EPA-EBA London Sugar Group

Representing the ACP and LDC sugar industries supplying the EU

Submission to DEFRA

on the European Commission draft working document on the import and refining of products of tariff heading 1701 under the EPA and EBA agreements

1. We value the opportunity which has been accorded us to make representations on the Commission's draft working document embodying proposed rules for the import of sugar from EPA and EBA suppliers.

2. We note firstly that some text in the document appears in square brackets. We assume that these matters are not quite agreed by the Commission services and are for particular discussion.

3. We note that in Article 4(1) there is no limit on the number of licence applications that may be submitted. We are pleased to draw the conclusion, which we trust is correct, that the EU authorities find there is no need to impose any such restriction.

4. However, Article 4(1) fixes the earliest date for import licence applications as the third Monday of September. For practical purposes, we find that this is too restrictive. The third Monday could be as late as 21 September, and in that event licences will not be issued until the following Friday, i.e. 2 October, which is after the beginning of the marketing year. A licence issued on 2 October would not be available until the following working day, which (if 2 October were a Friday) would not be until Monday 5 October. Thus in the next three marketing years (2009/10 – 2011/12) licences correctly applied for would not be available on 1 October. That timetable presupposes that there are no technical or administrative problems, which as is evident cannot be presumed, let alone guaranteed. Hence here is a real and substantial risk that the import of sugar available for delivery on 1 October, and required by the importer, might be unnecessarily delayed to the detriment of all parties and with concomitant costs in the form of demurrage, financing costs, disrupted cashflow etc. In the circumstances, we would request that licence applications may be validly submitted from the first Monday of September, which was the date shown in an earlier version of the draft document.

5. The licence security of €40 per tonne, which appears in square brackets in Article 4(4a), is twice the current security. A security of €40 per tonne would represent a significant financial burden on the importer, and would tie up credit lines. This cost would doubtless be reflected in the price paid for the sugar and thus reduce the suppliers' revenue. We are at one with the EU authorities concerning the vital importance of suitable measures to combat fraud. However, we would respectfully question if a simple increase in the licence security is an appropriate way to go about it. We take the view that, as suggested by the ACP, improved Community control measures such as for example authorised

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exporters determined by each EPA/LDC state should be more efficient if consistently applied. These improved measures are important as a fraud in one country in a region could penalise the whole region.

6. We are concerned to note that the option to supply a certified copy of the appropriate movement certificate evidencing the origin of the sugar, instead of the original export licence, appears in square brackets in Article 4(4b). There are certainly some origins which cannot supply an export licence on the form recognised by the EU authorities, and thus we would maintain that as presently the retention of the option is essential.

7. We are concerned to note the insertion in the latest version of the document of a new paragraph 4(5). Our view is that this paragraph is unnecessarily and unfairly onerous. Many suppliers have concluded long-term commercial contracts with EU importers. This penalty would exclude those suppliers from exercising their legitimate preferential access to the EU if their buyer were penalised in the way set out in this paragraph, even though the incorrect information might refer to a different supplier. We would request the deletion of this paragraph, or at the very least that it be amended to read "…unless the inaccuracy is of a minor or inconsequential nature, or unless it can be shown that the applicant was not at fault", or words to similar effect.

8. We note that in Article 5(1) the imposition of the safeguards is effectively automatic ("the Commission shall fix an allocation coefficient…..the Commission shall suspend applications for licences" – emphasis added). This does not seem to be in accordance with the corresponding provisions in Annex 1 of the CARIFORUM-EC Economic Partnership Agreement, and in the interim agreements of the ESA, EAC, SADC and the PACP, paragraph 5(a) of which provides: "The EC Party may … impose the Most Favoured Nation duty…" (emphasis added). It seems clear that the intention of the EC is that the application of safeguard measures should not be automatic but that discretion should be applied. Annex 1 paragraph 5(d) of the CARIFORUM-EC EPA and the interim agreements of the ESA, EAC, SADC and the PACP also provides for consultation between the parties. We would strongly urge that safeguard measures should only be undertaken after due consultation with the parties concerned, and should take into account all relevant factors including the overall supply situation in the Community. Safeguards should not apply unless there is clear evidence of an excess of supply over demand in the sugar sector in the Community as evidenced by the annual EU sugar balance sheet.

9. We agree with Article 5(2) and would ask that the square brackets be removed – they did not feature in the earlier draft document and we can see no good reason for doubt in this respect.

10. Article 6(1) should presumably read: "Every week on Thursday or Friday…"

11. Article 6(2) stipulates that licences are valid until the end of the third month following their first validity date. The Commission's explanation, given verbally to the ACP, is that this is the general rule and that the derogation in Article 10(1) is the only permissible derogation to the general rule because it is the subject of a Council ruling in the basic CMO regulation (1234/2007). We would respectfully maintain that it is important to harmonize the rules in this respect by making all licences valid to the end of the marketing year. This will avoid discriminating against EPA suppliers, all of whom have the right under the market access opportunities in the EPAs to deliver any type of sugar.

Any discrimination could jeopardize the investments made by ACP industries which have embarked on costly plans and adaptation strategies approved by the European Commission in order to move up the value chain by their own efforts to mitigate the serious adverse effect which the drastic 36% price cut will have on their sugar cane industries. This is particularly critical during this period of financial crisis. Hence we would request that the words "…the end of the third month following their start validity date without exceeding…" be removed.

12. If our argument in the previous paragraph is not accepted, the text of Article 6(2) should at all events be clarified by the addition of the words "…except as provided for in Article 10(1)" or equivalent text.

13. We are pleased to note that Article 7 provides that the validity of the licence shall be extended under certain circumstances, and would ask that the square brackets around this text be removed. The earlier version of this Article provided for validity extension provided that the sugar left the country of origin before the final date of validity of the import licence, and we are concerned to note that this has now been altered to 15 September and only applies to licences with a validity of 30 September. It is important to take account of the realities of ocean freight, which may give rise to delays outside the control of the parties, and hence we would request that the first sentence of this Article be amended to read: "At the request of the import licence holder, the competent body of the Member State of issue shall extend the period of validity of the import licence if the titular holder submits proof, acceptable to that competent body of the Member State of issue, that the sugar left the country of origin before the last date of validity of the import licence."

14. The earlier draft version incorporated a welcome clarification, in the text corresponding to Article 4(3d) of the current text, that the designation of the sugar as intended for refining or not is independent of the CN code. This would have helped to remove any potential problems with the import of 'VHP' (Very High Polarisation) sugar with a polarisation which may be slightly above or slightly below 99.5 degrees but which is intended for refining. We note that this has now been removed but that a new Article 8 has been inserted. We believes this new text provides the same clarification and hence we support it on that understanding.

15. Article 10 provides that applications for import licences for sugar for refining valid during the first three months of each marketing year may be submitted only by full-time refiners. We maintain that this provision could give rise to financial disadvantage for some preferential suppliers and we will monitor the impact of this provision during the period October/December 2009 and subsequently if necessary. If there is clear evidence of financial disadvantage, we will be making further representations on this point.

16. We note that Annex I includes several countries which do not produce any centrifugal sugar and/or would seem to have no interest in supplying sugar to the EU. With a view to minimising the risk of fraud and maladministration, we are proposing that the ACP Secretariat should regularly submit revised lists of ACP LDC and non-LDC countries designated as sugar suppliers and that Annex I should be updated in the light of this information.

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