exchange of letters between the Community and India;
- (iv) to approve the attached draft Regulation on the conclusion of an Agreement in the form of an exchange of letters between the Community, the ACP States concerned and the Ivory Coast.

FINANCIAL IMPLICATIONS

31. The proposals set out above would be implemented within the framework of the management of the common organization of the sugar market and would not, therefore, give rise to additional expenditure.

ANNEXES

- I. Copy of Note Verbale of 20.9.1982 from India to the Commission.
- II. Draft of a Council Regulation covering an exchange of letters with India.
- III. Draft of a Council Regulation covering an exchange of letters with the ACP states concerned.



Dir. gen. I Gen. Dir. I
N° 3334
Date 23-9-1982
AIL

ANNEX I
भारतीय राजदूतावास
EMBASSY OF INDIA
CHAUSSEE DE VLEURQAT, 217
1050 BRUXELLES
TEL. 840 81 40

No. BRU/204/A/15/80

September 20, 1982.

NOTE VERBALE

23.9

The Mission of India to the European Economic Community presents its compliments to the Directorate General for External Relations of the Commission of the European Communities and has the honour to refer to the Agreement on the supply of sugar by India to the EEC and the correspondence on this subject resting with letter No. SG(82)D/3955 of 17 March, 1982, from His Excellency Mr. Wilhelm Haferkamp, Vice-President to the Ambassador of India.

For diverse reasons, India has lost the benefit of delivering the agreed quota for 2 years (1980-81 and 1981-82). Given the fact that the adverse balance of trade between India and the Community is increasing at an alarming rate, a fact recognised as potentially harmful by both sides, and given India's need to increase her export earnings from all sources, the Mission of India has the honour to request the Commission of the European Communities for a restoration of India's sugar quota under the Agreement referred to above with effect from the 1982/83 delivery period. The Mission would appreciate an early positive response from the Commission.

The Mission of India to the European Economic Community avails itself of this opportunity to renew to the Directorate General for External Relations of the Commission of the European Communities the assurances of its highest consideration.

The Directorate General for
External Relations, Commission of the
European Communities, Rue de la Loi 200,
1049 Brussels.



COUNCIL REGULATION (EEC)

on the conclusion of an Agreement in the form of an exchange of letters between the European Economic Community and the Republic of India on the restoration to the latter of an agreed quantity of preferential sugar

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 113 thereof,

Having regard to the proposal from the Commission,

Whereas under the Agreement between the European Economic Community and the Republic of India on cane sugar (1), which entered into force on 18 July 1975, India had an original agreed quantity of 25 000 metric tons (white value) of preferential sugar; whereas with effect from 1 July 1981 that quantity was reduced to zero by the Commission of the European Communities acting under the provisions of Article 7(2) of the said Agreement;

Whereas the said Agreement is an integral part of the growing EEC-India trade relations; whereas there is an imbalance in EEC-India trade in favour of the Community; whereas this situation should as far as possible be redressed to the benefit of India;

Whereas it is therefore appropriate for the Community to agree to restore an agreed quantity of preferential sugar to India; whereas such a restoration is without prejudice to the validity of the aforesaid action by the Commission,

HAS ADOPTED THIS REGULATION:

Article 1

An agreement in the form of an exchange of letters between the European Community and the Republic of India on the restoration to the latter of an agreed quantity of preferential sugar is hereby approved on behalf of the Community.

The text of the Agreement is attached to this Regulation.

(1) OJ No L 190, 23.7.1975, p.35

Article 2

The President of the Council is hereby authorized to designate the person empowered to sign the Agreement referred to in Article 1 in order to bind the Community.

Article 3

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

For the Council

The President

to
AGREEMENT

in the form of an exchange of letters between the European Economic Community and the Republic of India on the restoration to the latter of an agreed quantity of preferential sugar

LETTER No 1

Sir,

The European Economic Community and the Republic of India have agreed on the following:

"The agreed quantity referred to in Article 3(1) of the Agreement between the European Economic Community and the Republic of India on cane sugar is hereby fixed at 10 000 metric tons with effect from 1 July 1983.

The Community has noted India's request to have its original agreed quantity restored in full and it will take this into account if and when a further redistribution of preferential sugar is contemplated.

I should be obliged if you would acknowledge receipt of this letter and confirm that this letter and your reply constitute an Agreement between the Government of India and the Community."

Please accept, Sir, the assurance of my highest consideration.

On behalf of the Council
of the European Communities.

LETTER No 2

Sir,

I have the honour to acknowledge receipt of your letter of today's date which reads as follows :

./...

"The European Economic Community and the Republic of India have agreed on the following :

The agreed quantity referred to in Article 3(1) of the Agreement between the European Economic Community and the Republic of India on cane sugar is hereby fixed at 10 000 metric tons with effect from 1 July 1983.

The Community has noted India's request to have its original agreed quantity restored in full and it will take this into account if and when a further redistribution of preferential sugar is contemplated.

I should be obliged if you would acknowledge receipt of this letter and confirm that this letter and your reply constitute an Agreement between the Government of India and the Community."

I have the honour to confirm the agreement of the Government of India with the foregoing.

Please accept, Sir, the assurance of my highest consideration.

For the Government of India.

COUNCIL REGULATION (EEC)

on the conclusion of an Agreement in the form of an exchange of letters between the European Economic Community and Barbados, Belize, the People's Republic of the Congo, Fiji, the Cooperative Republic of Guyana, Jamaica, the Republic of Kenya, the Democratic Republic of Madagascar, the Republic of Malawi, Mauritius, the Republic of Surinam, the Kingdom of Swaziland, the United Republic of Tanzania, Trinidad and Tobago, the Republic of Uganda, the Republic of Zimbabwe and the Republic of the Ivory Coast on the accession of the latter country to Protocol 7 on ACP sugar annexed to the Second ACP-EEC Convention

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 113 thereof,

Having regard to the proposal from the Commission,

Whereas the Joint Declaration annexed to Protocol 7 on ACP sugar to the Second ACP-EEC Convention⁽¹⁾ provides that any request from an ACP State Contracting Party to the Convention not specifically referred to in that Protocol to participate in its provisions shall be examined;

Whereas the Republic of the Ivory Coast is an ACP State Contracting Party to the said Convention ; whereas the Ivory Coast has requested to participate in the provisions of the said Protocol;

Whereas the ACP States concerned, in a letter of 25 February 1982, have signified their assent to the accession of the Ivory Coast to the said Protocol;

Whereas it is appropriate to approve an Agreement in the form of an exchange of letters between the European Economic Community, the States referred to in the said Protocol and the Republic of the Ivory Coast on the accession of the latter country to the said Protocol,

(1) O.J. No. L 347, 22.12.1980, p. 2

HAS ADOPTED THIS REGULATION:

Article 1

An Agreement in the form of an exchange of letters between the European Economic Community and Barbados, Belize, the People's Republic of the Congo, Fiji, the Cooperative Republic of Guyana, Jamaica, the Republic of Kenya, the Democratic Republic of Madagascar, the Republic of Malawi, Mauritius, the Republic of Surinam, the Kingdom of Swaziland, the United Republic of Tanzania, Trinidad and Tobago, the Republic of Uganda, the Republic of Zimbabwe, and the Republic of the Ivory Coast on the accession of the latter country to Protocol 7 on ACP sugar annexed to the Second ACP-EEC Convention is hereby approved on behalf of the Community.

The text of the Agreement is attached to this Regulation.

Article 2

The President of the Council is hereby authorized to designate the person empowered to sign the Agreement referred to in Article 1 in order to bind the Community.

Article 3

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 _____,

For the Council

The President

AGREEMENT

in the form of an exchange of letters between the European Economic Community and Barbados, Belize, the People's Republic of the Congo, Fiji, the Cooperative Republic of Guyana, Jamaica, the Republic of Kenya, the Democratic Republic of Madagascar, the Republic of Malawi, Mauritius, the Republic of Surinam, the Kingdom of Swaziland, the United Republic of Tanzania, Trinidad and Tobago, the Republic of Uganda, the Republic of Zimbabwe, and the Republic of the Ivory Coast on the accession of the latter country to Protocol 7 on ACP sugar annexed to the Second ACP-EEC Convention.

Letter No. 1

Sir,

The ACP States referred to in Protocol 7 on ACP sugar annexed to the Second ACP-EEC Convention, the Republic of the Ivory Coast and the European Economic Community have agreed on the following.

The Republic of the Ivory Coast is hereby included in Article 3(1) of the said Protocol with effect from 1 July 1983 with an agreed quantity of 2 000 tonnes (white value).

I should be obliged if you would acknowledge receipt of this letter and confirm that this letter and your reply constitute an Agreement between the Governments of the abovementioned ACP States and the Community.

Please accept, Sir, the assurance of my highest consideration.

On behalf of the Council
of the European Communities

Letter No. 2

Sir,

I have the honour to acknowledge receipt of your letter of today's date which reads as follows :

./...

" The ACP States referred to in Protocol 7 on ACP sugar annexed to the Second ACP-EEC Convention, the Republic of the Ivory Coast and the European Economic Community have agreed on the following.

The Republic of the Ivory Coast is hereby included in Article 3(1) of the said Protocol with effect from 1 July 1983 with an agreed quantity of 2 000 tonnes (white value).

I should be obliged if you would acknowledge receipt of this letter and confirm that this letter and your reply constitute an Agreement between the Governments of the abovementioned ACP States and the Community."

I have the honour to confirm the agreement of the Governments of the ACP States referred to in this letter with the foregoing.

Please accept, Sir, the assurance of my highest consideration.

For the Governments
