THE RAMPHAL INSTITUTE CONFERENCE: BREXIT AND EPAS: EXPLORING THE IMPLICATIONS FOR THE TRADE OF COMMONWEALTH DEVELOPING COUNTRIES

BREXIT AND SUGAR

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For most of the products we will be discussing our focus is likely to be on the problems Brexit may cause for ACP. For sugar the question is more complicated. There is for sugar as for other commodities, the potential problem that without the UK the EU market, to which the ACP have unrestricted access, will be smaller. But there is also the theoretical possibility that a UK that was totally outside the EU could provide a better market for ACP sugar than the EU after next year, when the EU will implement the change in its sugar policy that was decided as part of the last CAP reform.

To describe this change and the problem it will cause in a few words, the current EU sugar regime restricts the quantity of sugar that EU producers can supply to the EU market for sugar as food. This quantity leaves room for preferential imports, including imports from the ACP, which have duty and quota free access. When the quota regime end next October, EU producers will, unless world and EU prices are very low, be capable of supplying the whole EU sugar market and most imports are likely to be squeezed out – with the possible exception of imports into parts of the EU that have a deficit in terms of local production and of specialist markets for which cane sugar has advantages of beet sugar.

It's tempting to hope that Brexit will help to solve or at least alleviate that problem. After all the UK's production of beet sugar is well below its demand for sugar and, before entry into the then EEC, the UK, under the Commonwealth Sugar Agreement (CSA) offered a secure market for about 1.9 million tonnes of Commonwealth Sugar, of which about 1.5 million tonnes came from Commonwealth developing countries, so why, one might wonder, won't it do so again?

One answer to that question is that there is a strand of opinion amongst those who campaigned for Brexit that argues that an independent UK shouldn't apply any tariffs at all on any of its imports. This line is advocated by Professor Minford. His forecast that, with this policy, the UK could prosper outside the EU was quoted by other Brexit supporters – though they said more about his optimistic forecast for the UK economy than about the tariff proposal on which it was based. With a nil import tariff, the UK sugar market would be likely to be dominated by Brazil and other low cost suppliers. No comfort for the ACP.

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Supposing, however, that the UK did ditch Professor Minford and apply import tariffs against third countries including the EU, could it pursue a sugar tariff policy that had similar objectives to the old CSA? In the light of the way in which the rules of the GATT have been interpreted and enforced since the conclusion of the Uruguay Round and in particular of the panel and appellate body conclusions in the long running dispute over bananas, this would not be easy. it is clear that the way in which the UK would have to go about it if it wanted to provide Commonwealth (or ACP) sugar producers with something like the access they had under the CSA would be to restrict British beet sugar production, apply high tariffs to mfn suppliers and introduce a preferential tariff quota (trq) for Commonwealth or ACP suppliers. To make this preferential trq WTO compatible, it would need two WTO waivers, one from the mfn principle in Article I of GATT and the other from Article XIII of GATT which requires the non-discriminatory application of import restrictions.

Obtaining those waivers would be hard under any circumstances and especially hard when the UK will be involved in a tricky negotiation with other WTO members on what should be its independent tariff schedule after its exit from the EU, in particular as regards the trqs that form an integral part of the EU's tariffs schedule that currently applies to the UK. So even if the UK was ready to do this, I doubt whether it could succeed. And its willingness to do so is more than doubtful. The UK supported the end of EU sugar quotas, which hardly suggests that in would want to introduce them for its own producers after Brexit.

Could, however, the UK leave its own production free but run the risk of giving that ACP sugar suppliers a preferential trq without getting the waivers needed to make this secure in legal terms? After all, the EU ran the Lome sugar protocol, which involved separate trqs for each protocol member, without an Article XIII waiver – although it did have a waiver from Article I. Well, it did – but after the findings of the banana panels it was uncomfortable about doing so and this may well have been one of the considerations that led it to replace the Lomé Sugar Protocol with tariff free duty free access under the EPAs. These rely on the provisions of Article XXIV, which allows Free Trade Agreements (FTAs) and hence removes the need for an article I waiver.

Theoretically, therefore, the UK and the ACP sugar supplying countries could, either collectively, or in groups as in the EPAs, conclude free trade agreements that gave the ACP limited or even unlimited duty free access to the UK market. If the UK were to impose sugar tariffs at the prohibitive levels that are set out in the EU's tariff schedule on mfn suppliers, including the EU (419 euro/tonne for white sugar and 339 euro /tonne for raw), this would make the UK market much more attractive to the ACP than the market in the EU will be after the end of quotas.

But this is a long way from the policy the UK advocated when the EU sugar regime was renegotiated. Then the UK supported the end of sugar quotas but on condition that the EU sugar tariff was also removed so as to allow the refiners of imported raw sugar to compete on equal terms with EU beet sugar manufacturers, a policy Tate and Lyle appear to be hoping the UK will follow as regards its own post Brexit sugar tariff. This would allow T & L to buy raw sugar for their refinery at a competitive price and in unlimited quantity – but they would be likely to buy the raw sugar from the cheapest supplier. It is also a long way from the policy of the recently formed UK post Brexit Government, which appears to have the objective of negotiating some form of trade agreement (although its exact form has yet to be defined) with the EU and FTAs with "rapidly growing economies" around the world. Some of the obvious targets for such agreements are Brazil (although it isn't rapidly growing at the moment), Australia and Thailand, all major sugar exporters who are unlikely to agree to an FTA with the UK that excludes sugar.

In short, I am gloomy about the prospects for ACP sugar in the EU market when the EU ends its sugar quota regime and I struggle to be optimistic about prospects for the ACP in the sugar market of a post Brexit UK, even if the UK fails to negotiate a Free Trade Agreement with the EU.