ANNEX 1

LEXIS-NEXIS
Tell Me More

TEXWATCH

[Terms and Conditions]

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Fortune
January 10, 2000

SECTION: FIRST:; Pg. 30
LENGTH: 607 words
HEADLINE: Fighting Off the Aussie Lambs:HEY, HEY, HO, HO, U.S. PROTECTIONISM'S GOT TO GO
BYLINE: Cait Murphy
BODY:

Okay, so free trade took a battering in Seattle--for heaven's sake, even the teddy bear statue outside F.A.O. Schwarz got trashed. Still, the world is unlikely to stop buying and selling just because a bunch of scruffy Luddites blocked traffic and recited really bad protest chants ("Hey, hey, ho, ho, WTO has got to go.") The protesters were wrong about most things, but they were right, albeit for the wrong reasons, on two points: Poor countries can be hurt by the way trade is conducted. And the U.S. can be part of the problem. The solution, though, is not less trade, but more. (For more on this, see Rob Norton's column, "Not So Fast," which debuts in this issue.)

Take agriculture. World farm tariffs run ten times as high as those on other goods and services. By these standards, America looks pretty good. Its farm protection programs cover a much smaller portion of agricultural production (16%) than Europe's (42%) or Japan's (69%). Still, some sharp contradictions remain.

There is, for example, the lamb issue. In February, American producers pleaded for relief from lamb imports. No one alleged that Australian and New Zealand importers were being unfair, just that they were successful. Therefore, they should be punished. President Clinton agreed, capping imports for the next three years and sharply increasing tariffs.

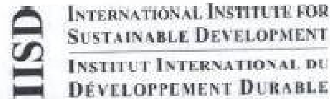
Or take sugar--please. Through a system of loan guarantees, price supports, and import controls, in most years American consumers pay double the world price for their sweet tooth. (Europe does much the same, but worse.) These arcane rules keep out cheaper sugar from places like the Caribbean, Africa, and India. "Isn't it ironic," asks Samir Somaiya, an Indian who came to Seattle to argue for agricultural liberalization, "that Europe is the most uncompetitive producer of sugar, and also one of the biggest exporters?" Well, yes. And the U.S. is little better.

Other agricultural follies abound. Peanut imports are allowed only when domestic production falls short. Producers in places like West Africa are therefore shut out. Grain, cotton, dairy, and tobacco farmers all have lobbies that keep them insulated from normal market pressures. Farmers in poor countries "shouldn't have to compete against state-owned enterprises, restrictive regulations, or the size of other countries' government grants," President Clinton told the WTO delegates. How true.

The same gap between theory and practice is gapingly obvious in textiles. America's textile policy is so complicated that the EU has charged that just filling out the customs form constitutes a trade barrier. But the bottom line is simple: Textiles are not freely traded goods. Import controls are being reduced, thanks to the WTO. But how is it right for history's richest country, basking in an economic expansion, to

ANNEX 2

THE ROYAL INSTITUTE OF INTERNATIONAL AFFAIRS
Energy and Environmental Programme


INTERNATIONAL INSTITUTE FOR SUSTAINABLE DEVELOPMENT
INSTITUT INTERNATIONAL DU DÉVELOPPEMENT DURABLE

The Kyoto Protocol and the WTO

Seminar Note

Aaron Cosbey
Trade and Sustainable Development
International Institute for Sustainable Development

Preface

This note is based on presentations and discussion at a seminar on *The Kyoto Protocol and the WTO*, jointly organized by the Royal Institute of International Affairs (RIIA) and the International Institute for Sustainable Development (IISD) during the third WTO Ministerial Conference in Seattle.

The meeting aimed to explore the potential conflicts between climate change mitigation under the Kyoto Protocol and the system of trade rules under the WTO, and how best to avoid them. This note summarizes the main strands of the presentations and discussion at the meeting. The topics discussed here are explored in depth in RIIA's recently released book on trade and climate change.[1]

IISD and RIIA would like to extend their sincere thanks to Lucas Assunçao, Duncan Brack, James Cameron and Gary Sampson for their presentations; to David Runnalls for chairing the meeting; and to all of the seminar participants for their enriching discussion.

Introduction

The Kyoto Protocol to the UN Framework Convention on Climate Change (FCCC) may be the most important economic agreement penned in the 20th century. While its aims are environmental—to reduce human-induced emissions of greenhouse gases—achieving those aims will mean changing the fundamental bases of production and consumption, transport, investment and energy provision in signatory countries.

There are a number of ways in which the Protocol, or the actions that parties may take in fulfilling their objectives, might come into conflict with commitments under another body of

[1] Duncan Brack with Michael Grubb and Craig Windram, *International trade and climate change policies*, London: RIIA Energy and Environment Programme/Earthscan Publications, 1999.

international law—the World Trade Organization. These potential conflicts were the subject of most of the meeting.

Yet the aim of the meeting—and the agreed priority of the participants—was not simply to highlight such problems, but to anticipate problems to help prevent them. The Protocol itself is not yet in force, and parts of it—such as the non-compliance procedures and flexibility mechanisms—are not even spelled out. Only a handful of countries have ratified the Protocol, and some major players will have serious difficulties in doing so. Time is available to defuse the potential conflicts, none of which seem intractable given the necessary political will.

The participants discussed potential conflicts in three areas of the Kyoto Protocol: the flexibility mechanisms, policies and measures; trade measures for compliance; and enforcement. Each is summarized below, followed by a brief discussion on where to go from here.

Flexibility mechanisms

The Kyoto Protocol established three flexibility mechanisms to assist parties in meeting their targets: emissions trading (Article 17), joint implementation between Annex I countries (Article 6), and the clean development mechanism (CDM) (Article 12). None of these has yet been precisely described by the negotiations, but most of the basic ideas are clear.

Emissions trading allows Annex I parties (those parties which have committed to cutting greenhouse gas emissions) to trade emissions reductions among themselves, buying or selling credits toward their commitments. Joint implementation entails collaboration between Annex I parties on projects that will reduce carbon emissions from the baseline scenario. Such projects will earn emissions-reduction credits. The CDM will provide incentives for firms investing in emissions-reducing projects in developing countries, with credits (certified emissions reductions, or CERs) being divided between the host country and the investing firm.

Some feel the mechanisms will be the test of the Protocol's success—if they can be made to work, real progress will be made in cutting emissions. For a number of countries they were also a prerequisite for signing the agreement.

One set of issues arises from the difficulty in defining emissions-reduction units in the trade-rules system. Are emissions traders exchanging 'goods' by the WTO definition? If they are, then the exclusive right to trade them among Annex I parties may violate the WTO's most-favoured nation (MFN) principle[2] by discriminating against non-Annex I trading partners.

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[2] The most-favoured nation principle prohibits members from discriminating between like goods from different WTO members.

But emissions-reductions units in fact resemble goods less than they do securities—transferable financial instruments. If they are viewed as such, then their trade is not governed by the rules of the General Agreement on Tariffs and Trade (GATT). But, as with securities, private institutions would spring up to handle trade in these new instruments. And the rules governing these trading institutions would need to conform with the General Agreement on Trade in Services (GATS), which covers measures affecting trade in services, including financial services. The GATS version of MFN would mean that providers of financial services (traders, brokers and securities exchanges) from all countries—even those not party to the Protocol—would have to be allowed to handle trades of emissions-reduction units. As long as those units are traded only between Annex I countries, there is nothing obviously wrong with this scenario.

The Protocol envisions emissions trading among countries, but the final result will probably see countries allocating their rights among their domestic industries, and letting them do much of the international trade themselves. This raises another set of issues: how will countries make the initial allocation of emission rights? Such rights are in effect valuable transferable instruments.[3] If we regard their distribution as a financial contribution from government to industry, then that contribution may be considered a subsidy under the WTO's Agreement on Subsidies and Countervailing Measures (SCM).

Such subsidies are not automatically prohibited or actionable. To be so they first must be 'specific'—granted to a specific enterprise, industry or sector, and not generally available. Most conceivable allocations would likely go to a small group of industries, with a few getting the lion's share, and so would probably be found specific. To run afoul of the SCM, however, they must also be shown to either be export promoting, or to harm some foreign competitor. The former is unlikely. The latter might be possible, and parties to the Protocol should bear that possibility in mind when designing national systems of allocation.

Policies and measures

While some argue that the flexibility mechanisms will be the heart of a successful Protocol, others maintain that the real reductions will in fact come at the domestic level, driven by governments, as policies and measures to reduce greenhouse gas (GHG) emissions. At least four types of these policies have the potential to bring countries into conflict with their WTO obligations: carbon taxes and border-tax adjustments, standards, subsidies and government procurement. Each is briefly discussed below.

Carbon taxes and border-tax adjustment

One policy that governments might use for reducing the emissions of GHGs is a tax on the carbon emitted in the production of goods. This would raise the prices of energy-intensive

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[3] The value of these rights underlies the problems with the initial allocation of rights internationally as well. Allocating rights on a per-capita basis, for example, would amount to a massive transfer of wealth to populous Annex I countries (or potential future Annex I countries such as China and India) that are low emitters. While this is the most equitable solution, the less populous high-emitters (such as the U.S.) would much rather see a distribution based on existing patterns of emissions.

goods and goods whose production causes high GHG emissions, penalizing them in the marketplace, and would stimulate the substitution of less-carbon intensive forms of energy for production. The final result would be less carbon emitted.

But this hypothetical chain of events ignores international trade. If foreign goods do not face the same taxes, then a unilateral carbon tax only has the effect of giving away market share of domestic business to their foreign competitors, both at home and abroad. And, in the end, global carbon emissions may be unaffected—only the names of the emitting countries would change.

One possible solution is to team up carbon taxes with what is known as border-tax adjustment (BTA). Such a scheme would see imported goods pay a tax at the border equal to what they would have paid had they been produced domestically. And it would refund the tax paid by domestically produced goods if they were exported. There is no consensus on whether such a tax would be found legal under GATT if challenged. BTA is only allowed for taxes levied directly on the product, so indirect taxes such as payroll taxes and social security charges are not eligible. A carbon tax, though, may be a different animal.[4]

Standards

Environmental standards are another set of tools that governments might use to fulfill their Kyoto Protocol obligations. The most likely type is efficiency standards mandating; for example, that appliances use only so much energy. The result would be less energy used domestically, and fewer energy-related GHG emissions.

Countries are free to adopt whatever standards they choose under WTO rules, their level of environmental protection being a matter of social choice. There may be problems, though, if such standards are designed in such a way as to penalize foreign firms in favour of domestic ones. This may be accidental—domestic firms may happen to be best suited to take advantage of particular standards, perhaps by dint of being industry leaders in the type of technology specified. It is also possible for such standards to be constructed with the aim of favouring domestic industries. Such regulations might run afoul of the WTO's Technical Barriers to Trade Agreement.

Subsidies

Governments may decide to use subsidies as another tool to help reduce national emissions. The most probable are subsidies to promote the use of renewable energy, or to promote fuel switching to less GHG-intensive sources. Such subsidies would certainly be specific in the sense discussed above—aimed at a specific sector or industry—and thus would fall under SCM rules. The key question to bear in mind when designing such programs is, do the subsidies impair the market share of a competing foreign producer? If so, they might conflict with WTO law.

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[4] The GATT 'Superfund' case found that certain U.S. taxes on products, based on the chemicals used in their production, were eligible for BTA. See L/6175 BISD, adopted 17 June, 1987, 34S/136, 160–163.

Government procurement
Governments purchase a large amount of goods and services: 10 to 25 per cent of GDP in the OECD countries. Many will be tempted to use their purchasing power to help achieve their Kyoto Protocol obligations. They may specify, for example, that they will give some purchasing preference to goods produced using renewable energy sources.

Discrimination of this sort—based on how a product is produced—has traditionally had a rough ride in the WTO. But government procurement specifications are not governed by the same rules as are general trade measures (technical regulations), and the relevant law—the Agreement on Government Procurement—does not seem to prohibit such measures. The Agreement does require that any such specifications not be constructed in such a way as to create unnecessary barriers to trade—a phrase that has yet to be defined. And the Agreement has only been signed by a handful of countries to date, though most of them are major traders.

Compliance and enforcement (trade measures)
The Kyoto Protocol will eventually need to have procedures for dealing with those parties that fail to meet their obligations. Article 18 calls for the first meeting of the parties to adopt a non-compliance procedure (NCP). And the sixth conference of the parties to the FCCC (November 2000 in the Hague) is expected to agree on some form of procedure, possibly fixing a penalty level per tonne of carbon emitted. But for the moment, the rules remain unwritten. The Protocol will also likely specify some use of trade measures to prevent non-parties from undermining its objectives, excluding them from certain forms of trade with the parties.

Trade measures in the Kyoto Protocol might take at least three distinct forms:

1. **Bans on trade with non-parties**. The Montreal Protocol's NCP bans parties from trading in restricted goods with non-parties. For the Kyoto Protocol, the list of goods in question is so large (anything produced with the use of GHGs) that this route seems improbable. It is likely that such a ban would be found to contravene the WTO's MFN principle (GATT Article I) if challenged, though no such challenge of an MEA has been brought to date.

2. **Trade restrictions**. Article 2 of the Protocol sets out a number of types of policies and measures that parties are encouraged to adopt to meet their obligations, including some of those discussed in the previous section. It is possible that parties will claim that they are acting under the mandate of the Protocol in enacting some of these trade-restrictive policies and measures, though none are specifically mandated.

This scenario is troubling because it is likely, and because it might precipitate a damaging clash between trade and environment objectives, were the rules and institutions no more evolved than those we have today. It is almost certain that some parties will eventually

implement policies and measures in a protectionist manner. The only question is whether another country, whether party to the Protocol or not, might complain to the WTO.[5] Were this to happen, the defendant would probably claim it was acting within its mandated obligations under the Kyoto Protocol (though they would not be specifically mandated), and the stage would be set for a titanic clash of trade and environment rules, with fallout that would be damaging for both communities regardless of the outcome.

3. **Prohibitions on emissions trading with non-complying parties, and with non-parties.** The prohibition against non-parties is obviously necessary for the integrity of the emissions-trading system, and its implications for the trading system are discussed above. Unless the emissions-reduction units are defined as goods, there is not likely to be a problem. The prohibition against non-complying parties is a likely punitive element of the Protocol's NCP. While it might violate the WTO's MFN, it is unlikely a party would complain to the WTO about its application, having signed on to the procedure.

Given the interest in investment negotiations in the WTO, it is interesting to note that the draft version of the OECD's now-defunct Multilateral Agreement on Investment would have prevented countries from barring investment from non-parties or non-complying parties. If the purchase of a country's emissions-reduction units were considered akin to portfolio investment, this could have been a problem.

The way forward

The potential problems surveyed at this meeting illustrate perfectly the need for measures and institutions to bridge the trade and environmental divide. The most obvious need in this case is to resolve the question, how do the MEAs relate to the WTO? Although the WTO's Committee on Trade and Environment has spent a great deal of time on this issue, there seems to be no will among most WTO members to address the problem before it becomes concrete. This is the pragmatic trade negotiators' traditional method of operation: since there has not yet been any conflict with MEAs, there is not yet a need for action. The FCCC and the Biosafety Protocol of the Convention on Biological Diversity may change this belief.

One approach to addressing the various institutional issues might be a working group in any future WTO negotiations charged with recommending changes to the institution itself, not unlike the Uruguay Round group with a mandate to examine the functioning of the GATT system. This group would seek to maximize the WTO's contributions to sustainable development.

For their part, the environmental negotiators and domestic regulators can help avoid conflict by understanding the potential problems and constructing treaties and regulations accordingly. A number of the disciplines imposed by the WTO are potentially helpful from

[5] Though the WTO itself has expressed its preference that MEA-related disputes between parties be addressed within the MEA, such a scenario is unlikely. The complainant would probably want to take the case to the venue that offered it the best chance of winning and enforcing its complaint—the WTO.

an environmental perspective, such as the proscription on discriminatory subsidies, for example. The issues of the trade-environment interface are not the responsibility of the WTO alone, but must also be actively addressed by the governmental environmental community.

The central message from this meeting was that there are serious potential problems in the interface between the WTO rules and the implementation of the Kyoto Protocol, but avoiding them is possible. Usually—but not always—the solutions are not complex, and time, for now, is on our side.

ANNEX 3

THE EXTRACT OF THE MINUTES OF THE MEETING OF THE BOARD OF DIRECTORS OF THE GODAVARI SUGAR MILLS LIMITED HELD ON THURSDAY, 17TH FEBRUARY 2000.

To note the benefits of the Greenhouse Gas Emission Prevention from the Cogeneration Project

Shri Samir S. Somaiya reported that his visit and attending the Seattle Conference of World Trade Organization (WTO) from 29th November 1999 to 3rd December 1999, was very useful and fruitful from the point of our going in for Co-generation Project. He also stated that he had learnt in the said Conference that there could be the benefit of the Greenhouse Gas Emission Prevention in case of generation of power through renewable fuels like Bagasse and the Company would be able to get additional monetary advantage to our proposed Cogen Project. Though he may not be able to quantify the said benefit now, but he is confident that some thing would concretize in the near future. Accordingly, we may consider the future benefits on account of Greenhouse Gas Emission Prevention which was also loosely discussed as clean development mechanism and which was, according to discussions in the said Seattle Meet, likely to be traded in the near future.

In the above context, the Board passed the following Resolution:

"RESOLVED THAT the future benefits likely to accrue on account of monetary benefits of establishment of Greenhouse Gas Emission Prevention project viz., bagasse based Co-generation project through the Clean Development Programme which was discussed in the Seattle Meeting of World Trade Organization (WTO) be and is herby considered in the implementation of our Bagasse based Co-generation Project"

CERTIFIED TRUE COPY.
For THE GODAVARI SUGAR MILLS LTD.

DIRECTOR

ANNEX 4

011 6238093
031 71036
CESEIN
DESEIN
DESEIN PRIVATE LIMITED
CONSULTING ENGINEERS
DESEIN HOUSE, GREATER KAILASH-II, NEW DELHI-110 048

Ref. 7527/EPC-BSES/06-BD/77
29th May, 2000

Mr R Ravi Krishnan, Project Manager
BSES Limited
EPC Business Group
Value Added Business Centre
BSES Tower, A-2 Sector 24
Noida - 201 301 (U.P.)

Fax No. (91) 4558908, 4526383

Subject : Job No. 7527 - Godavari Sugar Mills Limited 1x24 MW Cogeneration Power Plant at Sameerwadi, Karnataka - Revised Plant Layout

Reference : Your Letter ND/00-2001/EPC-GSML/12.3A/164 dated May 25, 2000

Gentlemen :

Approval/comments on the drawings listed in the attached sheet are enclosed. The column against each drawing refers to the status applicable to the particular drawing as identified below:-

STATUS

A - Drawing approved as submitted, proceed with fabrication.

B* - Drawing approved subject to comments noted, proceed with fabrication, considering our comments. Correct as necessary and resubmit for record.

C* - See attached memo.

D - Correct your original drawing incorporating our comments and resubmit for approval.*

E - Such drawing information furnished is noted.

Thanking you

Very truly yours
DESEIN PRIVATE LIMITED
CONSULTING ENGINEERS

K C MEHROTRA
DIRECTOR (TECHNICAL)

cc Mr Purnendu Dutt, GM (Co-generation), GSML, Mumbai. Fax: 022 2047297
cc Mr Samir Somaiya, Director - Mumbai. Fax: 022 2047297
cc G H Keswani, Advisor, GSML - New Delhi, Fax: 3723351

A Development Service for Industries & Utilities

Ref.: 7527/EPC-BSES/06-BD /77 Date: 29.05.2000 Sheet . 2

S.NO.	Vendor Drawing No.	Desein Drg.No.	Title	Remarks
1.	EPC99001M000F421 (Rev-2)		Revised Plant Layout	[B&C]

MEMO

1. For clarified water reservoir it should be clearly indicated in the index that it is covered.
2. ESP Control Room Building columns distance shall be kept same as per ESP columns and it should be in the front of ESP.
3. Drawing showing roads, drains, site grading, levelling & filling showing cross sections with slopes should be submitted. The sizing of each block shall depend on the same, since there is a level difference between each blocks and roads. Plot Plan is approved under category B & C subject to this drawing being found acceptable.
5. For other comments please refer the marked up copy of the Plant Layout.
6. Over & above, GSML site comments, if any are also to be taken into account.
7. Drawing incorporating the comments be re-submitted along with details/drawings mentioned at '3' above.

SELF-RELIANCE IN ENGINEERING

भारतीय औद्योगिक विकास बैंक
मुंबई शाखा कार्यालय
नरीमन भवन, 227, विनय के. शाह मार्ग,
नरीमन पॉइन्ट, मुंबई - 400 021.

INDUSTRIAL DEVELOPMENT BANK OF INDIA
MUMBAI BRANCH OFFICE
NARIMAN BHAVAN, 227, VINAY K. SHAH MARG,
NARIMAN POINT, MUMBAI-400 021.

(8) (7)

ANNEX 5

Ref.No. 2497 /IDBI/MBO/CFD/LOI

October 26, 1999

LETTER OF INTENT

The Managing Director,
The Godavari Sugar Mills Ltd.,
Fazalbhoy Building,
45/47, Mahatma Gandhi Road,
Fort,
Mumbai - 400 001.

Dear Sir,

ARN : THEGSM 0102
Application for Financial Assistance

Please refer to your application and subsequent correspondence and discussions your representatives had with us regarding your request for financial assistance of Rupee Term Loan (RTL) of Rs.4000 lakh for setting up a 24 MW co-generation power project at Sameerwadi, Dist.Bagalkot, Karnataka. The proposal has been considered and Industrial Development Bank of India (IDBI) is agreeable, in principle, to grant to the company a RTL not exceeding Rs.4000 lakh (Rupees Four thousand lakh only) under Project Finance Scheme (PFS).

2. The aforesaid assistance is subject to the conditions contained in the standard Rupee Loan Agreement and the General Conditions No GC-1-94, a copy of which is enclosed, as Appendix II, herein which is deemed to be a part of this Letter of Intent (LOI), in addition to the special terms and conditions set out in Appendix I hereto.

3. The company shall enter into a Rupee Loan Agreement with IDBI.

4. Specimen form of Rupee Loan Agreement (which is subject to modifications before execution/issue as may be considered necessary) containing the normal terms and conditions for grant of such financial assistance are enclosed (Appendix III). Drafts of the Loan Agreement covering the aforesaid RTL of Rs.4000 lakh would be forwarded to the company by IDBI after the company has accepted the terms and conditions of this LOI.

5. In case the above terms and conditions are acceptable to you,

i) You may furnish to us within 30 days, two certified copies of the resolution duly passed by the Board of Directors of your company as per the proforma in Appendix IV. This resolution must provide that the company is agreeable to enter into the Agreement in the form mentioned above within the time stipulated by IDBI and that till such Agreements are executed, there is no obligation or commitment on the part of IDBI to advance any money; and

ii) You may, within the same time as in (i) above, furnish to us a statement of anticipated drawals of loan indicating probable dates and amounts of drawals.

6. Please note that this communication should not be construed as giving rise to any binding obligation on the part of IDBI unless the company communicates to IDBI within 30 days from the date of receipt of this LOI that the terms and conditions set out herein are acceptable to it and unless the Loan Agreements and other documents relating to the above facility are executed by the company in such form as may be required by IDBI within 4 months from the date of this LOI or such further time as may be allowed by IDBI in its absolute discretion.

7. Meanwhile, kindly acknowledge receipt of this letter.

Yours faithfully,

(C.V.Ramani)
Dy.Gen.Manager

Encl : Appendices.

APPENDIX - I

The Godavari Sugar Mills Ltd.

Special Terms and Conditions

I] NORMAL CONDITIONS

1. Interest

The company shall pay to IDBI, interest on the principal amount of the loan outstanding from time to time, quarterly, on January 1, April 1, July 1 and October 1 at the rate equal to 2.5% p.a. above the Minimum Term Lending Rate (MTLR) of IDBI prevailing on the date of respective disbursement of the loan plus interest tax applicable from time to time (as on date, the minimum lending rate of IDBI is 13.5% per annum). The loans disbursed at different rates of interest shall carry weighted average rate of interest from the date of last disbursement of the loan or from the last date of drawal of the loan, whichever is earlier.

2. Additional Interest

Additional interest at the rate of 1.05% p.a. shall be payable on the aforesaid assistance together with interest as above from the date of first disbursement out of the aforesaid assistance, till creation of final security.

3. Up-Front Fee

The company shall pay to IDBI, on or before execution of loan agreement, up-front fee at the rate prevailing on the date of execution of Loan Agreement. As on date, the applicable rate is 1.05% of the sanctioned amount.

4. Liquidated Damages

A charge of 2.10% p.a. by way of liquidated damages will be levied for defaults in payment of principal, interest and other moneys payable under the Loan Agreements. Arrears of liquidated damages shall carry interest at the applicable rate for the loan.

5. Period of Repayment of the Loan

The Rupee term loan shall be repaid in 24 (twenty four) equal quarterly instalments commencing from April 1, 2003 and ending on January 1, 2009.

6. <u>Security</u>

The term loans shall be secured by way of :-

a) First mortgage and charge on all the movable and immovable assets of the company, both present and future, ranking pari passu with the charges created/to be created, subject to prior charge on the current assets in favour of bankers for working capital borrowings.

b) Escrowing of the company's receivables (sugar) through a Designated Account with a commercial bank acceptable to IDBI. Receivables from one or more major customers (as may be decided by IDBI) shall be deposited in the Designated Account to the extent of meeting atleast one quarter's interest payment and principal repayment for the existing and the proposed loans.

7. <u>Legal Fees</u>

The company shall pay to IDBI legal fees in connection with investigation of title deeds and/or carrying out of searches to be undertaken by IDBI departmentally in respect of company's properties. The amount of such legal fees will be intimated by the Legal Department of IDBI separately.

II] SPECIAL TERMS AND CONDITIONS

1) <u>Pre Commitment Condition</u>

Before the sanction becomes effective, the company shall enter into a Power Purchase Agreement (PPA) with KEB in a form and a manner satisfactory to IDBI.

2) <u>Pre Disbursement Conditions</u>

Before availing any assistance from IDBI, the company shall, to the satisfaction of IDBI :

a] Get all the approvals/consents required from the Govt/other authorities for setting up the project;

b] get the first charge on land/fixed assets [offered to CBI and BOI for securing their working capital borrowings] vacated and offer the same to IDBI;

c] agree and ensure that the promoters bring in the 100% of the equity share capital of Rs.500 lakh up front;

d] agree and ensure that internal accruals of Rs.1300 lakh are deployed in the project;

e] obtain and furnish an undertaking from the promoters agreeing to bring in interest free and subordinated unsecured loan of Rs.1100 lakh for financing the project;

f] get the grant of Rs.425 lakh under USAID revalidated, if considered necessary;

g] tie-up the lease assistance of Rs.3550 lakh from NBFC/Bank;

h] obtain and furnish from the promoters an undertaking for meeting overrun, if any, in the cost of the project without recourse to and in a manner satisfactory to IDBI;

i] obtain and furnish from the promoters an undertaking for meeting shortfall, if any, in the means of financing and/or cash deficit, if any, in the funds requirement during the implementation period of the project, without recourse to and in a manner staisfactory to IDBI;

j] obtain and furnish from the promoters an undertaking for non disposal of shareholding in a form and manner prescribed by IDBI;

k] obtain and furnish from Dr S.K. Somaiya and/or Shri Sameer Somaiya an undertaking for non receipt of commission in a form and manner prescribed by IDBI;

l] enter into an EPC contract with BSES clearly establishing the nature and scope of work, performance guarantees/warranties and penalties, in a manner satisfactory to IDBI;

m] enter into an O&M contract with BSES clearly establishing the nature and scope of work, guarantees, warranties and penalties;

n] agree to take appropriate measures for toning up the existing organisational set up;

o] constitute an Audit Sub Committee of its non promoter directors;

p] agree to take appropriate measures for prevention and control of pollution;

q] obtain and furnish NOC from the State PCB;

r] obtain and furnish site clearance from environmental angle from the appropriate authority;

s] obtain and furnish environment clearance from MOEF, GOK/GOI;

t] Constitute a Project Monitoring Committee of its directors, for the purpose of supervising and monitoring the progress in the implementation of the project. The committee shall be responsible for the overall management of the project during construction period, including civil tendering, placement of orders for supply of plant and machinery and other assets and monitoring of the implementation of the project. IDBI nominee shall be a member of the committee;

u] appoint key persons with requisite qualification and experience for smooth implementation of the project; and

v] agree that IDBI shall have the right to review the cost of the project and means of financing mid stream. With this end in view, the company shall furnish to IDBI all information/data required for the purpose.

3] Other Conditions

The company shall, to the satisfaction of IDBI :

a] furnish an undertaking that they shall not invest in its group companies without obtaining prior approval in writing from IDBI;

b] strengthen the organisational set up [for the proposed project] by appointment of technical and financial persons with suitable qualification and experience;

c] satisfy IDBI that it has appointed technical, financial and marketing executives of proper qualification and experience in all functional areas and the organisational set up is adequate to ensure smooth operation of the project;

d] ensure that the physical progress as well as the expenditure incurred on the project are as per original schedule. To this end, the company agrees and undertakes to furnish to IDBI such information as may be required by it;

e] agree that IDBI shall have the right to review the cost of the project before the final disbursement of the loan. Pending completion of the review, the company shall obtain prior approval of IDBI for utilising the amount of the loan equivalent to the contingency provision in the cost of the project;

f] agree to constitute other committees of the Board as may be required by IDBI for close monitoring of different aspects of its operations;

g] agree and undertake that during the currency of the loan, it shall not without obtaining prior consent of IDBI in writing, declare dividend in excess of the rate stipulated in the loan agreement/heads of agreement or declare any dividend on its share capital, if it fails to meet its obligations to pay interest and/or instalments and/or other monies to IDBI so long as it is in such default;

h] obtain sanction of adequate working capital facilities from the banks to the satisfaction of IDBI;

i] not undertake any new project or make any investment or take or give assets on lease, without the prior approval of IDBI, during the currency of the loan;

j] not escrow its future cash flows or create any charge or lien or interest of whatsoever nature thereon without the prior approval of IDBI;

k] agree that any favourable terms and conditions of the sanction of the lease and/or other assistance stipulated by other participating institutions/banks shall be applicable to the proposed sanction as well to the extent they are relevant ;

l] agree that the terms and conditions of earlier assistance shall apply mutatis mutandis to this sanction as well ; and

m) agree and undertake to take/confirm that it has taken all necessary steps for overcoming the year 2000 problems that is the risk that computer applications used by the Borrower may be unable to recognise, perform properly date-sensitive functions involving certain dates prior to or any date after December 31, 1999). The Borrower has ensured/shall ensure that the hardware, embedded systems, related equipments and software viz. Operating Systems, Database Management Systems (Relational or otherwise), and Application Softwares, used by the Borrower, whether acquired or developed in house, are Y2K Complaint i.e. capable of overcoming Year 2000 problems. The Borrower has developed /will develop feasible contingency plans adequate to ensure uninterrupted business operations in the event of failure of systems due to year 2000 problems.

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ANNEX B

भारतीय औद्योगिक विकास बैंक
मुंबई शाखा कार्यालय
नरीमन भवन, 227, विनय के. शाह मार्ग,
नरीमन पॉइंट, मुंबई - 400 021.

INDUSTRIAL DEVELOPMENT BANK OF INDIA
MUMBAI BRANCH OFFICE
NARIMAN BHAVAN, 227, VINAY K. SHAH MARG,
NARIMAN POINT, MUMBAI - 400 021.

IN DUPLICATE

Ref.No.2471 /IDBI/MBO/CFD/CVR

November 23, 2000

The Managing Director,
Godavari Sugar Mills Ltd.,
Fazalbhoy Bldg.,
45/47, Mahatma Gandhi Road,
Fort,
Mumbai - 400 001.

Dear Sir,

Modification to Security Clause - RTL of Rs.400 Million

Please refer to our Letter of Intent (LOI) dated October 26, 1999, and the discussions and correspondence you have had with us, from time to time, on the captioned subject. In this connection, we advise having carefully examined your request and are agreeable, in principle to modify Security Clauses I.6(a) & (b) and II.2.(b) of Appendix I of the said LOI dated October 26, 1999 ibid.

2. The original vis-à-vis the modified security clauses for the Term Loan of Rs.400 million shall be as under :

Original Clause Primary Security	Modified Clause
1. Appendix I.6.(a) First mortgage and charge on all the immovable and movable assets of the company, both present and future, ranking pari passu with the charges created/to be created, subject to prior charge on the current assets in favour of bankers for working capital borrowings.	Appendix 1.6.(a) I) First charge on the Project Assets (Co-generation Power Project) ranking pari-passu with the participating Institutions/Banks to the power plant and ceding second charge on the aforesaid assets in favour of Working Capital Banks; II) First charge on the existing immovable and movable assets of the company (both present and future) ranking pari-passu with the existing chargeholders; and III) Second charge (both present and future) on the current assets of the company.
2. Appendix I(II) 2(b) Pre-disbursement Condition Get the first charge on land/fixed assets (offered to CBI and BOI for securing their working capital borrowings) vacated and offer the same to IDBI.	Get the NOCs from existing chargeholders for the modified security clause at Appendix 1.6(a) (I), (II) & (III) above and also for modified collateral/other securities mentioned below.

टेलीफोन: 202 36 36 • टेलेक्स: 011-84395 • तार: "इंडरफिन" • पोस्ट बाक्स नं. 19970 • फैक्स नं. 287 1374
Telephone : 202 36 36 • Telex : 011-84395 • Telegram : "INDREFIN" • Post Box No. 19970 • Fax No. 287 1374

विकास बैंक
IDBI

Collateral / Other Securities	
3. Appendix I.6(b)	Appendix I.6(b)
Escrowing of the company's receivables (sugar) through a Designated Account with a commercial bank acceptable to IDBI. Receivables from one or more major customers (as may be decided by IDBI) shall be deposited in the Designated Account to the extent of meeting atleast one quarter's interest payment and principal repayment for the proposed loans.	I) Creation of a Debt Service Reserve Account (DSRA) to meet atleast one quarter's interest payment and principal repayment with a lien marked in favour of IDBI. The DSRA will be either in the form of a deposit in a Designated Account (DA) or in the form of Fixed Deposit (FD) in an acceptable bank. The said DA/FD will have to be surrendered/assigned in favour of IDBI; and II) Exclusive charge on the Power Receivables (to be routed through a separate designated account) to IDBI (with modalities to be worked out in consultation with Karnataka Electricity Board).

3. This letter is being issued in duplicate. You are requested to arrange to return the duplicate copy of this letter duly signed by an authorised signatory in token of acceptance of the modified security clause.

4. Meanwhile, as already stipulated in the said LOI dated October 26, 1999 ibid, you are requested to take steps for execution of Loan Agreement and other documents at the earliest.

Yours faithfully,

(C.V Ramani)
Dy. Gen. Manager

ANNEX 7

19/07/2001 UNION BANK OF INDIA - M.S.MARG BRANCH B II 16 22 54 Hrs.

CB-RPT-[illegible] Statement For The Period 30/03/2001 To 30/06/2001 Page No.

Name THE GODAVARI SUGAR MILLS LTD.-NO LIEN A/C A/C 17570

Address 45/47,FAZAL BHOY BLD
M G Rd
MUMBAI 400023

Date	S.No	Ty	Particulars	Chq. No.	Debits	Credits	Balance
			Brought Forward		0.00	0.00	0.00
2003	384	CS	By Cash			5000.00	5000.00
2103	379	TR	CHQ BK CHG		200.00		4800.00
3103	3	CL	By Clg. 12 -1			100000000.00	100004800.00
3103	551	TR	I/C CHARGE		40.00		100004760.00
0904	113	CL	DESEIN P LTD	356103	631754.00		99373006.00
0904	114	CL	BSES LTD	356101	75000000.00		24373006.00
1004	388	CL	BSES LTD	356105	18467898.58		5905107.42
1904	308	CL	BSES	356109	4664175.63		1240931.79
2004	67	CL	SBI A/C INCOME	356104	26716.00		1214215.79
2104	64	CL	TO CLG.	356106	7788.00		1206427.79
2304	39	CL	DESEIN P LTD	356107	674279.00		531648.79
[illegible]05	149	TR	YOURSELVESTAX	356108	27382.00		504266.79
[illegible]05	67	CL	DESEIN P LTD	356112	309647.00		194619.79
2505	68	CL	DESEIN P LTD	356113	171229.00		23390.79
0706	325	TR	YOURSELVESTAX	356111	18543.00		4847.79
1406	296	TR	RBI CHQ			100000000.00	100004847.79
1806	145	CL	TO CLG. BSES	356115	6609237.63		93395610.16
1806	146	CL	TO CLG. BSES	356114	8232206.91		85163403.25
1806	147	CL	TO CLG. BSES	356116	34698456.57		50464946.68
3006	46	CL	BSES LTD	356117	10725000.00		39739946.68
			Totals		160265053.32	200005000.00	
			Carried Forward				39739946.68

Unless a constituent notifies the Bank immediately of any discrepancy found by him in this statement of account, it will be presumed that he has found the account correct.

FOR UNION BANK OF INDIA

AUTHORISED SIGNATORY

ANNEX 8

ANDHRA BANK
(A GOVT.OF INDIA UNDERTAKING)
NANAVATI MAHALAYA
18, HOMI MODI STREET
FORT, MUMBAI - 400 023.

M/S.GODAVARI SUGAR MILLS LTD.
FAZALBHOY BUILDING
45/47, MAHATMA GANDHI ROAD
FORT, MUMBAI - 400 023.

Lr.No.051/16/327/2000 Date : 24.05.2000.

Dear Sir,

Reg : Sanction of credit facilities.
****

We are pleased to inform that the following credit facilities are sanctioned to your company with the following terms and conditions.

Nature of Facility	:	TERM LOAN
Limit	:	Rs.1900.00 lacs (Rupees One thousand Nine Hundred lacs only)
Security	:	(In line with IDBI sanction) 1) First Mortgage and charge on all the Fixed Block of the company, both present and future, ranking pari passu with the charges created/to be created. 2) Escrowing of the company's receivables (sugar) through a Designated Account with a commercial Bank. Receivables from one or major customers shall be deposited in Designated Account to the extent of meeting atleast one quarter's interest payment and principal repayment.
Guarantor	:	DR.K.SOMAYYA
Margin	:	Project Debt Equity Ratio of 2.43

Interest : PLR + 2.50% + Interest Tax - At Present - 12% + 2.50% + 0.29% = 14.89% , subject to a minimum of 14.5% + tax as applicable from time to time.

Repayment : Repayable in 24 equal quarterly instalments commencing from 1/4/03. Interest is payable on quarterly basis.

TERMS AND CONDITIONS :

1. Up front fees @ 1% of term loan amount is to be paid by you. (i.e. Rs.19,00,000/- as up front fees).

2. The term loan will be disbursed only after the financial closure is done by you and based on the progress report of project execution on production of a certificate from Chartered Accountant. Our disbursement will commence only after creation of necessary charges on pari passu basis and shall be in proportion with IDBI disbursement.

3. Any escalation in the project cost should be brought in by you/promoters from their own sources.

4. You have to submit all the approvals/consents required from the Government/other authorities for setting up the project.

5. You have to submit an undertaking from the promoters agreeing to bring in interest free and subordinated unsecured loan of Rs.1100.00 lacs for financing the project.

6. The grant of Rs.425.00 lacs under US Aid has to be revalidated if considered necessary.

7. You have to submit environmental clearance certificate from the appropriate authority.

8. You have to insure all the assets covering all risks with bank clause.

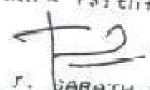
9. The unsecured loans from the promoters is not to be withdrawn

आन्ध्रा बैंक
Andhra
(A Govt. of India und

without the consent of the lending institutions.

10. Pari Passu letters are to be exchanged and Joint documentation is to be completed before disbursement of term loan.

11. All other terms and conditions as stipulated in IDBI sanction letter shall apply to our sanction also.



If the above terms and conditions are agreeable to you, please sign and send the duplicate copy of this letter in token of having accepted the same. Please call on us for execution of documents.

Yours faithfully,

(T. SARATH BABU)
ASST.GENERAL MANAGER

ACCEPTED THE TERMS & CONDITIONS
for GODAVARI SUGAR MILLS LTD.

ANNEX 9

भारतीय स्टेट बैंक
State Bank of India

परियोजना वित्त समूह,
एक्सप्रेस टावर्स, 20 वी मंजिल,
नरीमन पाइण्ट,
मुंबई - 400 021.
Project Finance Group,
Express Towers, 20th Floor,
Nariman Point,
Mumbai-400 021.
Tel : 288 3020 (Dir.)
204 1262 (Dir.)
Fax : 288 3021

The Director
Godavari Sugar Mills Ltd
Fazalbhoy Building
45/47 Mahatma Gandhi Road
Fort, Mumbai - 400 001

PF/RK/G - 29/310

April 9, 2001

Dear Sir,

LETTER OF INTENT: TERM LOAN TO PART FINANCE CO GENERATION POWER PROJECT WITH 24 MW CAPACITY AT YOUR EXISTING PLANT AT SAMEERWADI

Please refer to your request for financial assistance to part finance your project for setting up a cogeneration power plant with 24 MW capacity, at your existing sugar plant at Sameerwadi.

2. In this regard, subject to indicative terms and conditions broadly stated in Annexure-I of this letter, we are agreeable to sanction the following the following facilities to part finance the above referred project along with other lenders:

- Sanction a Rupee term loan of Rs.15.00 crore in lieu of the sanction for the lease assistance of Rs.17.50 crore conveyed to you earlier.

3. The final terms and conditions will be detailed at the time of preparation of final agreement/ legal documentation.

4. In case these terms and conditions are acceptable to you

a) You may furnish to us within 30 days from the date of receipt of this letter, two certified copies of the resolution duly passed by the Board of Directors of your company. This resolution must provide that the company is agreeable to enter into the Loan Agreements / legal documentation within the time stipulated by SBI along with the names of the authorised signatories for the purpose and that till such Agreements are executed, there is no obligation or commitment on the part of SBI to advance any money.

b) You may, within the same time as in (a) above, furnish to us a statement of anticipated drawals of loans indicating probable dates and amounts of drawals/ utilisation

5. You should communicate to the Bank within 30 days of this letter, the acceptance of the terms and conditions broadly set out herein. The loan agreements and other documents relating to the above facilities containing all other terms and conditions should be executed by the Company, latest by October, 2001 or such further time as may be allowed by the Bank at its absolute discretion. Please note that this communication should not be construed as giving rise to any binding obligation on the part of the Bank. The proposed term loan commitment of the Bank will be valid for a maximum period of six months from April 9, 2001.

6. Please acknowledge receipt of this letter and convey your acceptance on the duplicate copy of this letter.

Yours faithfully,

Dy. General Manger
(Project Finance)

Encl.:

vg/gw/godavary/loi