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NOTICE IN TERMS OF SECTION 3(2)

OF THE SWAZILAND SUGAR INDUSTRY AGREEMENT

Notice is hereby given that by a Resolution of the Swaziland Sugar Association passed at a General Meeting on the 18th day of March 1991, the Swaziland Sugar Industry Agreement was amended by the following:

- (a) The definitions, under clause 1, of "year" and "season" were amended by deleting the existing wording and replacing it with:

" "year" means the period of twelve calendar months ending on the 31st day of March, or such other period of twelve months as may from time to time be fixed by the Sugar Association: provided that for the year ending 31 March 1991, "year" shall mean the period of eleven calendar months commencing on 1 May 1990;"

" "season" means the period or periods in each year, determined in terms of clause 35, during which a mill is receiving and crushing cane;"

- (b) The definitions, under clause 1 were amended by the addition of the definitions of "quota sugar" and "segregated sugar":

" "quota sugar" means the 96% pol equivalent sugar produced during a year by a mill from the sucrose extracted from a grower's or miller-cum-planter's cane up to the limit set in his Schedule "A" and "D" quotas,"

" "segregated sugar" means the 96% pol equivalent sugar produced during a year by a mill from the sucrose extracted from a grower's or miller-cum-planter's cane deliveries, to the extent to which that sucrose exceeds the sucrose permitted in terms of that grower's or miller-cum-planter's Schedule "A" and "D" quotas; or

- (c) The existing clauses 44(3) and 45(2)(a) were amended as follows:

CLAUSE 44(3)

Replace the word "qualify" in line 4 with "quality".

CLAUSE 45(2)(a)

Change the reference to "sub-clause 3(b) of Schedule "F" hereto" to "sub-clause 4(b) of Schedule "F" hereto".

- (d) The existing wording of clauses 3, 26, 27, 29(1), 35, 36(1), 37, 39(3), 45(2)(b), 46(3), 47(1), 49, 55(4), Schedule "C" and Schedule "F" were amended by deleting the existing wording and replacing it with new wording as follows:

CLAUSE 3

"Subject to the provisions of the Sugar Act, 1967, this Agreement may be altered or amended from time to time, and any alteration or amendment shall be effected by the adoption thereof by separate resolutions in General Meetings of the Millers Association the Growers Association and the Sugar Association".

CLAUSE 26

"Determination of production levels for each year.

(1) Subject to the provisions of clause 26(2), the Sugar Association shall, prior to the commencement of each year -

- (a) obtain from every Mill Group Committee an estimate of the quantity of sugar that its mill will be able to produce during the forthcoming year from deliveries of cane from growers attached to the mill;
- (b) obtain from its Marketing Executive Committee an estimate of the anticipated prices that will be obtainable for all Swaziland sugar sold during the forthcoming year;
- (c) on the basis of the estimates so obtained and any other factors which it considers to be relevant, the Association may in respect of the forthcoming year:
 - i) decide that the maximum total quantity of Swaziland sugar that may be produced shall be that produced pursuant to growers' Schedule "A" and "D" quotas; or
 - ii) decide that the maximum total quantity of Swaziland sugar that may be produced shall be quota sugar produced pursuant to growers' Schedule "A" and "D" quotas and segregated sugar, either in a stated tonnage or a quantity equal to a stated percentage of the total quantity of Schedule "A" and "D" quotas, allocated in such manner as the Association may decide; or
 - iii) decide that sugar production for such year shall be restricted, in which event it shall be entitled to apply cuts to growers' quotas in terms of clause 28 below: provided that, if the Association makes no decision in terms of this clause 26(1)(c) before the commencement of a year, it shall be deemed to have decided pursuant to clause 26(1)(c)(ii) that the maximum total quantity of Swaziland sugar that may be produced during that year shall be quota sugar produced pursuant to growers' Schedule "A" and "D" quotas plus segregated sugar in an amount equal to 25% of the total quantity of the "A" and "D" quotas. This additional tonnage shall, unless the Association decides otherwise before the commencement of the year, be allocated between growers in the proportions which the totals of their Schedule "A" and "D" quotas bear to one another.

(2) For the year commencing 1 April 1991, the provisions of clause 26(1) shall be implemented as soon as is practical but may, notwithstanding the provisions of that clause, be implemented after the commencement of the year.

CLAUSE 27

"Segregated Sugar.

27. (1) Subject to the provisions of clause 27(2), if the Association makes or is deemed to have made the decision referred to in clause 26(1)(c)(ii), the segregated sugar shall:

- i) be produced subject to such conditions as the Association may from time to time lay down; and
- ii) be sold on the world market at prices which, in its discretion, the Association believes to be the best obtainable in the circumstances.

(2) Notwithstanding the provisions of clause 27(1), all cane delivered within that year by a grower whose total deliveries of cane produce 200 tons of sucrose or less shall be deemed, for the purpose of clause 27, 35, 39(3), 45, 46(3), 47(1) and 49, to be within and not in excess of that grower's quota: provided that the Sugar Association may, if it believes that a grower who reasonably expected to produce 200 tons of sucrose in a year or less has inadvertently and to a nominal extent produced more than 200 tons in a given year, decide that to the extent of the first 200 tons of sucrose produced by him in that year such grower shall nevertheless be treated as if he fell within the ambit of this clause."

CLAUSE 29 (1)

"The Association shall from time to time determine the various types of sugar, and the total quantities of each type, to be produced during each year. Such determination shall be made upon the basis of the total quantity of each type of sugar which can in the opinion of the Association be marketed during each year, and shall take account of stock requirements."

CLAUSE 35

"With effect from the 1991/92 season the milling season in respect of each mill shall start on the first working day in April unless agreed to the contrary between Millers and Growers through the medium of the appropriate Mill Group Committee. Each Miller shall determine the length of his season provided, however, that all cane deliverable to any mill in any one year in terms of this Agreement pursuant to the Schedule "A" and "D" quotas of the growers will be accepted and crushed during a period which shall not exceed 31 weeks of actual crushing, that is to say, excluding periods when the mill is open but not operating because of rain and other interruptions beyond the control of the Miller concerned as specified in clause 44(2) of this Agreement: provided always specified in clause 44(2) of this specified in clause 44(2) of this Agreement: provided always that the foregoing period of 31 weeks:

- i) will not apply to sucrose in excess of the aggregate of the Schedule "A" and "D" quotas in respect of each area;
- ii) may be extended by the miller if by reason of its fibre content the cane supplied to the mill cannot reasonably be crushed within that period;
- iii) may otherwise be extended by unanimous agreement of the Mill Group Committee."

CLAUSE 36(1)

"(1) It shall be the duty of every Mill Group committee to make estimates (hereinafter referred to as "seasonal estimates") of the quantity of cane that will be produced by each grower (including any miller-cum-planter) attached to the mill in its area during each season and to convert such quantities into tons of sucrose. Such seasonal estimates shall be made by the last day of February in each year in respect of the beginning of each following year, and shall thereafter be revised as at the first day of July, first day of September and a date six weeks prior to the estimated closing of the season in each year, or at such other intervals during the year as the Sugar Association may prescribe: provided that for the year commencing 1 April 1991 the first seasonal estimate shall be made as close as is practical to 1 April 1991, rather than by the day of February."

CLAUSE 37

"1 If it shall appear from any seasonal estimate made in terms of clause 36 above that there will in the case of any grower be a deficiency ("a *shortfall*") between the full amount of sucrose which such grower is entitled to deliver to the mill in terms of this agreement in respect of that year, and the amount of his actual deliveries as estimated in terms of clause 36(1), and that there will in the case of any other grower be an excess ("a *surplus*") of his actual deliveries as estimated in terms of clause 36(1) hereof over the full amount of sucrose which he is entitled to deliver to the mill in terms of this agreement, the Mill Group Committee shall aggregate all such shortfalls and re-allocate, for that year the total quantity of the shortfalls amongst those growers who have surpluses pro rata to the quotas of such growers, but not allocating to any grower any quantity in excess of his surplus. The effect of a re-allocation in terms of clauses 37(1) and (2) is that to the extent to which the shortfall consists of sucrose giving rise to quota sugar, the surplus applied thereto shall be paid for as if it were sucrose giving rise to quota sugar and to the extent to which the shortfall consists of sucrose giving rise to segregated sugar, the surplus applied thereto shall be paid for as if it were sucrose giving rise to segregated sugar.

(2) Each Mill Group Committee shall make an initial re-allocation of shortfalls as aforesaid at the beginning of each season on the basis of its initial season estimates for such year taken out in terms of clause 36(1), and shall thereafter make revised re-allocations of shortfalls immediately after taking out its subsequent revised seasonal estimates in terms of clause 36(1).

(3) In order to enable the shortfalls so re-allocated to be fulfilled during the season under consideration by the growers with surpluses to whom they are re-allocated, every grower shall render to his Mill Group Committee a final estimate as at a date six weeks prior to the estimated closing of the season, at which date surpluses and shortfalls shall be finally established by the Mill Group Committee for the season under consideration. Every grower shall be obliged when rendering such final estimates to nominate the fields to be harvested by him, and shall further be obliged to harvest and deliver all cane from such fields or to fulfil his final estimated delivery, whichever shall be the less.

(4) Should the re-allocation of shortfalls as aforesaid result in the exhaustion of surpluses for any Mill Group, the Mill Group Committee shall advise the Sugar Association of any shortfall still remaining, and the Sugar Association shall re-allocate the same amongst all other Mill Groups having surpluses still remaining after exhaustion of all their various shortfalls, in the proportions which the totals of all quotas deliverable to each such mill bear to one another, to a maximum in each case of the recipient's surplus: provided that:

- i) a shortfall in the production of sucrose giving rise to quota sugar, which is re-allocated from one Mill Group to another shall nevertheless, unless the Sugar Association agrees otherwise, be priced as sucrose giving rise to segregated sugar; and
- ii) a shortfall in the production of sucrose giving rise to segregated sugar, which is re-allocated from one Mill Group to another, shall be priced as such.

(5) For the purposes of this clause 37, "growers" includes miller-cum-planters."

CLAUSE 39 (1)

"(1) Upon a basis which shall take into account the quotas of all growers (including any miller-cum-planter) attached to its mill, the application of any cut made in the said quotas by the Sugar Association in terms of clause 28 above, the seasonal estimates of each grower's production made in terms of clause 36 hereof and the re-allocation of any shortfalls in terms of clause 37 hereof, each Mill Group Committee shall prepare a Delivery Schedule for every season for the purpose of controlling and regulating deliveries by growers (including any miller-cum-planter) to the mill. Such Schedule shall be prepared in accordance with such guiding rules as the Sugar Association may from time to time prescribe, and shall be drawn up in the first instance at the beginning of each season and shall thereafter be revised at the 1st day of July, the 1st day of September and a date six weeks prior to the estimated closing of the season in each year, or at such other intervals during the year as the Sugar Association may prescribe."

CLAUSE 39 (3)

"30. (3) The Delivery Schedules in respect of each season shall make provision for the total estimated quantity of cane to be delivered to the mill in terms of clauses 26(1) (c), 27 or 28 during the season to be delivered rateably over the season: provided that unless the Mill Group Committee should decide otherwise the quota of each grower (including any miller-cum-planter), expressed in tons of cane, shall, provide the mill continues to receive cane in quantities acceptable to the miller, be delivered over as short a time as possible."

CLAUSE 45(2) (b)

"The price payable to each miller shall be arrived at by firstly dividing the total sugar proceeds accruing in respect of each year less manufacturing allowances in respect of white sugar manufactured and less all industry obligations as defined in clause 53 by the aggregate tonnage of 96° pol equivalent sugar sold by the millers to the Sugar Association during the year and secondly by adding thereto for each mill the mill net price of molasses per ton of 96° pol equivalent sugar as defined in sub-clause 30 (4) hereof. The price per ton so calculated shall be apportioned between quota sugar and segregated sugar on such basis as the Sugar Association shall decide: provided that the amount payable to each miller shall be the quota sugar price for:

- (i) each ton of sugar produced by the mill during the year to the maximum of the aggregate of all quotas attaching to the mill (whether individual growers attached to the mill or the miller-cum-planter itself have met their quotas or not); and
- (ii) each ton of sugar produced by the mill during the year in respect of a shortfall of quota re-allocated as quota from another Mill Group area,

and the segregated sugar price for all other sugar produced by the mill."

CLAUSE 46(3)

"The price per ton of sucrose calculated in terms of sub-clause (1) above (whether in respect of quota sugar or segregated sugar) shall be paid by the miller to each grower within 30 days after the date on which the final quota sugar price or segregated sugar price, determined in terms of clause 45, is paid by the Sugar Association to the miller for 96° pol equivalent sugar."

CLAUSE 47(1)

"The Sugar Association shall from time to time during each year estimate the proceeds of quota sugar plus by-products in terms of clause 49(1) and, separately, the proceeds of segregated sugar plus by-products in terms of clause 49(1), which will finally accrue to each miller in terms of clauses 45, 49 and 50 and shall on the basis of such estimates make provisional payments to millers during the year in such manner as the Council of the Sugar Association shall determine, provided that such provisional payments shall in no event be made later than thirty days after the end of the mill month in which the sugar is produced."

CLAUSE 49

"(1) The Industry accepts the principle that whenever a true market can be established for a by-product, and the marketing thereof is more beneficial to both millers and growers, taking into consideration the capital and costs incurred in the Industry in diverting the by-products to such market, than any use to which the by-product is being or has been put, then the by-product may be marketed in accordance with the provisions of this Agreement, and the growers and millers-cum-planters shall be entitled to share in the net proceeds of sale in accordance with the provisions of Schedule "F" hereto.

(2) Whenever a miller directly turns to account commercially or directly and deliberately employs for his own benefit a by-product, then the value to be attributed to such by-product shall, as far as practicable, be assessed, and the growers attached to that mill and the miller-cum-planter shall be entitled to share in the proceeds or value to be attributed in accordance with the provisions of Schedule "F" hereto: provided that the indirect use of any part of a by-product which would otherwise have gone to waste (such as waste steam) shall not be counted as beneficial use for the purpose of this clause.

(3) The entitlement of the growers and miller-cum-planters to share in the proceeds or value of such by-product in terms of clauses 49(1) and/or 49(2) shall be apportioned between quota sugar and segregated sugar produced by that mill pro rata to weight."

CLAUSE 55(4)

"No person shall have an enforceable right of action arising out of any act or omission in contravention of the provisions of this Agreement, and nor shall any such act be capable of being set aside, unless a competent court or the arbitrator in terms of clause 55 is satisfied on a balance of probabilities that substantial injustice to that person resulted from such act or omission."

5.1.4 Each miller shall record the date and time of each consignment of cane received in the mill cane yard and if cane is stored in the mill cane yard the storage time shall also be recorded.

5.1.5 Cane storage time in the mill cane yard shall be kept to a minimum and, as far as practicable, stored cane shall be crushed in the order of sequence of the date and times of delivery to the mill, provided, however, that the application of this principle to individual cane bundles shall be subject to the physical constraints inherent in vertical stacking.

5.2 *Cane Sampling Equipment and Procedures.*

5.2.1 The miller shall provide and maintain cane sample tracking aids as specified in the Official Methods.

5.2.2 SSA shall, in consultation with the miller, provide and maintain the cane sampling equipment together with cane sample preparation and sub-sample devices as specified in the Official Methods.

5.2.3 Cane consignment identification and sampling procedures shall be conducted by the cane testing services in conformity with the procedures detailed in the Official Methods.

5.3 *Analysis of Cane Samples.*

5.3.1 The miller shall provide and maintain saccharimeters (as specified in the Official Methods) together with the ancillary chemicals and glassware required for the measurement of pol content of cane samples.

5.3.2 SSA shall, in consultation with the miller concerned, provide and maintain all other analytical equipment (as specified in the Official Methods) required for the measurement of moisture and brix content of cane samples.

5.3.3 The cane testing service shall conduct the analysis of cane samples for the determination of moisture, brix and pol in conformity with the analytical procedures detailed in the Official Methods.

5.3.4 The cane testing service shall compute the brix percent extract, pol percent extract, moisture percent cane, fibre percent cane, brix percent cane, pol percent cane, non-pol percent cane and purity of cane juice in accordance with the calculation formulae given in the Official Methods.

5.4 *Non-Test Consignments.*

Consignments which for any reason cannot be tested shall be credited with a calculated figure. Such calculation shall be in accordance with procedures as detailed by the Committee.

6. *Distribution of Total Pol Entering Mill.*

6.1 *Determination and Application of Pol Factor.*

6.1.1 The pol percent cane test results determined in accordance with paragraph 5 shall be adjusted in each distribution period by the cane testing service by the application of a pol factor which shall be calculated for each distribution period in conformity with the procedure detailed in the Official Methods.

6.1.2 The distribution period shall normally be one week but may be varied in accordance with procedures as detailed by the Committee.

7. *Reporting of Results and Inspections.*7.1 *Reporting of Results.*

The miller or the independent cane testing service shall report weekly to SSA and the Growers Association the total mass of cane and sucrose delivered by each grower (including the miller-cum-planter) who delivered cane to the mill during the preceding weekly period.

7.2

7.2 *Inspections.*

7.2.1 SSA and the Committee shall have the right to authorise any person to carry out periodic inspections on the testing of cane at the mills. Such authorised person shall be entitled to enter the mills for such purpose at any time without prior notice subject to his reporting to the supervisor in charge at the mill immediately on his arrival in the mill and on his departure therefrom.

7.2.2 The chemist in charge of the cane testing service at any mill shall carry out regular inspections of all facets of the cane testing service at such times as may reasonably be determined by the Committee.

SCHEDULE "F"

"(1) The price payable to growers attached to each particular mill per ton of sucrose delivered which goes to make quota sugar ("quota sucrose") shall be calculated in terms of whichever is applicable of the following formulae:

a) where P is greater than the sum of A + B, then

$$\text{price per ton of quota sucrose} = A + \frac{P \div (A + B) \times (C + D)}{R}$$

(b) where P is equal to or less than the sum of A + B, then

$$\text{price per ton of quota sucrose} = \frac{P \times \frac{A}{(A + B)}}{R} \div R$$

In the above formulae

P is:

- (i) the proceeds of quota sugar, expressed as a price per ton of 96° pol equivalent sugar for each particular mill determined in terms of clause 45(2) (b); together with
- (ii) the net price per ton of 96° pol equivalent sugar of any by-product other than molasses accrued in respect of quota sugar in accordance with the provisions of clause 49(1); together with
- (iii) the assessed value of a by-product turned to account by a miller in accordance with the provisions of clause 49(2) expressed as a price per ton of 96° pol equivalent sugar to the extent to which it is apportioned to quota sugar.

- A is the notional cost of producing the cane required to manufacture one ton of 96° pol sugar calculated by multiplying the notional cost of producing one ton of cane by the weighted cane/96° pol sugar ratio of all the mills for the specific season.
- B is the notional cost of manufacturing one ton of 96° pol sugar
- C is the notional capital employed to produce the cane required to manufacture one ton of 96° pol sugar calculated by multiplying the notional capital employed to produce one ton of cane by the weighted average cane/96° pol sugar ratio of all the mills for the specific season.
- D is the notional capital employed to manufacture one ton of 96° pol sugar
- R is the weighted average sucrose/96° pol sugar ratio of all the mills for the specific season

(2) The price payable to growers attached to each particular mill per ton of sucrose delivered which goes to make segregated sugar ("segregated sucrose") shall be calculated in terms of whichever is applicable of the following formulae:

- (a) where P is greater than the sum of A + B, then

$$\text{price per ton of segregated sucrose} \equiv A \frac{[P - (A + B) \times \frac{(C)}{(C + D)}]}{R}$$

- (b) where P is equal to or less than the sum of A + B, then

$$\text{price per ton of segregated sucrose} = \left[\frac{P \times (A)}{(A + B)} \right] \div R$$

where

P is:

- (i) the proceeds of segregated sugar, expressed as a price per ton of 96° pol equivalent sugar for each particular mill determined in terms of clause 45(2) (b); together with
- (ii) the net price per ton of 96° pol equivalent sugar of any by-product other than molasses accrued in respect of segregated sugar in accordance with the provisions of clause 49(1); together with
- (iii) the assessed value of a by-product turned to account by a miller in accordance with the provisions of clause 49(2) expressed as a price per ton of 96° pol equivalent sugar to the extent to which it is apportioned to segregated sugar

A, B, C, D and R have the meanings given to them in (1) above

(3)(a) The notional cost of producing one ton of cane shall be the "cost of producing a ton of cane by a reasonably efficient grower" deduced by the Cane Prices Review Committee from the accounts of cane growers and miller-cum-planters and from data relating to new replacement values for fixed assets at the end of the year to which the review will apply in order to assess depreciation as an element of the cost based upon revaluation of fixed assets, indexation of historical costs of fixed assets or a combination of the two.

- (b) The notional cost of manufacturing one ton of 96° pol sugar shall be the "cost of manufacturing one ton of 96° pol sugar by a reasonably efficient miller" deduced by the Cane Prices Review Committee from the accounts of the miller and from data relating to new replacement values for fixed assets at the end of the year to which the review will apply in order to assess depreciation as an element of the cost based upon revaluation of fixed assets, indexation of historical costs of fixed assets or a combination of the two.
- (c) The notional capital employed respectively by the grower to produce one ton of cane and the miller to manufacture one ton of 96° pol sugar shall be the capital employed by a reasonably efficient grower and miller respectively as deduced by the Cane Prices Review Committee from the accounts of growers (including miller-cum-planters) and millers.
- (4) (a) Notional costs and capital employed shall be adjusted, if necessary, as the result of reviews undertaken annually.
- (b) The aggregate equivalent tons of 96° pol sugar shall be calculated by applying to the tons of refined and unrefined sugar the formula.

$$\frac{2 \times P - 100}{92}$$

where P is degrees of polarisation as tested by the polariscope in respect of each grade of sugar produced each mill."

H.C. MAUNDER
Secretary of the Swaziland Sugar Association