

PERMANENT ARBITRATION TRIBUNAL

AWARD

RN 584

BEFORE

Rashid Hossen	-	Ag President
Binnodh Ramburn	-	Member
Rajendranath Sumputh	-	Member
Ashoke Roy	-	Assessor
Michel Hardy	-	Assessor

In the matter of:-

RN 584

The Union of Artisans of the Sugar Industry (UASI)
And
Mauritius Sugar Producers' Association (MSPA)

RN 585

Sugar Industry Labourers' Union (SILU)
And
Mauritius Sugar Producers' Association (MSPA)

RN 588

Plantation Workers' Union (PWU)

and
Mauritius Sugar Producers' association (MSPA)

RN 589

- (i) Artisans & General Workers' Union (AGWU)**
 - (ii) Organisation Artisans Unity (OAU)**
- and**
Mauritius Sugar Producers' Association (MSPA)

RN 597

Sugar Industry Labourer's Union (SILU)
And
Mauritius Producers' Association (MSPA)

The following dispute had been referred by the Minister of Labour, Industrial Relations and Employment for Compulsory Arbitration by virtue of **Section 82(1) (f) of the Industrial Relations Act 1973**, as amended.

In an award delivered on 20.12.2002 by the then President of the Permanent Arbitration Tribunal, Mr Harris Balgobin, assisted by the then members, the Tribunal awarded that the forty-hour week should be introduced on a 6-day basis. This decision was quashed by the Supreme Court on 04.08.2003: *"we quash the decision of the first respondent relating to the forty-hour week during the crop season and order a fresh hearing before a differently constituted tribunal. It stands to reason that the first respondent in reconsidering this important issue should take into account the salary increases and other benefits it had already granted to the workers of respondents No 2 to 6. The President of the first respondent might wish also to consider whether it is expedient in the circumstances of the case to appoint two expert assessors to assist the first respondent in its task – vide paragraph 4 of the Second Schedule to the Act. With costs against the first respondent."*

The above listed Unions are hereinafter referred to as the "Unions" and the Mauritius Sugar Producers' Associations as the "Respondent".

All the above cases have been consolidated as they involve the same dispute following a motion made by both parties.

Mr Antoine Domingue of Counsel represented the Unions.

Sir Hamid Moollan Q.C. assisted by Mr Yves Hein, of Counsel represented the Respondent.

The Terms of Reference read as follows:

“Whether the 40-hour week should be extended to the crop season on a 5-day’ basis or otherwise”.

UNIONS’ STATEMENT OF CASE

The Unions informed the Tribunal during the course of proceedings that they are no more insisting on the 40 hour week on 5 days for both non-agricultural and agricultural workers. They are prepared to settle as follows:-

40 hour week on 6 days for non-agricultural workers and 5 days for agricultural workers.

In their Statement of Case, the Unions aver:

1. The only subsisting point in dispute and which has been remitted by the Court for fresh consideration is the following:

“Whether the 40 hour week should be extended to the crop season on a 5 day week basis, or otherwise”.

2. The Unions' stand is that the 40 hour week has already been implemented within the Sugar Industry. It was first introduced in May 1993 by an Award of the Tribunal dated 16 June 1993.
3. In fact the 40 hour week was introduced in the 1993/1994 inter-crop season on a six day basis. It was thereafter implemented on a 5 day basis as from January 1995 following an agreement that was signed between the MSPA and the Government on 30 June 1994 at which the Government made a major concession to the Sugar Industry by abolishing completely the Export Duty on sugar as from crop 1994 which represented about Rs500 million annually.
4. It is the case for the Unions that, firstly, the 40 hour week is one of the fundamental rights of the working class, secondly, the 40 hour week has been applied by agreement or otherwise in many other sectors in Mauritius and thirdly the principle of the 40 hour week is, in the context of the 1993 Award, an acquired right.
5. It is further the case for the Unions that the 40 hour week should be extended to the crop season on a 5 day week basis as is already the case during the intercrop season:
 1. so that the field workers engaged in the cutting of sugar canes and those employed in the transport section may not have to work on Saturdays and may

have one additional day's rest;

2. to alleviating pressure on the factory and field workers whose volume and cadence of work have greatly increased following the centralization process of sugar manufacturing;
 3. adjusting all salary benefits on basis of 22 days (as is already the case in the intercrop season) and not 26 days.
6. The Unions urge that there is no technical difficulty in extending the 40 hour week within the industry.
 7. This has already been considered by the NRB. The NRB has already recommended that" *the 40 hour week based on 5 days during Inter-crop and on 6 days during crop will not pose any technical problems*". This is a matter which has already been looked into by the NRB and it is submitted that the Tribunal may wish to enlist the assistance of the NRB and its officers, if need be.
 8. Such extension should be on a 40 hour-5 day week basis.
 9. The Unions contend that with the mechanization of sugar cane cutting and loading there is no need for agricultural workers to work on Saturday. In fact in certain factory areas cane cutting is not effected every day of the week. The system of work is flexible. In addition to that, the system of payment already caters for cane cutting carried out in excess of a normal day's work and a normal week's work. Only the rates have to be increased. The system of payment is adaptable to the 40 hour-5 day week.
 10. In 1987 the NRB expressed the hope that "*with the rationalization and rehabilitation of the sugar industry, the financial position will be such as to allow the introduction of the 40-hour week*".
 11. The Unions contend that the extension of the 40 hour week should not be further delayed. The dispute on this issue dates as far back as 1993. Further delay affects directly and adversely the interests of the workers. It is therefore requested that matter be dealt with before the 2004 crop season in or about June.
 12. The main issue is whether there is any substantial financial impediment to the extension of the 40 hour-5 day week to the crop season. The Unions' stand is that these additional costs are so marginal that they may, financially speaking, be absorbed by the Sugar Industry.
 13. In relation thereto, the Unions urge that distinction be made between the *extension costs* and the *Saturday costs*. The extension costs are what should have been paid since 1995 when the 40-hour-5 day week was introduced within the Sugar industry. The *Saturday costs* are overtime costs related to work performed on Saturdays only.

14. The following considerations are material.
1. The depletion of the labour force in the Sugar Industry since 1987 and the salary movement in the Sugar Industry in relation to other sectors since 1987, all categories of employees combined.
 2. The advantages drawn by the Sugar Sector since 1987 by decision of Government and following the Sugar Protocol between the Sugar Sector and Government.
 3. The advantages drawn by the Sugar Sector since 1987 through decisions taken by the Bank of Mauritius in relation to the sugar proceeds and the value of the rupee.
 4. The advantages drawn by the Sugar Sector since 1987 following the centralization process, the consequential closing down of more than 8 sugar cane factories, the parceling out of sugar cane fields, the production and sale of electricity to the CEB etc.
15. The Unions herewith attach a copy of the extract from the joint Statement of Case No.2 of the SIILU and UASI on the extension of the 40 hour- 5 days' week to the crop season within the Sugar Industry which was filed in the first case.

In addition to the above, the SILU/UASI Unions aver the following:-

The 40 hour week has been a long-standing claim of the working class in the Sugar Industry. The SILU and the UASI consider that:

1. The question of principle was first settled when the 40-hour week was introduced in the Civil Service and subsequently when a PAT Award extended it to the Sugar Industry in May 1993 (in the inter-crop season).
2. The principle was however accepted by the MSP A in the context of a tax-deal with Government in 1994,
3. Following that agreement the 40 hour-6 days' week was changed to the 40 hour 5 days' week with the spreading of Saturday task work on weekdays.
4. However following representations made by the unions - on basis of third party interests- Government removed the spreading task performed on Saturday.

5. The MSPA protested against the change brought by Government to the agreement with the MSPA.

The matter was referred by the MSPA to the Supreme Court and still rests with that Court.

The SILU and the UASI consider the 40-hour week as an acquired right. The principle of its extension to the crop season should not be contested *per se* concerning the technical constraint element the NRB has already recommended that *"the 40 hour week based on 5 days during inter-crop and on 6 days during crop will not pose technical problems"*. The SILU and the UASI conclusions are:

It has already been subjected to a study by the NRB regarding the technical element.

1. Being given that the SILU and the UASI are claiming the 40-hour week on a 5 days' basis, the technical problems related thereto should be considered.

It is averred that the claim for the 5 days' week has been made to permit an additional rest day for workers who are not directly concerned with sugar manufacturing and transporting.

2. Concerning the financial and other implications the NRB expressed the hope in 1987 *"that with the rationalization and rehabilitation of the sugar industry the financial position will be such as to allow the introduction of the 40-hour week"* It is hereby stressed that the financial situation of the Sugar Industry had greatly improved since 1987.

The residual issue is: Has the financial situation improved to the extent that the 40 hour-5 days' week can be introduced in the crop season? The financial aspect is treated below.

3. The demand of the Unions is for the introduction of the 40 hour on a 5 days' week. The question that has to be settled is: Under what regime work will be organized on Saturday?

Should work be organized on basis of an *"optional Saturday overtime"* agreement or on basis of a *"compulsory Saturday overtime"* agreement supported by an appropriate salary incentive scheme for the categories of workers directly concerned or alternatively on a combined system of *"Agreed Saturday Overtime"* for workers directly concerned.

The term *"workers directly concerned"* is here defined as meaning *"workers performing activities related to the cutting and transporting of sugar cane or performing activities related to manufacture and transport of sugar"*

The SILU and the UASI are in favour of the *"Agreed Saturday overtime"* agreement. Such an agreement shall:

- (a) set down the categories of workers which are concerned with crop season activities;

- (b) the Saturday overtime benefits to be drawn; and
- (c) the conditions under which a worker may decide not to attend duty on Saturday.

4. The alternative solution is the adoption of the principle of 5 out of 6 days' work from Monday to Saturday.

Any worker who is awaiting the extension of the 40 hour/5 Days' Week during crop season is expecting certain specific pecuniary and non-pecuniary benefits.

The SILU and the UASI consider the following as the main objective gains:

1. One additional rest day on Saturday
2. (i) The basic calculation of daily wages on basis of 22 days.
(ii) The introduction of the 40-hour on basis of preserved salaries.
(iii) Increases in overtime income.
3. The correction of the existing anomaly in the salaries.

There is presently a glaring salary anomaly. "Dans les faits" the daily rate of work during inter crop season is higher than the daily rate for the crop season.

The SILU and the UASI contend that either the 40 hour week-5 days' week should be extended to the crop season or the daily rate for work performed during crop season should be increased.

4. Increases in all incentive schemes based on the actual 45 hour/6-days' week.

The "*additional cost*" element.

It is an agreed fact that work on Saturday definitely entails additional costs.

The SILU and the UASI insist that the additional costs should be analyzed from the following angle:

1. That the 40 hour-5 days' Week would have been introduced during crop season too, if the "5 days' crop week" did not pose any technical problem.
2. That not all Sugar Cane employees are required to work on Saturday during Crop Season.

That as a consequence to 1 and 2 above a difference should be made between the "*extension costs*" and the "*Saturday costs*".

The extension cost is what should have been paid since 1995 when the 40 hours Days' Week was introduced in the Sugar Industry and based on a 40 hour-5 days' Week. This is considered as overdue. The Saturday costs are the 5 hours overtime work required from the '*workers directly concerned*'.

When the matter was discussed between parties it was feared that these negotiations might take a long time.

The Unions suggested that discussions be held as to whether the 40 hour-5 days' week would be introduced for the 1997 crop or for the 1998 crop or otherwise.

This today still remains a question to be determined.

A Technical Committee was set up by parties to consider all matters related to the introduction of the 40-hour/5 days' week in the crop season.

3. The following elements were adopted for the sake of that study:
 1. That the daily and the hourly rate would be calculated on basis of 22 days work monthly.
 2. That all work performed on Saturday would be remunerated as extra work and on basis of 1.5 times the revised hourly rate.
 3. That the average duration of milling activities would be 120 days. i.e. 20 weeks of 6 days effective work.
4. That the total costs of the implementation of the 40 hr-5 days' week would be 269.5 million rupees inclusive of COLA 98?

It has been assumed that:

1. The actual 12 hour-shift in force will be maintained in the Production Department.
2. The Sugar Industry will need the services of all its non-agricultural workers on Saturday and 40 % of its normal Agricultural workers during the crop season.

The SILU and the UASI insist that:

1. Only the "Saturday Costs" should be considered as additional costs.
2. The SILU and the UASI have requested Coopers and Lybrand to carry out an exercise on the issue

of additional costs. Content of that Report will be addressed to the Tribunal at a later stage.

3. The fundamental stand of the SILU and the UASI is that the additional costs should be considered as per following formula:

Extension Costs based on 6 days

Extension Costs based on 5 days

i.e. - Saturday Costs

RESPONDENT'S STATEMENT OF CASE

In its Statement of Case, the Respondent avers the following:-

INTRODUCTION

This document has been prepared further to the judgment of the Supreme Court of 4 August 2003 and the subsequent request of the PAT to all parties to submit a Statement of their Case in relation to the remaining dispute on the 40-hour, week during the crop season.

The opportunity is taken to reply specifically to some of the points raised by the Trade Unions in their Statement of Case of 29 October 2003.

LIST OF ABBREVIATIONS

ACP:	African Carribean Pacific
BOM:	Bank of Mauritius
CPI:	Consumer Price Index
CSO:	Central Statistical Office
DCDM:	De Chazal du Mée
EBA:	Everything But Arms
EPA:	Economic Partnership Agreement
EU:	European Union
EURO:	European Single Currency
GDP:	Gross Domestic Product
IRA:	Industrial Relations Act
LMC:	Landell Mills International Ltd
MCA:	Mauritius Chamber of Agriculture
MSA:	Mauritius Sugar Authority
MSPA:	Mauritius Sugar Producers' Association
NRB:	National Remuneration Board
PAT:	Permanent Arbitration Tribunal
SSSP:	Sugar Sector Strategic Plan 2001-2005
VRS:	Voluntary Retirement Scheme
WTO:	World Trade Organisation

2. EXECUTIVE SUMMARY

2.1 There is today a real consensus, not to say unanimity, that

- (i) the market environment of sugar is changing drastically and the preferences of the EU market (which account for 97% of our total sugar proceeds) are being eroded and
 - (ii) Mauritian sugar is not competitive and its cost of production should be reduced by 44% by year 2008 to compete with efficient sugar producing countries.
- 2.2 The European Commission has recently tabled a proposal in the context of the reform of the Sugar Regime which implies a price reduction up to a 50 % of the current price.
- 2.3 Other developments at the level of the WTO, EBA Initiative and EPA Current Negotiations indicate clearly that, henceforth, only competitive sugar producers will be able to survive in the EU Sugar Market and the World Sugar Market.
- 2.4 The SSSP underlines the lack of competitiveness of Mauritian sugar in an environment where existing preferences are being eroded. That is why the sugar industry is facing serious difficulties and needs a major urgent rethinking to cut down costs of production and be competitive. The only way forward is to reduce the costs of production by 44% by 2008.
- 2.5 LMC compared working practices in the sugar industry in Mauritius to those practices in a sample of other sugar producing countries. The main conclusions of this comparative exercise indicate clearly that:
- (i) a vast majority of countries work 6 days or more and longer hours a week during the crop season, both in the fields and in the factories;
 - (ii) the number of days and hours of work in Mauritius is significantly lower than in most countries;
 - (iii) the Mauritian cane cutter has a lower productivity but higher wages than their foreign counterparts; as a result, the cost of cutting one tonne of cane is among the highest in the sample;
 - (iv) non-wage benefits to employees are higher in Mauritius than in the majority of the countries compared.
- 2.6 The whole sugar industry is in a profound re-engineering process with the final objective of achieving international competitiveness and sustainability. The SSSP 2001-2005 has identified a number of targets to achieve this objective by 2008.
- 2.7 The sugar industry has already embarked in this process and, as a result, has an unprecedented level of indebtedness due essentially to the cost of the VRS and of the ongoing centralization. The cost of production and indeed the profitability of sugar companies are adversely affected by such a huge level of financial costs.
- 2.8 Furthermore, in the short to medium term, the cost of the essential investments to be made in order to modernise, is estimated at Rs 4 billion which will add up to its already very high indebtedness and

financial charges.

2.9 The sale of land which was meant to recoup the cost of investment and of the VRS has still not materialised because of long and tedious procedures, it might not materialise in many regions where there already exists an excess supply of land in relation to the limited demand.

2.10. The financial situation of sugar companies during the last seven years has been characterised by three main factors:

- (i) the results have been significantly influenced by the price of sugar and the level of the crop;
- (ii) the cost of producing one tonne of sugar is still much higher than the SSSP target; and
- (iii) the net operating profits on sugar activities over the period have been marginal (Rs 300M for 7 years). However, it was the profits from other activities and from exceptional items that have allowed some companies to show a profit and to declare dividends.

2.11 A sensitivity analysis on price reductions and the impact of the 40-hour week has been carried out. The results are that, without any change in price, the profitability would be marginal; however, losses would be incurred as from a price reduction of (8,75%). With a 20% price reduction, losses would amount to more than Rs 600 M.

2.12. The costs of the 5-day 40-hour week has been computed by DCDM at Rs 252 M per year. The basis of this computation has been checked and found accurate by Coopers and Lybrand who had been asked by the Unions to verify the methodology used by the MSPA.

2.13. The main parameters used for this computation are the following:

- (a) Saturday work is unavoidable and must be kept so as to optimise the harvesting period and avoid losses in the sugar production process. Moreover, work carried out during Saturdays allows for proper and timely cultural practices (i.e. plantation and maintenance of fields after harvest), and of other equipment and means of production;
- (b) The cost of the 5-day 40-hour week is mainly attributable to (i) the increase in the hourly rate and, as a result, in the overtime rate and in the rate of cutting and/or loading, thus increasing the cost of existing overtime and cutting of canes on weekdays (ii) the replacement of the Saturday work at increased overtime or cutting rates and (iii) the increase in the productivity bonus payable, as a consequence of the increase in earnings;
- (c) The result of the 5-day 40-hour week would be tantamount and result in an increase in remuneration i.e. more wages for the same amount of work and number of days work; for example, a cane cutter performing exactly the same volume of work and during the same number of days, would get an increase of 46 % in his crop remuneration;
- (d) Should the Saturday work not be replaced, major technical problems would be

encountered; this is why, in its statement, that there was not a technical problem to the 40-hour week but a financial one; the NRB implied that there would not be any technical problem should Saturday work be replaced, hence the financial problem.

2.14. The Supreme Court has already ruled against the 6-day 40-hour; such measure would go against the declared objective to increase productivity in order to be competitive and would entail the replacement of 5 hours work. Moreover, it would concern only non-agricultural workers and as such would create an unsustainable and unhealthy situation where nobody would be happy. This would inevitably provoke a situation where the Unions would ask for the extension of the 5-day 40-hour week.

2.15. The costs of the other measures already awarded by the PAT amount to Rs 278.2 M, representing an increase of 18.9% of yearly wage.

2.16. The 40-hour week during the crop will further increase the cost of production, deepen the existing difference with the most efficient countries and erase the efforts made to reduce the costs of production by reducing the labour force. In short, the introduction of the 40-hour week during the crop would be totally in contradiction with Government policy and to all measures taken to date in view of achieving ultimately the already very difficult target of cost of reduction.

3. **THREATS AND CHALLENGES TO SUGAR IN THE INTERNATIONAL CONTEXT**

3. **Overview**

3.1.1 There is today no denying the fact that the Mauritian sugar industry is facing numerous and major threats and challenges in the international context.

3.1.2 The EU market accounts, on average, for nearly 97% of our total sugar proceeds each year. In September 2003, a technical communication was tabled at the EU Council and European Parliament which seek to open discussions on identified reform policy options. All of these options foresee inevitable and significant reduction in EU sugar support prices **over the next decade**. The likely extent of price cuts ranges from:

A minimum between **15-20%** in the transitional stage of the price cut reform options, and a maximum of up to **50% cut** in the final stage.

3.1.3 At the level of the **WTO**, the objective of the proponents of world trade liberalisation, including the recent strong lobby by Australia, Brazil and Thailand, is: to favour open market access directly detrimental to the interests of ACP countries.

3.1.4 The **EBA** initiative, on its part, has already resulted in a much decreased export revenue for

Mauritian Sugars.

3.1.5 Lastly, the **EPA Current negotiations** will carry far reaching implications as regards the status of the Sugar Protocol.

3.1.6 Those developments indicate clearly that, henceforth, only competitive sugar producers will be able to survive in the EU sugar market and the World Sugar Market.

3.2 Existing Threats and Challenges

The SSSP 2001-2005 declares without ambiguity that Government is fully conscious of this state of affairs and firmly advocates "that the Sugar Industry needs a major urgent rethinking. The erosion of preferential access on our traditional export markets for sugar and the challenges imposed by the trade liberalization process call for immediate action." (SSSP: Introduction, page 1).

The **Prime Minister** reiterated this grim reality when declaring that the industry.

"fait face à tous les dangers et défis: mondialisation et contestation de nos acquis à l'Organisation mondiale du commerce, réforme de la Politique Agricole Commune de l'Union Européenne et menaces directes sur le Protocole Sucre et ses prix:" (Opening Address of the Symposium of the Mauritius Chamber of Agriculture - 29 October 2003).

On the same occasion, **Mr Joseph Daul, Chairman of the European Commission on Agriculture**, stated in a press interview that " *Il faut que les producteurs sucriers mauriciens comprennent la chose suivante .. ce ne sera plus jamais comme avant. Apprenons a faire autrement,*" Week End - 2 November 2003)

The coming years will therefore be critical to the Mauritian sugar industry to carry out necessary reform which will enable it to face the erosion of its preferential agreements and finances on an unparalleled scale and magnitude.

3.3. Major changes at international level

These include the following four main issues:

- **The EU Sugar Regime Reform**
- **The World Trade Organisation Negotiations on Agriculture**
- **The Everything But Arms Initiative, and**
- **The Economic Partnership Agreement Negotiations**

These issues are fully introduced, defined and commented upon in both the LMC and MCA reports (re: Annex II, Section 2 and Annex III respectively).

3.3.1. The EU Sugar Regime Reform

The EU market accounts, on average, for nearly 97% of our total sugar proceeds each year. The main concern today is thus linked to the future of the Sugar Regime which has guaranteed up to now access, protection and preferential price to Mauritian sugar on the EU market.

Commitments made by the EU to the WTO have meant that sugar production quotas have suffered both permanent and temporary cuts, in order not to exceed WTO export subsidy limits.

Having agreed to maintain its current structure until 2006, the Sugar Regime now finds itself beset by a host of new pressures. With the WTO Doha Development, Round of trade negotiations underway, internal pressures for agricultural reform strengthening, and a range of bilateral trade agreements with third world countries increasing access to the EU sugar market, the EU Commission is currently evaluating options for the future direction of EU sugar policy.

Such consultations process led to the publication in September 2003 of a technical communication to the EU Council and European Parliament. This communication seeks to open discussions on reform policy options identified fore proceeding to a formal proposal for reform of the EU Sugar Regime post 2006.

The likely EU Sugar Reform path seems to favour the "**price cut option**" entailing not only price cuts but also eventual abolition of quotas and income compensation for EU beet farmers. The detailed proposals are due to be tabled by the Commission in July 2004 and the time table for reform envisages that the policy initiatives be in place by year 2015.

All of these options foresee an inevitable and significant reduction in EU sugar support prices as from year 2006. The likely extent of price cuts ranges from:

- A minimum between 15-20% in the case of the status quo and fixed quota, and transitional stage of the price cut policy options.
- A maximum of up to 50% cut in the final stage of the price cut reform option.

Such decreases in price will result in a reduction of the Raw Sugar Intervention Price as follows:

Price Cut	Euro/Tonne
Actual Price	523.70
15-20%	419 - 445
38%	325
50%	262

3.3.2. The WTO

At WTO level, proponents of unbridled liberalization for trade in agricultural products (Cairns Group and G20) have already clearly declared that they would pursue their objective.

The failure of the 2003 Cancun conference in Mexico is tantamount, for our local sugar sector, to a series of missed opportunities. The Draft documents presented on that occasion contained elements on Preferences, Market Access, Export subsidies and Domestic Support that could have safeguarded the interest of the Mauritian sugar industry.

Furthermore, the **Australia, Brazil and Thailand challenge to the EU Sugar Regime** has been the object of a formal complaint at the WTO. The panel examining this complaint is due to publish its report in the course of second semester of 2004.

If upheld, such a position would result in serious political, economic and social problems in the ACP states concerned.

3.3.3 The EBA

The SPS Agreement of 1995 resulted in a potential export quota of some 85 000 tonnes of sugar for Mauritius for an initial period of 6 years. However, as a result of the EBA initiative for least developed countries approved in 2001, the conjunction of the increase in quota and the corresponding decrease in tariff in their favour do, in fact, mean the end of the SPS agreement by 2008/2009.

According to the new ACP allocation formula, the gradual decreasing export SPS tonnage for Mauritius has been set as follows:

Crop Year	Tonnes
2001	37 460
2002	33 510
2003	28 970
2004	23 750
2005	17 750
2006	10 850
2007	3 070
2008	0

It is to be recalled that, in past good average production years combined with corresponding reasonable

sugar prices, the export earnings accruing under such SPS quotas have reached Rs 859 M in 1998 and Rs 920 M in 2001.

3.3.4. The EPA

Government has decided to conduct negotiations in an Eastern and Southern configuration which calls, in the context of the Cotonou Partnership Agreement, for ACP countries to conclude EPA's with the EU by 2008.

This new approach carries far reaching implications as regards the future of the Sugar Protocol. Mauritius runs the risk of losing part of its quota due to a possible re-sharing because of WTO rules.

3.4 Unprecedented and Imminent Threats and Challenges

The above illustrate well the acute degree and seriousness of the threats and challenges facing our local sugar industry.

Now that the EU has tabled its proposals regarding the options for reform of the EU Sugar Regime, ACP producers can therefore expect, by 2015, to retain at least their current levels of access to the EU market (i.e. for Mauritius, the equivalent of 97% of our sugar export proceeds) but at significantly reduced prices.

There is today no possible doubt that the sugar sector is confronted by a liberalisation process which will result in a major erosion of its preferences and of its revenue.

It is in this difficult context that the Mauritian Sugar Industry is evolving today and the developments to come at international level will directly impact on the local sugar sector.

Ultimately, only producers that are able to produce and supply at lower prices in order to match the reduced price, will be able to derive benefits.

THE LACK OF INTERNATIONAL COST COMPETITIVENESS

4.1. Overview

4.1.1 The only possibility of economic survival of the sugar industry of Mauritius is to be competitive in the new world environment and market.

4.1.2. *The SSSP underlines the lack of competitiveness of Mauritian sugar in an environment where existing preferences are being eroded. That is why the sugar industry is facing serious difficulties and needs a major urgent rethinking to cut down costs of production and be competitive. The only way forward is to reduce the costs of production by 44% by 2008, a huge task. No effort is too small to achieve this target cumulatively.*

The 40-hour week during the crop would manifestly go against this objective and Government

policy.

4.1.3. LMC compared working practices in Mauritius to those practices in a sample of other countries.

The main conclusions of this comparative exercise are the following:

- (i) a vast majority of countries **work 6 days or more** a week during the crop;
- (ii) In the fields, workers in Mauritius **work fewer hours** than those in other countries;
- (iii) In the factories, all countries **operate at least 6 days per week** and the vast majority of them work **45 hours or more** a week;
- (iv) in general, in Mauritius, because of a shorter crop period and a 5 day week during intercrop, the **number of days and hours of work in Mauritius is significantly lower** than in most other countries;
- (v) The Mauritian cane cutter has a **lower productivity** but **higher wages** than their foreign counterparts; as a result, the **cost of cutting one tonne of cane is among the highest** in the sample ;
- (vi) Non-wage benefits to employees are **higher** in Mauritius than in the majority of the countries compared;
- (vii) In its judgment, the Supreme Court referred to the evidence put in by the Mauritius Sugar Authority which it considered to be relevant and important. It is therefore imperative that the PAT does invite the MSA to update its evidence on that issue of 40-hour week. It will be remembered that it was the Unions which requested the Tribunal to obtain the participation of the MSA in this exercise.

4.2. The Sugar Sector Strategic Plan 2001 – 2005

The main thrust advocated by the SSSP is indeed the lack of competitiveness of Mauritian sugar in an environment where existing preferences are being eroded.

The SSSP clearly states the following" *The Sugar Industry is facing serious difficulties and needs a major urgent rethinking. The erosion of preferential access and our traditional export markets for sugar and the challenges imposed by the trade liberalisation process call for immediate action. The long-term viability of our sugar industry depends on its ability to cut down its cost of production and ensure a selling price for our sugar that would enable it to compare with the least developed country suppliers. Last but not least, the industry cannot and should no longer rely on depreciation of the rupee*".

The SSSP further adds that *"The reform implies more centralisation, cost reduction, enhanced productivity, manpower rightsizing, an optimal use of cane sugar resources, well-planned diversification activities, improvement of value added and the creation of new opportunities."*

The SSSP has estimated that the necessary decrease in the cost of production should be 44% (i.e. from

18c/lb to 10c/lb). This is a major but unavoidable target for the Mauritian sugar industry that needs to be achieved by 2008, i.e. in the coming five years at most.

The objective of Government policy is therefore to strengthen the viability of the sector so that it will be able to operate and compete in a less protected market environment. This can become feasible only if the industry reduces drastically its cost of production, improves its productivity and efficiency and increases its operating revenue, which themselves will require massive investments.

The MSPA therefore submits that the Unions' request for a forty-hour week during the crop season goes directly against Government policy and the " objectives imposed upon the sugar sector and would further aggravate the existing lack of competitiveness of the industry.

4.3. The LMC Report on the comparative working practices

MSPA has requested the LMC, a reputed international consultant in the sugar business, to update the report it submitted to the Tribunal in 1998. (See Annex II). The first part of this report reviews comparative working practices and provides a benchmark for comparison of local practices and of some of the conditions of employment of the Mauritian labour force with those of eleven other sugar producing countries.

The following features stand out:

(a) During the crop season

- (i) Mauritius has among the shortest length of crop in the sample;
- (ii) 10 countries work 6 days a week or more, one works 5,5 days a week and one works 5 days a week;
- (iii) Mauritius works a daily shift of 6 hours which is the shortest compared to 8 hours in seven countries, 9 hours in one country and 12 hours in three countries.
- (iv) The average number of hours of work per employee per week in the field is the lowest in Mauritius (i.e. 35 hours whereas the average is 53 hours over the 12 countries).
- (v) As a result, the total number of hours of work per crop period for a Mauritian employee is the lowest of the sample and amounts to approximately 50% of the number of hours of work in the majority of those countries.

(b) During the intercrop season

- (i) Six countries work 6 days and the other six countries work 5 days a week;
- (ii) Mauritius has lesser hours of work per employee per week (i.e. 30 hours) compared to other countries where the weekly hours of work range from 40 to 54 hours;
- (iii) Despite Mauritius having one of the longest intercrop period, the total hours of work per employee during that period is comparatively low.

(c) During the whole year

- (i) Mauritius is among the lowest of the twelve countries as regards the total number of days worked over the whole year;
- (ii) Mauritius has clearly the lowest number of hours of work per employee over the whole year, i.e. around 1700 hours whereas all the eleven other countries work more than 2000 hours yearly and eight of them work 2500 or more hours per year.

11. Labour practices in the Factory

(a) During the crop season

- (i) All countries of the sample operate at least 6 days while seven of them operate 7 days a week;
- (ii) The vast majority of countries (ten) in the sample work for 45 hours or more per week;
- (iii) The total hours of work per employee per crop in Mauritius is comparatively very low for non shift workers (884 hours) and near to the average for shift workers (1 412 hours) who perform 27 hours overtime per week.

(b) During intercrop season

- (i) All countries, except one, operate on a 5 day basis during intercrop;
- (ii) The intercrop period in Mauritius is among the longest in the sample;
- (iii) Countries of the sample work 40-hours during intercrop while one work less and four more than 40-hours.

(c) During the whole year

- (i) Mauritius has one of the lowest days of work per employee per year;
- (ii) The non shift workers work a lower than average number of hours during the year; the scenario is different for shift workers who perform regular overtime work during the crop season.

III. Cutter productivity and payments

- (a) Mauritian cane cutters receive higher wages than in any other country in the sample;
- (b) The Mauritian cane cutter has a relatively low productivity;
- (c) The cost of cutting one tonne of cane in Mauritius is among the highest in the sample;

IV Non wage benefits

Non wage benefits to employees in Mauritius are higher than the majority of the countries; only two countries have a percentage of higher non wage benefits.

4.4 The MSA Document of March 2002 to be updated

The MSA in the previous case in front of the Tribunal, was called upon to give its views, comments and

suggestions regarding the disputes and submitted a document on 14 March 2002. Its Director was subsequently examined on the contents of this document.

The Supreme Court, in its judgment dated 4 August 2003, stated the following " *Moreover, the first respondent (i.e. the PAT) did not do justice to all the evidence and documents put in by the applicant and indeed to the document put in by the Mauritius Sugar Authority before deciding on the issue of the forty-hour week during the crop season, in the light of section 47 of the IRA as the records amply demonstrate*". Therefore, it becomes imperative that the updated views and comments of the MSA be sought by the PAT so as to give an objective and knowledgeable opinion on the issue under consideration.

To that effect, updated data on the lack of competitiveness of Mauritian sugar compared to some African countries (Zambia, Zimbabwe, Sudan, Malawi, Tanzania, Swaziland and even Mozambique) and on the recent development in the international and European environment, could be provided.

The MSA would thus be in a position to confirm whether its previous concluding remark in its document, which read as follows: "*The debate is no more on the current financial situation and the capacity to pay, which no longer exist given the series of adverse events that have beset the industry, **but rather on the capacity to be competitive and to survive***", is still valid today.

THE MAJOR INDUSTRY RE-ENGINEERING REQUIRED FOR THE SUGAR INDUSTRY

5.1 Overview

5.1.1 The whole sugar industry is in a profound re-engineering process with the final objective of achieving international competitiveness and sustainability.

5.1.2 The sugar industry has already embarked in this process and, as a result, has an unprecedented level of indebtedness due essentially to the cost of the VRS and of centralization. The cost of production and indeed the profitability of sugar companies are adversely affected by such a huge level of financial costs.

5.1.3 In the short to medium term, the cost of the essential investments to the industry in order to modernize is estimated at Rs4 billion which will add up to its already very high indebtedness and financial charges.

The sale of land which was meant to recoup the cost of investment and of the VRS has still not materialized because of long and tedious procedures and might not materialize in many regions where there already exists an excess supply of land in relation to the limited demand.

5.1.4 The financial situation of sugar companies during the last seven years has been characterized by two factors:- the results have been significantly influenced by the price of sugar and the level of the crop and – the net operating profits on sugar activities over the period have been marginal (Rs

300M for 7 years); however, it was the profits from other activities and from exceptional items that have allowed some companies to show a profit and to declare dividends.

- 5.1.5 The financial forecasts based on favourable assumptions have carried out a sensitivity analysis on price reductions and the impact of the 40-hour week. The results are that, without any change in price, then profitability would be marginal; however, losses would be incurred as from a price reduction of (9.1%). With a 20% price reduction, losses would amount to more than half a Billion rupees.

5.2 SSSP: the relevant measures identified

- 5.2.1. The SSSP unequivocally states, in its introduction, that "*reform is imperative and that the five-year strategic plan is meant to create the proper environment to enable the industry to rethink its operations thoroughly, ensure its efficiency and viability and with the competitiveness battle.* Among the eleven targets set (re: pages 1 and 2 of the SSSP – Annex I), the relevant ones to the case are the following:-

- (i) the reduction of the cost of production from 18c/lb to 14c/lb in 2005 and to 10-12c/lb in 2008 i.e. an overall 44% reduction;
- (ii) the reduction in the number of sugar factories from 14 to 7 or 8 by 2005 and the reduction of sugar loss at harvest time and in factory processing to a strict minimum;
- (iii) the complete mechanization of 60 000 ha of land and the irrigation of some 32 000 ha by 2010;
- (iv) the introduction of a substantial reduction of the labour force through a socially feasible VRS.

- 5.2.2 The SSSP also provided in its section dealing with "**Factory Issues**", (at pages 2 and 3), the following:-

- (i) the possibility of having factories producing more than 100 000 tonnes of sugar;
- (ii) the cost of factory modernisation and rehabilitation with the low cost option being preferred;
- (iii) the extent of spare capacity available, assuming that factories will as far as possible run 7 days a week and for up to 150 days.

- 5.2.3. As regards "**Field Issues**", the SSSP provides for the setting up of a task force to look into the funding of derocking, irrigation and mechanisation projects.

The main conditions of the VRS provided in the SSSP were the following:

- it is voluntary;
- any company implementing a VRS has to offer the VRS to "old" workers (A category) who benefit from an improved cash compensation;

- the package offered to workers is attractive and comprises land, cash and other "social" components;
- the heavy cost of the VRS incurred by the companies would be partly financed through a soft term loan from the BOM and through the sale of land.

5.2.4 The **characteristics of a "socially feasible VRS"** for MSPA members are the following:

- the total cost for MSPA members is of Rs 2 760 M for 7 130 workers ie. an average of Rs387 100 per worker.
- workers received a cash compensation varying according to their age and length of service (total cost: Rs 1 800 M)
- they receive a plot of land with all necessary amenities provided by the companies - 700 arpents of land have been devoted to these morcellements
- these new morcellements will have to be maintained by the companies (roads, drains and refuse collection) for a period of 3 years
- those living on the estate houses will receive the reimbursement of school transport for their children
- they will be entitled to use the facilities of the estate hospital during 5 years
- for a period of 10 years, 2 annual scholarships will be granted by each company having implemented a VRS to the workers' children

5.2.5. For the whole sugar industry the VRS has been accepted by some 7700 employees and will cost a total of Rs 3 Billion rupees out of which Rs 2 Billion has already been paid as cash compensation and Rs. 1 Billion for infrastructural works for land to workers has yet to be incurred. . Such cost is partly financed by loans and funds obtained from the BOM (Rs 2 Billion) and the balance by commercial banks.

5.2.6. However, as regards sale of land to recoup costs, it is to be noted that nearly two years after the implementation of the VRS, not a single *morcellement* permit has yet been obtained. Only one *morcellement* for workers has obtained its permit and land has been transferred to workers. Administrative procedures are very long and cumbersome and obstacles have been numerous. The implications are that the companies, which are, in the meantime, paying heavy financial charges, will soon have to start reimbursing the loan capital. Moreover, it seems very likely that, even if by the time the relevant permits would have been obtained, the real estate market will by then be even bleaker in view of the excess of supply over demand, and of the exiguity of the market.

5.3. The indebtedness and the massive investment needed

5.3.1 In its process of re-engineering, the sugar industry is in a paradoxical situation where, on the one hand, it has an unprecedented level of indebtedness as a result of the VRS and of the various

investments already effected and, on the other, it needs imperatively to invest more heavily within a very short period, in order to modernise and be competitive.

- 5.3.2. The costs of production will therefore be significantly and adversely impacted upon by the high financial charges.
- 5.3.3 Such an unprecedented level of indebtedness, which according to the BOM, is at June 2003, of Rs 6,3 Billion (compared to Rs 4,7 Billion in 2001), is particularly due to the VRS for the growing sector and to the heavy centralisation costs for the milling sector. Should be added to this indebtedness, a further loan of Rs 0.9 Billion for the financing of the infrastructural works for the coming morcellements for workers in the context of the VRS, as mentioned earlier. The total cash flow requirements for the financing of the VRS costs will range between Rs 318 M and Rs 474 M per year during the next four years.
- 5.3.4. The need for investment for modernisation is imperative and is meant to reduce the cost of production of Mauritian sugar and to render it competitive. These essential investments are very significant and have been estimated at around Rs 4 Billion over 2004 to 2008. They concern the following technical areas:
- factory centralisation and modernisation,
 - land preparation,
 - field mechanisation,
 - cane transport, and
 - irrigation.
- 5.3.5. Therefore, the industry must be in a position to be profitable enough to generate funds to reduce its indebtedness and its already heavy financial charges, and to reassure shareholders of the economic rationale of their investments.
- 5.3.6. Furthermore, a great effort should be made to provide **Training and Development programs** to those employees remaining after the VRS. Their appropriate job profile and existing competencies must be suitably and fully assessed. A customerised training package should subsequently be designed in view of upgrading their skills, developing their capabilities and promoting multi-skilling at all stages of their work responsibilities.

5.4. The economic and financial situation of the Industry

The DCDM report (cf. Annexe IV) also analyses and reviews the economic situation and evolution of the sugar industry within the economy and the financial status and forecast of companies members of MSPA.

- 5.4.1. As regards the **economic analysis** from 1995 to 2002, the following main elements stand

out.

- (i) From 1995 to 2002, annual wages grew more rapidly than inflation as measured by the CPI
- (ii) From 1995 to 2001, despite a regular reduction in the labour force employed, total labour costs have never been lower than the 1995 level. In 2002, after the implementation of the VRS, the total reduction of the labour force amounted to 50% compared to the 1995 level. Yet, total labour costs in that year, and for the first time, decreased by a mere 7% as compared to 1995;
- (iii) the share of wages and salaries represented 48 % of the total operating costs for the period 1995 - 2001 and decreased to 40% as from 2002 as a result of the VRS;
- (iv) the share of labour cost in the total cost is still higher than in other sectors.
- (v) the total labour cost per employee has increased by 78% for the agricultural and non agricultural worker respectively whereas the CPI has increased by 43% and the price of sugar by 22% during the same period;
- (vi) Value added grew more quickly than the labour cost; this means that returns to non-labour factors of production rose more rapidly than the returns to labour;
- (vii) A number of measures have already been implemented to increase productivity and efficiency for enhanced competitiveness of the Mauritian Sugar Industry.

5.4.2. The salient features of the **financial analysis** for the period 1995-2002 are as follows:

- (i) operating profits were registered only for 6 years; total profits during those 6 years account for Rs 1 577 million while losses for the 2 remaining years accounted for Rs 868 million; total net profits for 8 years amount to Rs 709 million for the whole corporate sector;
- (ii) operating income fluctuates mainly as a result of the sales tonnage and sugar price which are the two most important factors that affect the turnover and profitability of MSPA members;
- (iii) operating costs have increased from Rs 4,7 Billion in 1995 to Rs 5,6 Billion in 2002 despite a 50 % reduction in the manpower employed;
- (iv) operating costs have followed an upward trend and a large proportion of these costs are of a fixed nature;
- (v) operating costs per tonne of sugar have been higher than ex-MSS price of sugar on 6 occasions out of 8 and higher after the SIFB compensation and the inclusion of revenue from molasses on 3 occasions out of 8;

- (vi) prior to 1999, the agri-monetary mechanism determining the EU price in pounds sterling, provided for a relative stability of sugar proceeds. Since 1999, proceeds are paid in Euros; hence, the proceeds in rupees heavily depends upon the Euro/Rupee parity and are highly vulnerable;
- (vii) it is the profits generated from the other activities (i.e. dividends and exceptional items such as profits on sales of land) that have allowed sugar companies to show a profit and to declare dividends;
- (viii) the full benefit of the reduction in manpower employed will be felt in the medium term when the heavy VRS costs will have been reimbursed and the significant financial costs been paid;
- (ix) MSPA members have regularly invested in sugar activities during that period, at varying levels, according to their respective financial situation; and
- (x) the cost of producing one tonne of sugar. is still much higher than the SSSP target.
- (xi) **The financial forecasts** are based on a **sugar price** of Rs 15 200 per tonne, which is on the very high side but similar to that forecasted for 2003 due to a strong Euro, and a **sugar production** of 580 000 tonnes which is the average for the period 1995 - 2003 (but excluding 1999). A sensitivity analysis has been conducted to assess the impact of different levels of price reductions and in an unlikely scenario where the 40-hour week during the crop season would have been introduced. A number of assumptions are made for this exercise.

5.4.4. The salient features of these forecasts are the following:

- (i) even with a very good price and a relatively good crop, the profitability of the sector would be marginal in 2004 and 2005;
- (ii) as from a reduction in price of sugar of 8,75% in future, the sector would entail losses; with a reduction of 20%, losses would amount to more than Rs 600 M.
- (iii) The cost of production in US cts would still be far from the target set by the SSSP.

THE IMPLICATIONS OF THE 40-HOUR WEEK DURING THE CROP SEASON

6.1 Overview

6.1.1 The costs of the 5-day 40-hour week have been computed by DCDM at Rs 234 M per year. The basis of this computation has been checked and found accurate by Coopers and Lybrand who had been asked by the Unions to verify the methodology used by the MSPA

- (i) Saturday work is unavoidable and must be kept so as to optimize the harvesting period and

avoid losses in the sugar production process.

Moreover, work carried out during Saturday allows for proper and timely cultural practices (i.e. plantation and maintenance of fields after harvest), and of other equipment and means of production.

(ii) The cost of the 5-day 40-hour week is mainly attributable to (i) the increase in the hourly rate and, as a result, in the overtime rate and in the rate of cutting and/or loading, thus increasing the cost of existing overtime and cutting of canes on weekdays (ii) the replacement of the Saturday work at increased overtime or cutting rates and (iii) the increase in the productivity bonus payable, as a consequence of the increase in the earnings;

(iii) The result of the 5-day 40-hour week would be tantamount and result in an increase in remuneration i.e. more wages for the same amount of work and number of days work; a cane cutter performing exactly the same volume of work and during the same number of days, would get an increase of 46% in his crop remuneration;

(iv) Should the Saturday work not be replaced, major technical problems would be encountered which would result in sugar losses

(v) The costs of the other measures already awarded by the PAT amount to Rs 278.2 M, representing an increase of 18.9% of yearly wage;

(vi) The Supreme Court has ruled against the 6-day 40-hour week awarded by the PAT in 2001 as such a measure would increase the cost of production.

6.2 The Hours of Work in the Sugar Industry since 1993

6.2.1. **Prior to 1993**, the work organisation in the sugar industry was:

- (i) those employees working on a hourly basis (mainly factory, transport, garage and administration) : 6 day 45 hours week during both the crop and the intercrop periods (i.e. 5 x 8hrs and 1 x 5hrs)
- (ii) those working on a task basis (field workers) : the daily task to be completed or work to be performed diligently for a maximum of 6 hours per week day and 5 hours on Saturday i.e. a maximum total of 35 hours weekly.

6.2.2 **In September 1993**, the PAT awarded a 6 day 40-hour week during the intercrop so that the organisation of work was amended as follows:

- (i) those working on a **hourly basis**: 40 hours a week on 6 days (i.e. 5 x 7 hrs and 1 x 5 hrs)
- (ii) those working on a **task basis** (field workers) **no change** as already performing a maximum of 35

hours weekly..

6.2.3. **In July 1994**, following a Government proposal in the 1994 Budget Speech, Government and MSPA signed a Memorandum of Understanding which provided inter alia, that the 40-hour week during the intercrop season would be performed on a 5 day week but that the weekly task would remain unchanged (Le. the Saturday task be redistributed on that of the weekdays). MSPA's proposal to implement this agreement was as follows:

- (i) those working on a **hourly basis**: 40-hours a week on 5 days (i.e. 5 x 8 hrs)
- (ii) those working on a **task basis**: weekly task redistributed on 5 days work i.e. the daily task increased by 1/6th and the daily maximum number of hours of diligent work increased to 7 hours, thus a weekly total of 35 hours as previously.

6.2.4. **In January 1995**, the NRB, on its own motion and after a study, recommended that such new organisation of work be implemented after appropriate amendments to the Remuneration Orders. This implementation went very well, without any major incident or discontent from workers or trade unions nor any protest submitted at the ministry of Labour.

6.2.5 **In February 1995**, the Minister of Labour questioned this new set up of hours of work and Cabinet of Ministers subsequently decided to refer back the matter to the NRB for a fresh survey to ascertain the situation.

6.2.6 **In April 1995**, the NRB carried out site visits which indicated that the increased volume of work was still being performed within 6 hours. It thus maintained its recommendation for a 40-hour week with the redistribution of the Saturday task. In spite of these findings, the Minister of Labour amended these NRB recommendations and introduced a 5 day 40-hour week without the spreading of the Saturday task on the weekdays.

The organisation of work was once more amended to:

- (i) those working on an hourly basis: 40-hours a week on 5 days (5 x 8 hrs);
- (ii) those working on a task basis: weekly task reduced on 5 days work, i.e. the daily task from Monday to Friday brought back to 6 hours of diligent work, thus a weekly total of 30 hours only instead of 35 hours.

6.2.7 **In December 1999**, following a dispute referred to it in July 1998, the PAT awarded, inter alia, the introduction in principle of the 40-hour week during the crop without however giving the modalities and the date of application of such a measure.

6.2.8 **In June 2001**, pursuant to an application from MSPA requesting a judicial review of the December 1999 PAT Part Award, the Supreme Court found that it was premature for the Court to

give a judgment before a full and complete Award was given by the PAT.

6.2.9 **In December 2002**, the PAT, in a second Part-Award, found that the 40hour week should be introduced on a 6 day week and as from the 2003 crop.

6.2.10 **In May 2003**, after the MSPA had entered an action for a stay of execution and for an order of *Mandamus* in front of the Supreme Court, the PAT delivered a full and complete Award.

6.2.11 **In August 2003**, the Supreme Court, on hearing the application of MSPA for a stay of execution of the part and full Awards and for a judicial review of same, quashed the decision relating to the forty-hour week during the crop season.

It further ordered a fresh hearing before a differently constituted tribunal stating. that *"In considering this important Issue, the first respondent (i.e. The PAT) should take into account the salary increases and other benefits it had already granted to the workers..."*

Costs Estimates

The format used by DCDM, in its report (re: Annex IV, pages xxx), for the estimates of the cost of the 40-hour week during the crop season is similar, to a great extent, to that used by MSPA during the negotiations with the Unions in 1997-98. The same can be said of the study undertaken by Coopers and Lybrand who had, back in 1998, been designated by the Unions to verify MSPA's methodology and figures. Coopers and Lybrand came out with estimates and analysis that turned out to be very close to those of the MSPA.

For this new exercise, DCDM has adjusted its figures to a post VRS situation to take into account the reduction in the personnel employed, the revised wages to date, the recruitment of seasonal labour, the new rates for the two Primes, as awarded by the Tribunal and also the financial charges and the reimbursement of the VRS costs.

The main elements and parameters of this computation are as follows:

6.3.1. **The Saturday work presently performed by all workers** i.e. shift and non shift workers, cutters and non cutters **is unavoidable** and contributes to the cultivation and harvesting of canes and to the maintenance of the fields and of other equipment and means of production. The work being presently performed on Saturdays **still has to be performed and would consequently be remunerated as overtime** work. The opposite would imply that presently workers are not fully employed on Saturdays and are not working according to schedules. The simple elimination of this volume of Saturday work has definitely a cost that is difficult to quantify at this stage and which is dealt with in the following section;

6.3.2. **The reduction in the number of normal hours of work results in additional overtime payment for the replacement of the normal hours of work "lost"**

6.3.3. **The reduction in the number of normal days work would result in the increase in the rates of pay** (by 18,2 % i.e. 26/22) which implies the following:

- (i) the current and voluminous overtime on the existing 6-day 45-hour week will cost 18,2 % more;
- (ii) the new overtime hours on Saturdays will cost 18,2% more;
- (iii) the rates of cutting and/or loading will be increased in the same proportion because cutters will be cutting less canes for the same basic wage, i.e. the rate of tonnage of canes cut will cost more;
- (iv) the productivity bonus paid to cane cutters will be increased as a result of increased earnings for the same tonnage of canes cut, to which should be added the cane cutting on Saturdays to be remunerated as an overtime basis henceforth.

6.3.4. **DCDM has worked out the details of the computation of these costs (re: Annex IV, Appendix III) and they are as follows:**

6.3.4.1 **for the non-agricultural workers:**

- replacement of Saturday work on an overtime basis at an increased rate
- increase of the existing overtime performed every day; the overtime bill for the factories in 2003 is estimated at Rs 127 M; based on a month of 22 days, the same hours of overtime would cost Rs 150 M i.e. Rs 23 M more.

6.3.4.2 **for agricultural workers:**

- For non cutters, replacement of Saturday work on overtime basis at an increased rate
- For cane cutters, replacement of Saturday work at an increased rate of cutting and/or loading (18,2%) and increase in. the quantum of productivity bonus.

6.3.4.3. On these new premises, **the 40-hour week during the crop season would cost Rs 230 M per crop (year) i.e. approximately 16% yearly wage increase for a 5 to 6 months period per year.**

6.4. **Costs of other measures contained in the PAT Award of May 2003**

- 6.4.1. It is to be recalled that the Supreme Court has asked the PAT, when reconsidering the 40-hour week, to take into account the salary increases and other benefits already granted to workers.
- 6.4.2. Such benefits have been calculated by DCDM, in their updated report of September 2001, and have been further revised in the light of the reduction of personnel, in the wake of the VRS and the increases in basic wage as per Additional Remuneration Acts of 2002 and 2003.

6.4.3. These costs are as follows:

	Agricultural Workers Rs M/Year	Non-Agricultural Workers Rs M/Year
Wage increase (14%)	124.4	78.6
Increase in two Primes	32.1	20.8
Other measures	12.7	9.6
Total	169.2	109.0

These combined costs amount to Rs. 278.2 M per year, representing a yearly wage increase of 18.9%.

6.5. The implications of the 6-day 40-hour week during the Crop Season

6.5.1. The Supreme Court (in its judgment dated 4 August 2003) has already ruled against the 6-day 40-hour week during the crop awarded by the PAT in 2001. Such reduction in the hours of work would also be unacceptable in the hours of work because it would increase the cost of production of sugar and be contrary to the rationale adopted by Government and producers to reduce cost and to become competitive. This measure would obviously constitute a comparative disadvantage in relation to other efficient sugar producing countries.

6.5.2. However, the MSPA, believes that, for the reasons given below, the 6-day forty hour week should not be entertained:

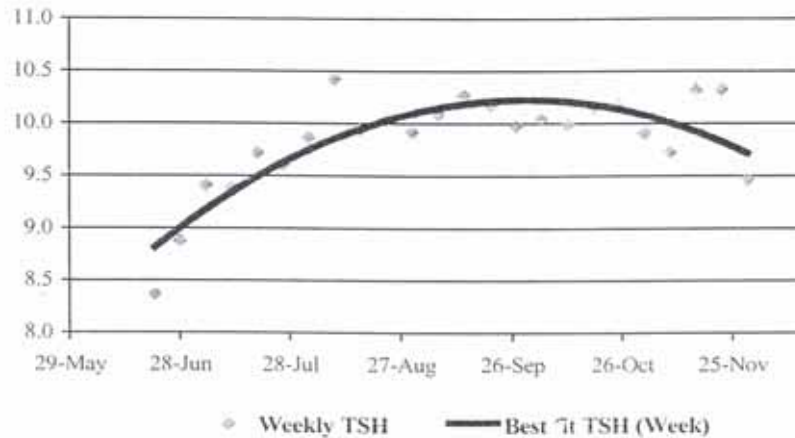
- (i) Such a measure would result in the reduction of the number of hours and additional overtime payments (as ascertained by DCDM as being Rs 28 M), whereas our competitors are working more and at a lesser cost (as ascertained by the SSSP and the LMC Report).
- (ii) Such measure entail a reduction in the volume of work whereas the sugar industry is in a logic of increasing productivity and decreasing its costs; such measure would be contrary to the existing national policy and objectives.

- (iii) Most of the countries in the sample of the LMC report work 45 hours per week or more during the crop season.
- (iv) Workers in Mauritius already work less than their foreign counterparts.
- (v) It would be perceived by the Unions and the workers as a step towards the 5-day 40-hour week and they would rapidly ask for its "extension".
- (vi) Such measure would apply only to non-agricultural workers and would, as such, not be sustainable and would create frustration.
- (vii) Such measure would hence satisfy no one.
- (viii) It would be a bad signal to the international community at a time when our representatives are negotiating to limit as far as possible price reductions

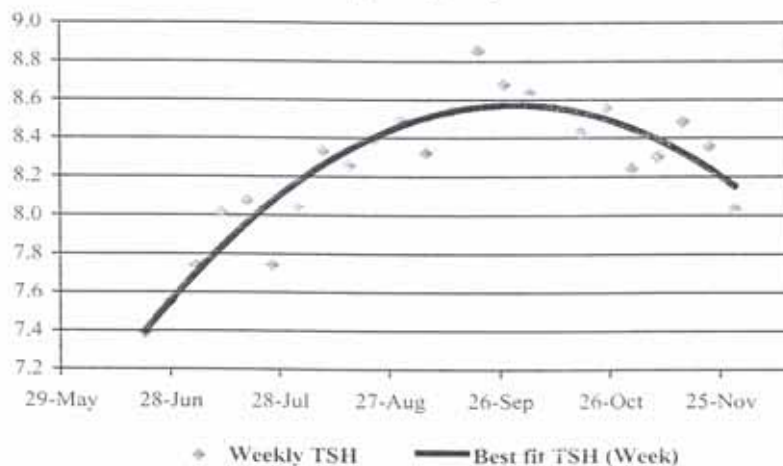
6.6. Technical and other Implications

- 6.6.1 It has been stated that there is no technical problem to the introduction of the 40- hour week during the crop season and that its introduction would be conditional to a better financial situation of the sugar industry.
- 6.6.2. Such a statement clearly implies that, should the work presently being performed on Saturdays be replaced by overtime and should the industry be in a position to bear this additional cost, then only, there would be no technical problem.
- 6.6.3. However, should the work performed on Saturdays not be replaced, then, the equivalent of 14 % (i.e. 5h / 35h) and 11 % (i.e. 5h / 45 h) of the volume of work presently performed in the field and factory respectively during the crop season would be eliminated.
- 6.6.4 In those circumstances, **some major problems of a technical nature or otherwise**, would be encountered as follows:
 - (i) the length of the crop season would be increased by nearly one month's work (i.e. 20 days); the crop would either start in May with very low sucrose content or end in December/January with lower sucrose content too and with very hot and humid conditions to work and during festive and cyclonic season. Sugar will hence be lost because of harvest of canes outside the normal maturation period. To that effect, it is interesting to note the evolution of weekly sugar yield for the island in respect of year 2001 (645 000 tonnes) which resulted in an average good crop and year 2003 (536 000 tonnes) which proved to be a poor crop. The sugar yield for both years starts to decrease significantly as from end of September, whether in a good crop year or a poor crop year, and deteriorates rapidly until the end of the crop as shown below:

Evolution of Weekly sugar yield in 2001 Island



Evolution of weekly sugar yield in 2003 Island



- (ii) loss of the period of growth (as from the start of summer) for the canes that will be cut after the normal date of harvest;
- (iii) delay and probable elimination of some cultural practices that have a bearing on the quality of maintenance of the cane fields; such work comprise inter alia pre and post- harvest practices (i.e. trashing wherever applicable, *relevage*, application of fertiliser), land preparation, plantation, irrigation etc.;
- (iv) the loss of sugar at the factory as a result of full stoppages during the week-ends. Sugar is lost because of (i) the degradation of saccharose due to fermentation, (ii) the required liquidation of the clarifiers (loss of 1/3rd of the juice content, i.e. 10 tonnes of sugar, every week end for each factory, that has to be thrown away every weekend instead of once a crop); (iii) loss of syrup from the evaporators;

- (v) higher consumption of energy to reheat the factory;
- (vi) delay and probable lower quality of maintenance of factory and transport equipment due to the shortening of the intercrop period and the reduction in hours worked for those not directly ascribed to the milling operations that will lead to higher maintenance and replacement costs.

6.6.5. It can be concluded that, to avoid those technical problems and sugar losses, the sugar industry would have to continue to operate on a 6-day basis, should the 40-hour week be introduced despite all the evidence shown earlier. This situation implies nothing less than an increase in remuneration.

7. CONCLUSIONS

7.1 The market environment of sugar is changing drastically. The preferences of the EU market are being eroded and Mauritian sugar is not competitive. The cost of production, as clearly advocated by the SSSP, should be reduced by 44% by year 2008 to compete with sugar of efficient sugar producing countries.

7.2.1 The European Commission has recently tabled a proposal in the context of the reform of the Sugar Regime which implies a price reduction up to a 50 % of the current price.

7.3 The sugar industry is already experiencing an unprecedented level of indebtedness and is thus incurring very high financial charges. The major challenge of the sugar sector, and of the country altogether, is to reduce its cost of production, enhance its efficiency, increase its revenue so as to become competitive and to survive.

7.4 The sugar sector is today engaged in a major re-engineering process that calls for a rethinking of its operations, a massive investment programme and the capacity to withstand heavy financial costs.

7.5 Mauritian workers, as compared their foreign counterparts, already enjoy a significantly lower number of days and hours of work and cane cutters here have a lower productivity and a better remuneration.

7.6 The introduction of the 40-hour week during the crop period would entail payment of overtime in order to perform the same volume of work presently performed on Saturdays and to perform technical and other maintenance problems. This would hence tantamount to a further permanent 16% wage increase, in addition to the wage increase and other benefits already granted which represent an additional 21 % increase.

7.7 The profitability on sugar operations has been very low form 1995 to 2002. The financial situation of all sugar sector depends heavily on the price of sugar and the level of production. The sensitivity analysis made by DCDM showed that the level of profitability would be very low, should the 40-hour week during the crop season be implemented. This profitability would be non-existent if the price of

sugar was reduced by 9.1 % and losses would amount to more than half a Billion rupees if the price was reduced by 20%, which is within the **minimum range** of price cut tabled by the European Commission.

7.8 It is now of paramount importance that this sector generates enough profits to repay loans and also to invest so as to reduce the production costs.

7.9 The 40-hour week during the crop will further increase the cost of production, deepen the existing difference with the most efficient countries and erase the efforts made to reduce the costs of production.

7.10 In short, the introduction of the 40-hour week during the crop would be totally in contradiction with Government policy and to all measures taken to date to achieve the already very difficult target of cost reduction. The objective is to have a competitive production cost and a sound financial situation by 2008.

REPLY TO SOME OF THE POINTS RAISED BY THE UNIONS IN THEIR STATEMENT OF CASE DATED 29 OCTOBER 2003.

1. **Pt. 2.** The 1993 Award concerned the 40-hour week **during intercrop** only. It can be noted that, in many sugar producing countries, even in the most efficient ones, work during intercrop is performed during 40 hours.

However, it is to be stressed that, **during the** crop season, almost all these countries work 45 or more hours. Moreover, the vast majority of those countries employ very few permanent labour and have recourse to seasonal labour. So, workers in Mauritius are already in a privileged situation because they benefit from a permanent employment and of a 40-hour week during the intercrop season which is comparatively longer than in other countries.

2. **Pt 4.**

(i) There is no evidence that the 40-hour week is a fundamental right of the working class. Among the core Conventions of the ILO which represent the fundamental rights being promoted by this international organisation, there is no mention of the 40-hour week.

(ii) in addition, the vast majority of private sector companies in Mauritius work 45 hours weekly all year round.

(iii) the 40 hour week during the crop season cannot be construed as an acquired right because it has never been agreed, granted, nor implemented. In 1993, the Award concerned only the intercrop season.

3. **Pt. 5.** (i) The weekly volume of work during the crop season is not contested as such by the Unions. Consequently, if all workers take a day rest on Saturdays, the crop will then have to be extended by 22 additional days (i.e. 1 month). This will result in a significant and negative impact on the sugar

production, on the plantation program, and on losses at the factory level. The crop would then have to start earlier in June and end later in late December / January.

(ii) With the modernisation of the production process and automation of the factories pursuant to the centralisation process, workload, on the contrary, has been alleviated. Processes that were previously operated manually are now being more and more operated automatically through electronically monitored devices. All heavy manual duties are being now performed by machines. However, new skills and new jobs are being required.

Similarly, the workload of field workers has also been alleviated with the advent of mechanisation. Heavy tasks that were performed by workers are now increasingly performed by machines eg loading of canes, spreading of fertilisers, scums, etc, derocking.

(iii) this would be one of the significant consequences of the 40 hour week during crop season; as previously stated, most sugar producing countries have 2 different regimes i.e. during the crop (45 or more hours per week) and during the intercrop (in general 40 hours per week). Mauritius is not an exception and furthermore, this situation does not create particular difficulties and has been very smoothly and efficiently adopted during the past nine years.

4. Pt. 6. The introduction of the 40 hour - 5 day week would imply two different scenario: either

- (i) work is still being performed on Saturdays, then there is no additional day's rest and no technical problem but a financial one (i.e. an additional cost of Rs 229 M per crop) or
- (ii) work is not performed on Saturdays, then we are confronted with the lengthening of the crop with significant reduction in sugar production as a result of loss in extraction rate, of factory full stoppages and of delays for plantations and other critical work to be performed in a timely manner. Such a decision would result in one additional month of work and the crop would end in late December / January (i.e. in summer and in the midst of festive season and in an eventual cyclonic period) instead of November/December as it is presently the case.

In practice, they will continue to work on Saturdays and earn overtime pay. The question of an additional day's rest is a misconception.

5. Pt. 7. The NRB also declared that, referring to the replacement of the Saturday work, the problem was of a financial nature. (viz. pt 10 of the Unions). Again, if Saturday work is still performed, there would be no technical difficulty as such but the problem would be a financial one which is tantamount to a mere increase of 16 % in remuneration.

6. Pt. 9. A smooth and efficient organization of the crop implies regular supply of

freshly cut canes throughout the working days and a platform of canes on Saturday afternoon so that the weekly crushing cycle ends early on Sunday morning. In cases where the organization of the crop is disturbed by an unforeseen element (e.g. cane fire, factory breakdown), cane cutters may be requested not to cut canes or to cut less canes. Besides, further to the implementation of the VRS, of the intensification of the mechanization, cutters may also be requested not to cut canes every day or to cut less canes. However, machines are operated by employees and workers are employed productively for other tasks and are not redundant. The two last sentences of this para 9 of the Unions statement of case illustrate well that their main objective is to increase the remuneration of the workers and that their contention is in fact a disguised increased in wages.

7. Pt. 10. This pertinent point was made by the NRB in 1987. The Unions will surely reckon that the environment in 2003 is drastically different than in 1987 where the focal point was the financial situation. In those days, there was no threat on the Sugar Protocol, no EBA initiative and no concrete proposal for a decrease of 45 % in the price of sugar from the UE.

To day, with the liberalisation of the world economy and trade, the only challenge is to become competitive to be able to survive. The relative cost of production is therefore critical and in that respect, Mauritius, in view of some intrinsic but also social factors, is a medium to high cost producer and would not be able to cope with a significant price cut and compete with the much better efficient producing countries.

8. Pt. 11. In 1998, the capacity to pay of the sugar sector was one among the main arguments against the introduction of the 40 hour week during the crop together with the competitiveness aspect. Moreover, the EBA initiative had not been adopted by the EU and the SSSP.

To-day, in the wake of the reform of the Sugar Regime and after the proposals from the European Commission to reduce the EU price by up to 45 %, the only crucial issue concerns the need to survive and the inescapable duty to be competitive.

9. Pt. 12. In 1998, Coopers and Lybrand, commissioned by some Unions to check the MSPA computation of the cost of the 40 hour 5 day week, concurred with MSPA's figures. This cost is today estimated at Rs 229 M and cannot say to be marginal. Furthermore, the cost of production of Mauritian sugar would be adversely affected and be further disadvantaged compared to other efficient sugar producing countries.

10. Pt. 13. Whatever intellectual or abstract distinction is made to differentiate the cost, the end result will still be an addition of Rs 229M to the existing cost of production and an adverse direct impact on the competitiveness of Mauritian sugar.

11. Pt. 14. (1) Despite the reduction in the labour force, the total cost has remained high and increased except in 2002 and 2003 as a result of the VRS.

(2) Amongst the advantages was the abolition of the Export Duty that was only imposed on the sugar

industry; however, these supposed advantages were almost in all cases accompanied by concessions to be made by the companies (e.g. financing of funds leading to the purchase of 20 % of equity of milling companies by SIT, introduction of 40-hour week during intercrop with the spreading of the Saturday task etc). In any case, all the impact of the supposed advantages are comprised and are fully accounted for in the accounts published and the analysis of DCDM

(3) the sugar sector is still the only sector which is compelled to sell a share of its foreign earnings to the BOM; this share has in effect been reduced over the years so that a significant part is still sold to the BOM (35%) Furthermore, sugar producers are the only export producers not having the liberty of having their earnings in foreign currency. So, the sugar sector is still disadvantaged compared to all other sectors of the economy and to the export oriented sectors in particular.

(4) The eventual impact of all the measures taken since 1987 are included in the financial statements and analysis submitted by DCDM. Here again, a number of factories have been closed down but at a very high cost which is significantly higher than that imposed to all other sectors in the private sector. (2,5 months salary per year of service plus a plot of developed land (12 to 16 perches) and other benefits v/s only 0,5 month salary per month of service in other sectors). Moreover, the parceling out of land to recoup the costs is a very long process due to tedious administrative procedures and up to now very few plots of land have been effectively sold. The real estate market is absorbed such a huge quantity of supply of land in the short term.

As regards energy production, it is to be pointed out that only the proceeds arising from the sale of energy from bagasse by continuous plants are included. in the financial statements; energy from bagasse and coal produced by independent firm power producers are not accounted by the sugar growing companies because these energy companies are differently constituted entities and comprise a different and larger shareholding because of the magnitude of its investments (e.g. SIT, SIC, banks, financial institutions as well as growing companies).

TESTIMONIAL AND DOCUMENTARY EVIDENCE

The first witness to depone on behalf of the Unions is Mr Nardeo Lutchmun Roy. As President of the Plantation Workers Union he represents all the labourers of the Sugar Industry. According to him, the Union has been fighting for the 40 hour based on 5 days per week during and off crop season for a long time that goes beyond 1970's. Government at that time set up a Commission to look into the matter, known as the Bourdet Commission and it was in 1976. The Unions made representations before the Commission without obtaining satisfaction. There was then the National Remuneration Board before which there was no satisfaction obtained. The Avramovic Commission was then set up but it was again not to the satisfaction of the Unions. The witness stressed that the Unions have been asking for a leisure time i.e. a Saturday off all year round in order to allow the workers to rest and avoid stress and ill-health. This should in return improve efficiency and enhance productivity. The witness reckoned that in 1984 sugar was being produced by 20 factories in Mauritius. The Reufac Solitude Factory closed down in 1985. Britannia Factory closed down in

2002 and by the time the witness was deponing the number of factories producing sugar were reduced to 11. According to the witness the sugar factory has saved a considerable amount of revenue in the closing down of 10 of its factories.

Mr Lall Dewnath, President of the Artisan and General Workers Union (AGWU), also deponed :-

He supports the extension of the 40 hours week during crop season for the milling operations. According to the witness, at present an "artisan" works between 45 hours and 53 hours weekly during crop season. In 2009 when there will be a reduction in the price of sugar there will be only 4 sugar mills in operation to produce more or less the same quantity of sugar which is being produced now in addition to Ethanol, Energy and "special sugar". In 2009 when there will be only about 800 non-agricultural workers and if they work 40 hours a week during crop season, overtime payment will be about Rs7.5 Millions for the 6 days-week and about Rs13 Millions for the 5 days-week. He is in favour for a 6-days/40-hours work for non-agricultural workers during crop season. The Sugar Industry has benefited considerably concerning the tax de sortie between 1994 to 2004 and the Illovo Deal where planters and workers have not received anything. The total work force in the Sugar Industry is about 13,000 at present. It was about 24,000 in 1998 and in 2007 about 7,200 workers will leave following "VRS" and the "Blue Print" regime. By 2009 the whole population of the Sugar Industry will be only about 4000 and the Sugar Industry will save billions of rupees in terms of salary. The Sugar Industry is well prepared to face the 36% decrease in the price of sugar. Since 1995 the 40 hours week have been implemented during inter-crop season and is working perfectly. The demand of "artisans" is a 6 days/40 hours week whereas for the field workers it is a 5 days/40 hours week. Following this practice there will be no problem for the mills to receive sufficient canes for the "crushing" exercise. He is aware of the accompanying measures that the European Union has recommended. He agrees that the decrease of 36% in the price of sugar will affect adversely the country, but on the other hand the Sugar Industry will save in respect of labour costs after thousands of workers will leave the Sugar Industry. He does not deny that Mauritius is not competitive in the World Market but avers that it is not so bad when compared to other countries. In many countries the sugar sector works on a 7-days a week but to put that in practice in Mauritius needs a serious debate around a table. Following modernization the labour cost is less and more profitable to the Industry. The cost of labour may perhaps represent 35% of the cost of production. He is not against delocalization but wants that workers get a fair treatment after the closing down of mills. He is not aware of the fact that in the report of Mr Todd that in 12 countries he had dealt with there is only one where in-fields workers work for 5 days a week. It is not a secret that in the Private Sector the majority of workers have a 45 hours week. The contributions by the Sugar Industry in certain funds are not significant compared to the benefits derived and mentioned earlier by him. Mechanisation has increased due to the non-replacement of employees after VRS I. Mechanisation should be about 25%. Seasonal workers, recruited among those who have left following VRS I, during crop season are engaged but are not paid a decent salary.

Jack Bizall, a clerk stated that he represents the interests of the Unions.

He did not add much to what the previous witnesses had already stated.

Instead he conceded the following in cross-examination:-

The basic objective of every private sector company is to make its company more competitive. He considers the 40-hour week to be an acquired right and wants it to be extended to the crop season. He does not agree that we need to work on Saturday to perform all the work related to the harvest of the cane such as planting, fertilization and cleaning. It is difficult to evaluate the mechanization of field activities as a global figure. Non agricultural workers are opting for the 40 hours on 6 days whereas labourers are requesting the 40 hours on 5 days from Monday to Friday and a rest day on Saturday. This is the new stand of the Union because originally they claim the 40 hour week on 5 days for the two groups. He reads part of the Harel Frères Group Annual Report before conceding that it must be read in the context of the whole report and that each sector of activities of Harel Group must be examined in relation to those activities to know the bottom line of that particular activity. He accused MSPA of organizing a visit of locus that tantamounts to a *mise en scène*. According to him, DCDM which worked out the report on the 40-hour week is not an independent institution.

The General Manager of Mon Trésor and Mon Desert Ltée, Mr Christian Foo Kune, testified to the effect that he joined the sugar industry in 1972 and has worked as Chemist, Agronomist, Field Manager and Agricultural manager. He is now the General Manager of Mon Trésor Mon Desert Ltée. He has helped in the preparation of the Statement of Case of the MSPA. Working 5 days a week, for agricultural workers, and 6 days a week, for non-agricultural workers, will create problems because there are many operations where non-agricultural workers and agricultural workers have to perform together. It is very important in order to optimize the quantity of sugar, that the sugar-cane, when they are fresh, be sent to the factories as early as possible after the cutting has been done. Leaving the canes in fields for a longer time after cutting lead to fermentation which may impede the production of sugar. Machines do not work by itself and it is also imperative that agricultural and non-agricultural workers work concurrently to enable the sending of the canes effectively to the mills. Many agricultural activities such as the cleaning of fields, manual weeding, application of fertilizers, clearing of stones among others should be carried out as soon as the canes are cut. The planting operations are to be done at appropriate times. One has to bear in mind the bad weather. An agriculturist would wish to work 7 days weekly if possible. He is convinced that the 40 hours week is not good economically.

He referred to the report of Mr Martin Todd in which we have seen that there are countries which work all the 7 days a week. Cane-cutting is done on piece-rate, whereas task-works are for activities such as weeding, fertilization. If work is done for only 5 days a week instead of 6 days, this will affect the quality of the cane, the quality of the sugar and the quantity of the sugar. The ideal thing would have been to work 7 days a week, but the difficulty is the labour laws and the maintenance of agricultural machines (which are done on Sundays).

The witness agreed in cross-examination that:-

- The same quantify of canes are crushed daily from Monday to Saturday.
- The normal working hours on weekdays are 5 x 8 hours but in practice it is 5 x 6 hours and on Saturday it is 5 hours.
- The quantity of canes cut is more or less the same on weekdays and on Saturdays.
- About 60 to 70% of canes are crushed on the same day of the cutting.
- Canes cut on Saturdays are crushed on Mondays.
- He cannot remember which countries have adopted the 5 days week in the sugar industry.
- It may be that some factories are more efficient than others.
- About 30% of field work force are not concerned with cane cutting activities.
- Nearly 20% of canes are cut by machines and about 80% manually. With the reforms ahead the percentage of cutting by machines may laboriously reach 50%.
- A good worker can cut about 4 tons of canes daily and a machine 160 tons. However the machine driver is assisted by at least 2 other workers.
- Works such as gleaning (glanage), cane planting, manual weeding, fertilization, weed killers, "relevage" among others are carried out every day on weekdays and Saturdays. These operations effected on Saturdays cannot be absorbed over the weekdays.
- There is a cane storage capacity of about 12 to 14 hours for a running of 24 hours.
- Canes cut for planting if they are cut of Fridays and planted on Mondays will have a bad effect on the germination of the cane. It is very logical that canes be planted as early as possible after they have been cut (within 24 hours).

Mr Laurent Law Thoung Fong's testimony is to the effect that he is presently officer of Legal and International Affairs at the Mauritius Chamber of Agricultural for the past 8 years. He follows International issues and Legal Issues. His experience in International Trade is mainly sugar. He follows regional issues SADC, COMESA and more international issues like WTO, EU Sugar Regime and the US Sugar Market. He has a Master Degree in European Community Law, Diplôme d'Etude d'Approfondi in International Economic Law and Diplôme d'Etude d'Approfondi in Political Science. He has been delegated by the Mauritius Chamber of Agriculture to depone on its behalf and the Chamber has submitted to the Tribunal a letter of the 29 August 2006 under the signature of his General Secretary and a paper of the same date entitled Mauritius Chamber of Agricultural Sugar in the International Context. The decrease of 36% in the price of sugar is in fact something which is already announced, declared and is a matter of policy which will be applied. Along with that decrease, there will be accompanying measures. Declarations have been made by the EU for the total amount to be allocated. Some 6 countries – all of them ACP countries – do not meet the criteria set down by the EU for that allocation and Mauritius has got to be very careful to make sure they keep meeting that criteria. There is no guarantee that the totality of whatsoever is obtained will be passed to the sugar industry. He has collaborated in the preparation of those papers and is aware of their contexts. He confirms those contents.

He stated in cross-examination that:-

Prices of sugar may change in the future depending on the market condition. It may go down and it may also go up. Accompanying measures that will be provided by the EU have been announced. We are getting 6.5 M Euros out of 40 M Euros and this has been finalized. He is not aware of other accompanying measures to be finalized at the end of September 2006. The Economic Partnership Agreements (EPA) will replace the Cotonou Agreement. The EPA will not include sugar as per the report of Mr Todd although this is not confirmed yet. Mauritius is negotiating the EPA with the EU. We are part of Eastern and Southern Africa (ESA) and part of ESA and we are currently negotiating with the EU so as to finalize the important EPA issue.

Mr Martin Todd, Economist and Managing Director of L M C International has produced a Report entitled:-

- I Working Practices in Selected Sugar Industries**
- II Prospects for EU Sugar Policy Revised Version**

He confirms under oath all the statements he made in that report.

These are the main features of his testimony:-

- The total hours of work of a Mauritian field worker during crop period is 738 (123 days x 6 hours) and this is the lowest in the group of 12 countries found in his report. Mauritius stands out as the country with the shortest working week.
- During the inter-crop, the average number of days worked per field employee is 163, one of the highest of the countries listed.
- Mauritius among the lowest countries listed, working on an average of 286 (123 + 163) per crop year.
- There is a high level of overtime worked in Mauritius by shift workers during milling season in the factory.
- The length of the inter-crops in terms of days (excluding Sundays) is 228 in factory and the total days per employee is 163.
- Mauritian cane cutters receive higher wages than any other countries featured in the Survey. Moreover, workers receive non-wages benefits such as pensions, housing, health insurance equivalent to approximately 66% of the basic wage costs of the average factory.

- In the second part of his examination the witness speaks of Prospects for EU Sugar Policy where complex issues are dealt with such as :-
 - (a) The current situation of the EU Sugar Regime
 - (b) The World Trade Organisation
 - (c) The EBA
 - (d) The LDC
 - (e) The SPS
 - (f) The Sugar Regime
 - (g) The Sugar Protocol
 - (h) The West Balkans Agreement
 - (i) The WTO Uruguay Round Commitments
 - (j) The Doha Round

- The EU has set out a new regime until 2013.

- The witness also mentions the unspecified lower future prices

- Mauritius has prepared a proper plan and a proper projection and have taken the commitment to stand by and implement and as a result of that, they created the image which brought in 700,000 Euros.

His cross-examination revealed that:-

For effecting the survey 12 countries were chosen. They were chosen to reflect 3 categories. The first was to include 3 of the world market players- Australia, Brazil and Guatemala. The second category was a range of ACP countries like Guyana, Swaziland, Malawi, Fiji, Zimbabwe and Mauritius. The third group were 3 other world players. The survey was carried by phone, by E-mail, exchange of documents and visits. He has at his disposal a list of ACP sugar producers but is not aware that countries such as Barbados, Jamaica, Trinidad and Tobago operates on a 5 days x 8 hours week. He has not been mailed concerning exact working practice – for example 8 hours of normal work is equivalent to 6 hours of task work and that the total hours for employees for the crop period would in fact be 984 hours (8 x 123). He agrees that the milling season is dependent on a number of factors – different fields, different growth, different climate and a longer dry season. He understands that there is a peculiarity to Mauritius that over the years we have had a work force of permanent employees who have staffed the various companies. He also agrees that assuming that the task work represents 8 hours of normal work, the total hours per employee during the inter-crop period should be 1304 (8 x 163). The shift workers are working many more hours than non-shift workers and agrees that we are exactly in the same league as Thailand and USA. The price at which sugar is being purchased today is higher than the world price. He anticipates a lower future price for sugar as we have to bear in mind that under the current regime the new prices are not guaranteed.

Mr Todd has made some comparisons of other countries with Mauritius on certain aspects.

According to him, it is probable that prices of sugar will be lower as there is a tendency that there will be free protection and allow sugar to come to world price level. He further adds that 6 countries did not meet the requirements of the EU and therefore were not given their allocation. These countries are Jamaica, Trinidad, Zimbabwe, Ivory Cost, Kenya and Congo. In making his report he has contact with people who provide him the best source of information. He has no reason to believe that the information is biased. He sees no reason why his assessment would have been different if he has chosen other countries to those found in his report. Mauritian industry, having a shorter milling season, inevitably works less because people tend to work longer during milling season than during off-crop period. However, the result in his report shows that on the factory side there is no such diversity between Mauritius and other countries but it is essentially in the field sector and essentially in the crop period where Mauritius stands out and has somewhat different system.

It is apposite to refer here to the salient part of his report (Doc AA7).

Industry	Length of the Milling Season (days)	Days of Operation per week	Total No. of Shifts	Shifts per Day	Av. No Shifts per Employee per week	Hours per Day	Av. No Hours per Employee per Week	Total Days per Employee per Crop Period	Total Hours per Employee per Crop Period
Australia ¹	131	5	1	1	5.0	8	40	94	750
Brazil Centre/South ⁴	185	7	2	1	3.7	12	44	98	1,176
Fiji	186	6	1	1	6.0	8	48	160	1,277
Guatemala	141	5.5	1	1	5.5	8	44	111	888
Guyana	251	7	1	1	7.0	8	56	251	2,006
Malawi	224	6	1	1	6.0	8	48	192	1,538
Mauritius	137	6	1	1	6.0	6	35	123	738
South Africa	256	7	1	1	7.0	8	56	256	2,047

Swaziland	248	6	1	1	6.0	8	48	213	1,702
Thailand	136	6	1	1	6.0	12	72	116	1,396
USA ²	140	6	2	2	6.0	12	72	120	1,438
Zimbabwe ³	256	6	1	1	6.0	9	54	219	1,972

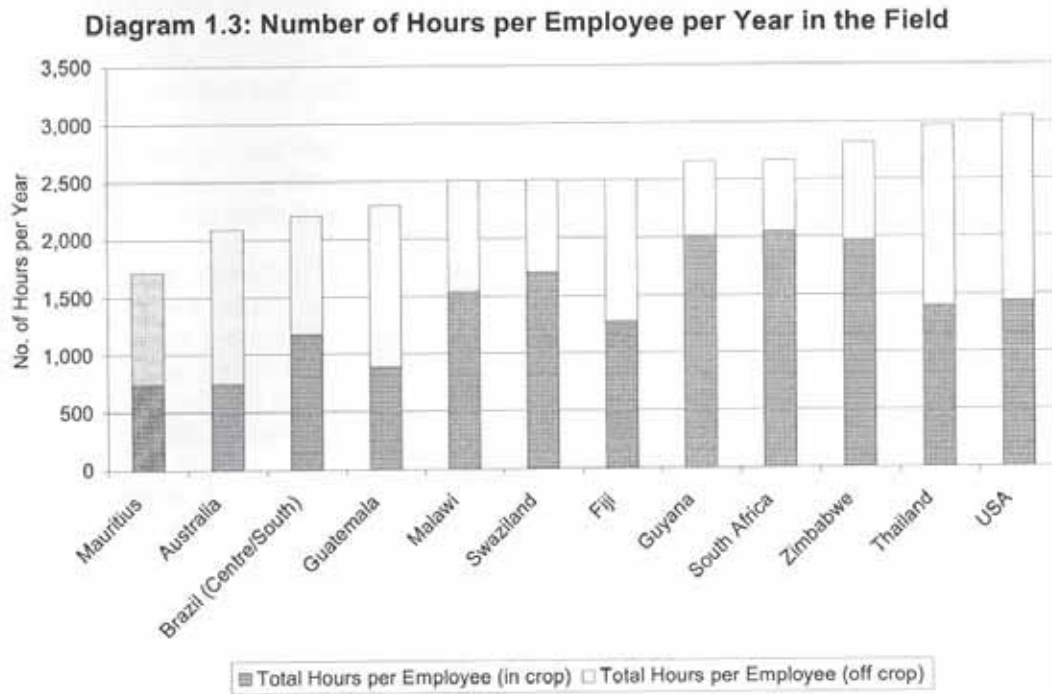
Notes: 1. Represents hired labour in Australia, which is used when required to supplement labour provided by farmers themselves.

2. Florida. The Louisiana cane sector works one shift per day only, lasting up to eight hours.

3. Due to the unstable current situation in the Zimbabwe industry, we have used data from 1998 to present a more representative indicator of performance.

4. In Centre/South Brazil, the shifts per employee per week is adjusted for the legal 44 hour per week system. In several regions, employees work over 44 hours and are paid overtime.

“When we analyse the total number of hours worked by each employee during the crop (shown in the last column of Table 1.1), the ranking of the countries is not exactly the same, because of the impact of the length of the milling season. South Africa and Guyana demand the greatest number of hours from their employees followed by Zimbabwe and Swaziland. Mauritius drops further behind in relation to other countries (with the exceptions of Australia and Guatemala), as the short working day and week is compounded by the brief milling season.”



Focusing upon the number of days worked as an indicator of labour utilization, however, has the disadvantage that it fails to capture the number of *hours* worked per day during the milling season and during the inter-crop. Since some industries use a 12-hour shift system, while others use 8-hour shifts, a more accurate indication of labour utilization is the total number of hours worked over the whole crop year. For this reason, we have compiled Diagram 1.3, where we present the total number of hours per employee per year.

Diagram 1.6: Number of Days per Employee per Year in the Factory

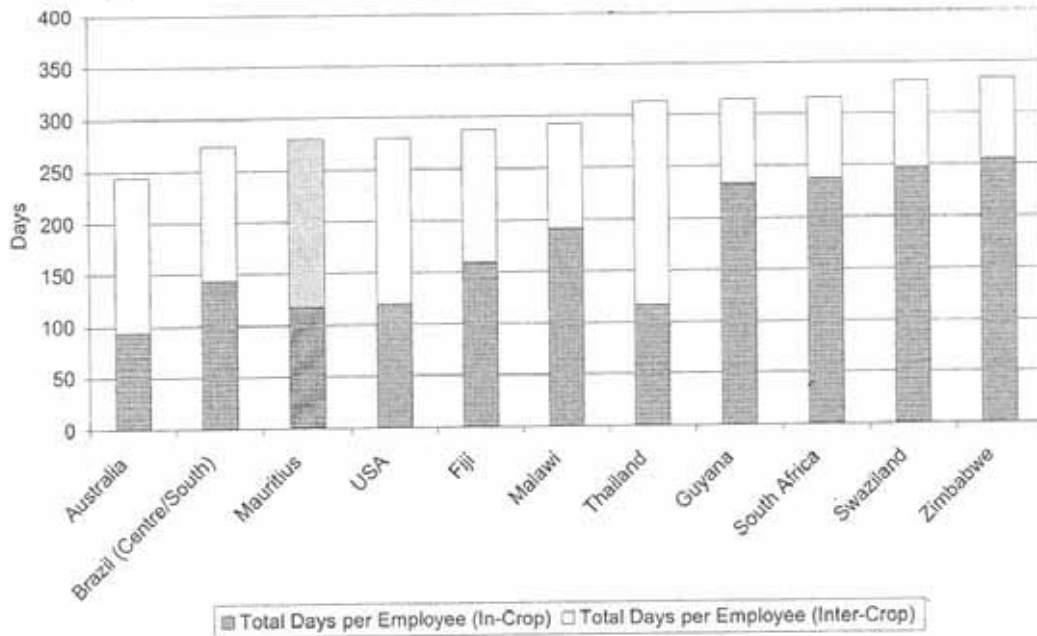
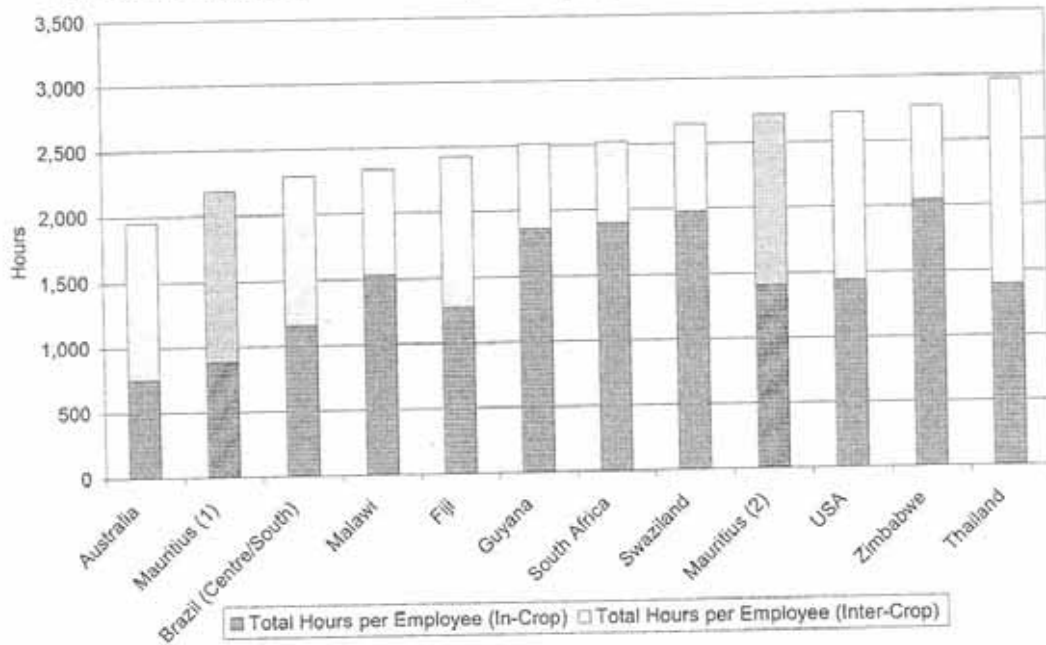


Diagram 1.7: Number of Hours per Employee per Year in the Factory



"In terms of the total number of days worked across the whole crop year, i.e., the sum of the number of days worked during the crop and during the intercrop, employees work on average around 300 days per crop year. Employees in Swaziland and Zimbabwe work the greatest number of days, working on average, over

330 days per crop year. Mauritius is once again among the lowest of the countries listed, with employees working on average just 280 days per crop year. Only Australia and Brazil have lower figures than Mauritius.

Mr Jack Kwong Wing Chan, Deputy Chief Operation Officer of Société du Sud, also deponed:-

He is mainly concerned with the running of the factory. He has read the Statement of Case of the MSPA and confirms its contents more particularly from pages 38 to 40. According to him, we are in a process industry and it is like a long chain and for the process to work properly, all the links in the chain must be working together. Everything must be on time for the crushed cane to remain fresh and sent to factory. Fresh cane improves extraction rather than letting it stack and heat up because that will cause a deterioration of the cane. A drop in purity of the juice of the order of one degree will be roughly 1% drop in sugar content. If we have 500,000 tons sugar 1% drop represent 5,000 tons. Plenty of work is done on Saturdays and he would be in favour, ideally, of a running week of 6½ days. That would mean utilizing the capacity of the factory but one must have the supply of cane to be able to do that. From a technical point of view closing a factory and restarting it again has an adverse effect. In the sugar factory there is always more work than people can do and that is why we always pay overtime to perform job that cannot be done in normal time. Sometimes we even take outside contractors to perform some of the jobs. We produce electricity by using the steam and that is done during crop period which also means on Sunday if the factory is not running we do not produce electricity that day.

When there is cane being brought to the weighbridge on Saturday it may be until 18.00 hrs and it can be later as well. It is possible that cane, which is brought on a Saturday, might have been cut on a Friday. Some of the cane cut on Saturday will be sent on Sunday morning because the transport starts early as they must have something to start. Cane harvested on Friday would reach the weighbridge probably on a Saturday. There are some measures of overlapping for Saturdays. In the present circumstances the ideal thing would be to work 6½ days a week subject to cane supplies. We cannot receive cane for 2 days at the factory. If we were to crush cane on Sundays then the whole chain must work together. There will be chemical effects on the canes if they are kept overnight or over the weekend. However, this does not mean that those countries for example Australia where workers work on a 5 day-week basis will meet these problems. For instance at John Mill in Australia it actually run 7 days a week and do not stop. When they say 5 days basis, he believes the workers have got 5 days work on a shift system.

Mr Yacoob Ramtoolah, Chartered Accountant, deponed to the effect that:-

He is presently a partner at BDO De Chazal Du Mée, a firm of Chartered Accountant and he has been a partner for the last 20 years. He is aware of the report which has been prepared by his firm entitled "Economic and Financial Analysis". A communiqué issued by the Chamber of Agriculture has amended the initial forecast in relation to the estimated production of sugar – reduced from 530,000 tons to 500,000 tons. In the report the profit statement at page 20 has been based on the initial forecast given by the Chamber of Agriculture. He confirms all the statements contained in that report.

As at 2005 the total agricultural and non-agricultural workers employed by the MSPA is 13500. He agrees with Mr Domingue that non-agricultural workers stand about 4300 out of which 2000 of them are likely to become redundant under the blue print (2) leaving us with a balance of 2300. A total workforce of 6000 (agricultural + non-agricultural workers) will be redundant under VRS 2. Based on July 2005 figures, a non-agricultural worker earns Rs7211 monthly. With the number of non-agricultural worker reduced to 2300 – after the centralization of sugar mills from 11 to 4 – this category of worker will earn about Rs9000 monthly. He pointed out that workers who opt for the VRS are not entitled to a retirement pension as such. They are entitled to a lump sum which is a one off payment and which is paid to them as a reduced contribution retirement pension (CRP) and which is pro-rated for VRS workers, whereas those who retire normally at 60 are entitled to the full CRP. The word pension in fact is a misnomer.

The witness refers to the DCDM report (Doc AA17) in which we find the following, among other things:-

“5.3.1 5-day 40 hour week

The Trade Unions demand that the 5 day – 40 hour week be introduced during the crop season as already applicable during the inter crop season. The financial implication of these demands has been estimated at Rs 253 million, representing 10% of total remuneration, as summarized in table 12 below. The basis of our computation and assumptions used are explained in detail in Appendix III.

Table 12: Financial Impact of a 5 day – 40 hour week

	Rs M	
<i>Agricultural workers</i>		
- Cutters	138.4	
- Others	32.8	
<i>Total for agricultural workers</i>	171.2	<i>Appendix III (Section A)</i>
<i>Nonagricultural workers</i>	62.4	<i>Appendix III (Section B)</i>
<i>Seasonal labour</i>	19.4	<i>Appendix III (Section C)</i>
TOTAL FINANCIAL IMPACT	253.0	

6-day 40 hour week

The financial implication of a 6-day 40 hour week has also been studied and has been estimated to be Rs 28 million.”

Mr Rajpati, Executive Director, Mauritius Sugar Authority stated that:-

The Mauritius Sugar Authority (MSA) regularly examines the accounts of planters and millers be it members of MSPA or not. The Multi Annual Adaptation Strategy Plan 2006-2015 (MAAS) which is proposed to guide the industry in the future and ensure that it survives beyond the year 2009 when there be a scrap of 36% is a confidential document. It has been prepared by the MSA which has been approved by the Government and has been submitted to the EU. The closure of 7 out of 11 factories should bring in reform. There are currently 11 factories in the country, the smallest one producing around 18000 tons of sugar and the biggest one, Belle Vue producing around 80000 tons. In the context of the closure there will be 4 remaining – Belle Vue, Savannah, FUEL and Medine. Savannah and Fuel would be producing more than 150000 tons of sugar, Belle Vue more than 100000 tons and Medine around 50-60000 tons. All measures should hopefully be in place by 2009 so as to be able to address this problem of the reduction of 36% in the price of sugar. The country will lose 782 M Euros (Rs31 Billion) over the Multi Annual Adaptation Strategy period (2006 to 2015) and on the other hand the country would need about 675 M Euros to implement the MAAS. Globally we will be getting 200 M Euros by way of accompanying measures from the EU to the Government of Mauritius. By the year 2009, 87% of the investment have to be effected for which we need around 580M Euros. The most difficult years from the funding and profitability angle would be 2007 to 2010 and the time lag between investment and the flow of benefits, depending on so many factors might be 2 years to 5 years. The objective of longer crushing hours is to optimize installed capacity and to avoid unnecessary and costly investments. The 130 days running require a crushing capacity of at least 525 TCH (tons of canes crushed per hour) whereas the 180 days of running requires a crushing capacity of at least 380 TCH. Running a factory 7 days a week is not only saving on sugar but saving on energy and already power plants which are associated to sugar factories are operating 7 days a week and distilleries and refineries are also going to operate on 7 days a week. So the crop season would go on from 120, 130 days up to 150 or even 180 days with the same production of sugar in the region of 500/520 thousand tons. If it is not a 7 days week we will have 180 days plus 25 or 26 Sundays together with 4 public holidays and we are already on the 210 days for the length of a crop season.

The witness does not find running factories 7 days a week instead of 6 and the crop extended to 180 days to be a startling proposition because no one would be having an installation where we are going only to 65, 70% spare capacity because then we are making huge losses on the actual investment. We have to bear in mind the 36% decrease in turnover and the other fact is to compete with very formidable competitors. For instance, in Sudan they have a factory which is producing 600,000 tons of sugar. Currently the 130 days excludes Sundays and public holidays. It should be 30 to 35 days more because on certain Sundays we will have to shut once in a month for maintenance.

In a paper (Doc AA23) Mr Rajpati prepared in relation to the present dispute, we reproduce some striking remarks:-

“7.1 (iii) “The WTO negotiations in agriculture, the outcome of the EU Commission Study on the Sugar Régime and EU Enlargement will all lead to reduction in the sugar price in the EU. WTO led price

reductions are expected to be in the order of 15 to 20% over the 2005/6-2010/11 period. The other developments could bring further price reductions.

(vii) Only low-cost efficient producers will survive in a not too distant future. The local sugar industry has to move from a protected environment to a competitive one.

(x) Recovery in the sugar industry is not effected overnight.

(xii) Lobbying and diplomatic action vis a vis the EU and in Brussels and Geneva has been significantly intensified since the Lamy initiative of October 2000. However, Mauritius cannot afford to sit back with the hope of positive results stemming from these actions. Instead, it has to act to become much more competitive. A do nothing approach would be simply suicidal.

*(xxv) The debate is no more on the current financial situation and the capacity to pay, which no longer exist given the series of adverse events that have beset the industry, **but rather on the capacity to be competitive and to survive**".*

COUNSEL SUBMISSIONS

Sir Hamid Moollan, QC submitted that it is a matter which does not affect only a sector of the country but it is also a matter which will have a domino effect on every other industry because it is the sector that brings in the totality of value added money in Mauritius fully. Today we no longer have a guaranteed market and guaranteed price. Other countries are ready to take over our share. The demand of the union is for a 40 hour week over 6 days for some and over 5 days for others. This is not an acquired right but merely a demand. There is a major difference to what we see in the fields during crop season now compared to the crop season 40 years ago or so. In the old days everything was done by hand from cutting to loading and carrying. Now a major part of it is being done by mechanization and the strain of work is reduced to nothing. We cannot afford illusory rest time to the workers at the cost of production when our goal is to reduce the cost of production and to remain competitive. Work will go on on Saturdays and this work is going to be paid by way of overtime. We cannot say it is just a few cents as we may find ourselves no longer being able to survive.

He submitted that it is important to remember that this Tribunal is to be guided by the Supreme Court. In its judgment of the 4 August 2003 when the Supreme Court referred this matter to the Tribunal, after ordering a fresh hearing, the Supreme Court went on to say:- that in reconsidering this important issue should take into account the salary increases and other benefits it had already granted to the workers of respondents No. 2 to 6. If the demand is granted it would necessarily reduce the output and would increase the cost. Therefore we will be going against the whole strategy which Government is putting in place in order to help the survival of the Industry. Evidence has been adduced that the debt of the Sugar Cane Industry of the MSPA is Rs5.6 Billion and from 2006 to 2015 it is expected to increase to be at Rs31 Billion. From 2007 to 2010 it is going to be the most decisive

years. From the accompanying measures we need 675 million Euros. Even by obtaining the 15% or 20% which are hoping to get it will be nothing in comparison of the 675 million Euros which are lacking. The benefits, as per Mr Rajpati, will start accruing as from 2011 and this is why 2007 to 2010 are the critical years. Also those funds given by the EU is not coming to the Sugar Industry directly. It is coming to the Government and it will be for the Government to share it out and how it is going to be shared out is a matter of Government policy. Compromisely, giving the 40 hour week over 6 days will be merely a stepping stone to the extension of that 40 hour week over 5 days and the Sugar Industry cannot afford it. The financial aspect of the Sugar Industry has been fully set out in the report of DCDM. At the previous hearing when the report of DCDM was contested and Ernest and Young was commissioned in order to make a counter report, this counter report turned out to be a twin brother of the report of DCDM. This time no counter report is being put in. Any counter report – the claimants are fully aware of – can only buttress and confirm what DCDM has given. It is true that the Industry has obtained some benefits but these factors has been taken into consideration by the DCDM.

In concluding, Sir Hamid Moollan, QC invites the Tribunal not to take any decision which can have adverse effects not only on the history but on the country itself. Over the period of 1999/2000 to 2003/2004 we see the increase in cost of living of 21% has largely been compensated by the average increase in wages of employees of about 40% in the Sugar Industry. Coming to say that wages have remained static over 9, 10, 15 years is against reality because we know that there has been compensation.

In his submission, Mr Antoine Domingue draws our attention to the following:-

Although the Unions had originally claimed that the 40 hours week should be extended to the crop season on a 5 days week basis, the Unions representing the artisans now support a 40 hours 6 days week whereas the unions representing the labourers maintain their claim for a 40 hours 5 days week from Monday to Friday. The Unions submit that the 40 hours week has been a long standing claim of the working class in the Sugar Industry. The Unions consider that the question of principle was first raised when the 40 hours week was introduced in the Civil Service and this has opened the way of its extension for the other sectors. It has been implemented in many sectors of the economy that are considered to be essential services such as the CEB, the CWA, and public transport. The present claim dates for more than 11 years back because it was first introduced during the inter-crop season in the year 1995. Since then several changes have occurred and are still occurring- mechanization centralization, automation and a drastic reduction in workforce from about 46603 in 1985 to 13500 in 2005 which is expected to be further reduced to about 5500 under VRS 2 and the blueprint and the implementation of the Multi Annual Adaptation Strategic Action Plan 2006-2015. In 1994 in the context of an agreement between the millers and the planters and the Government it was decided to introduce the 40 hours week on a 5 days basis with a spreading of Saturday task work during the week. Subsequently the spreading of the Saturday task work was removed by regulations enacted in 1995. The 40 hours week has been applied during the intercrop. The Union submits that the principle of the 40 hours week is an acquired right and that acquired right should also be extended to the crop season. Since 1993 the NRB has recommended the introduction of the 40 hours 5 days week during the

intercrop and a 40 hours 6 days week during the crop season which in its view does not cause any technical problem. With the departure of more than 8000 workers under VRS I the crop activities are carried out by the remaining labourers without any disruption. By and large the crop has been reaped within or before 120 days time frame.

According to the MSPA data a cane cutter cuts on an average of about 4.263 tons daily. In fact he is performing the equivalent of 2 days work daily during the crop season. The cane cutting manually is considered to be the work which is very demanding and the union submits it is high time for the labourers to benefit for a 2 days rest per week. With mechanization the need for manual cutting of cane no longer arises on Saturdays as only 6% of canes are cut fully manually. The advantages drawn by the sugar sector since 1987 by the decisions of successive Governments should also be borne in mind. In 1987 a decision was taken by the Bank of Mauritius to the advantage of the sugar sector in relation to the sugar proceeds in the value of the rupee. Since 1987 there has been the centralization process which the consequential closing of more than 8 sugar factories. Moreover, there is the complete abolition of the duties on sugar as from the 1994 crop. Now with the agreement signed at Savannah, a drastic reduction in overtime payments and a considerable reduction in the number of persons employed on shift has taken place. The MSPA has estimated the implementation of the 40 hours 6 days week during the crop season as awarded by the PAT on 20 December 2002 at Rs13 Million at that time. With the drastic labour reduction, with the eventual closing of the sugar factories, the cost of the 40 hours on a 6 days week is presently estimated at Rs19.7 million by 2006. It is worth noting that, before the Supreme Court, in its affidavit of May 2003, the MSPA estimated the cost of the various Awards as follows – the part award of salary increase delivered in December 1999 at Rs200 Million, part award on 40 hours 6 days week delivered on 20 December 2002 was subsequently quashed at Rs13 Million and the final award on other measures delivered on 16 May 2003 at Rs 78 Million making at total of Rs 308 Million.

Mr Domingue invites the Tribunal to consider the following:-

- (a) New shift systems are being introduced in the factory to eliminate overtime cost. The number of artisans will be reduced by almost half.
- (b) In the last collective agreement signed in 1 June 1994 there has not been any salary review within the Industry except for what has been awarded in December 1999, which is seven years ago.
- (c) The existing factories are modernizing their operations and are expected to manufacture more than 100 thousands tons of sugar yearly per unit.
- (d) Intensive mechanization is taking place both at factory and field level operations.
- (e) Alternative sources of income, production of electricity production of ethanol, IRS, investment in agro industry and tourism should also be borne in mind.
- (f) In respect of harvesting on Saturdays, canes crushed on Saturdays have not necessarily been harvested on that very day. Canes transported to factories on Saturday involve only non-agricultural workers such as drivers, lorry loaders and helpers who are attached to the

garage and transport department whose remuneration and conditions of service are governed by the Sugar Industry Non-Agricultural Workers Remuneration.

- (g) According to the data supplied by the M.S.P.A as per document dated 25 September 2006, it is demonstrated that only 6% of the cane cutting are fully manual, 30% are fully mechanized and 64% are semi-mechanized.
- (h) Concerning the issue that Mauritian cane cutters receive a higher wages than their foreign counterparts, the Tribunal's attention is drawn to the fact that no quota system was imposed on the cane cutters and the field was not fully mechanized at the time when the survey was carried out by Mr Todd.

To conclude Mr Domingue submits that the Tribunal should award that the 40 hours week should be extended to the crop season as follows:-

- (a) the 40 hours 6 days week to non-agricultural workers and
- (b) the 40 hours 5 days week to agricultural workers and this would not entail a significant financial cost.

TRIBUNAL'S FINDINGS

- The background of the triple shock facing Mauritius, namely the 36% reduction of the sugar price brought by the reform of the EU sugar regime, continually rising oil prices and the dismantling of the Multifibre Agreement requires bold measures on the part of the sugar industry for its sustainability and survival. Economic imperatives dictate that it cannot do otherwise.
- Reform in the sugar industry has been an ongoing process for a number of years now and the Tribunal's last wish is to step in the way of the reform mechanism that has been set up.
- Sugar has a multifunctional role in Mauritius which explains the importance to continue the cultivation of this crop. The role encompasses both direct and indirect contributions, namely economic return of all stakeholders, income for employees and net fund flows for the overall economy, among other things. Needless to emphasize that our history with sugar goes back to nearly four centuries.
- We are doing an exercise that necessarily invites us to consider the economic burden of the sugar sector and in so doing, we cannot discard the various difficulties the sector is facing with lower sugar prices and fiercer competition, in line with the provisions of **Section 47 of the Industrial Relations Act 1973** as amended:-

“47 Principles to be applied

Where any matter is before the Tribunal, the Commission or the Board, the Tribunal, the Commission or the Board shall, in the exercise of their functions under this Act, have regard, inter alia, to –

- (a) *the interests of the persons immediately concerned and the community as a whole;*
- (b) *the principles and practices of good industrial relations; and*
- (c) *the need for –*
 - (i) *Mauritius to maintain a favourable balance of trade and balance of payments;*
 - (ii) *to ensure the continued ability of the Government to finance development programmes and recurrent expenditure in the public sector;*
 - (iii) *to increase the rate of economic growth and to provide greater employment opportunities;*
 - (iv) *to preserve and promote the competitive position of local products in overseas market;*
 - (v) *to develop schemes for payment by results, and so far as possible to relate increased remuneration to increased labour productivity;*
 - (vi) *to prevent gains in the wages of employees from being adversely affected by price increases;*
 - (vii) *to establish and maintain reasonable differentials in rewards between different categories of skills and levels of responsibility; and*
 - (viii) *the need to maintain a fair relation between the incomes of different sectors in the community.”*

- The 40 hour week is perceived to be the culmination of a long and arduous struggle of agricultural workers of the sugar industry. One cannot ignore the fact that whatever may be other imperatives there is a symbolism associated with it that gives an emotional dimension that goes beyond mere cartesian considerations.
- In the introduction to the **Sugar Sector Strategic Plan** of June 2001 (Annex I to Respondent's Statement of Case), we read:-

“Government, fully conscious of the threats and challenges facing the Sugar Industry, decided that a Sugar Sector Strategic Plan be elaborated after consultation with all stakeholders. This task was assigned to the Mauritius Sugar Authority (MSA) which handed over its report end-May.

The Sugar Industry is facing serious difficulties and needs a major urgent rethinking. The erosion of preferential access on our traditional export markets for sugar and the challenges imposed by the trade liberalization process call for immediate action. The long-term viability of our sugar industry depends on its ability to cut down its cost of production and ensure a selling price for our sugar that would enable it to compete with the least developed country suppliers. Last but not least, the industry cannot and should no longer rely on depreciation of the Rupee.

Reform is therefore imperative. This five-year strategic plan is meant to create the proper environment to enable the industry to rethink its operations thoroughly, ensure its efficiency and viability and win the competitiveness battle.

The reform process implies more centralization, cost reduction, enhanced productivity, man-power rightsizing, an optimal use of cane sugar resources, well-planned diversification activities, improvement of value added and the creation of new opportunities.

This comprehensive package reconciling the conflicting requirements and views of the stakeholders of the sector will enable the sugar industry to face the formidable challenges ahead. As such, the package should be viewed as a whole and not from a piecemeal perspective.”

- The whole idea of centralization i.e. the closure of seven out of the existing 11 factories is to meet cost reduction, produce more sugar and reach the right size of human resources in production entities to reduce the level of labour costs.
- In 1998 the total work force in the Sugar Industry was about 24000. Nearly 11000 of the workers have left and by 2009 the population of the Sugar Industry will be about 4000 following the “V.R.S”, when sugar prices will be reduced by 36% and only four sugar mills in operation.
- The demand of agricultural workers is now a 5day/40 hour week whereas for the non-agricultural workers it is 6 day/40- hour week during the crop season. The average duration of the crop activities is about 132 days (6x22).
- The Tribunal considers that granting the 40-Hr week on a 5-day basis would add a financial burden of Rs 252 M per year, over a Billion Rupees over a lapse of each four years and it can only be a major blow to the sugar sector sustainability and will inevitably result in an increase in the cost of production.
- The Unions have not successfully challenged the figures advanced by the sugar industry be it on the 5-day or 6-day basis. Unless proven otherwise, we have no reason to doubt the figures put

forward by DCDM. MSPA has requested DCDM to carry out a financial study on the remitted costs of the introduction of the 40-Hr week during the crop season. These have been computed to represent some Rs 252 M per crop i.e. an average increase of 16% of crop wages increase (i.e. a 5/6 months period per year). The basis of this computation has been checked and found accurate by Coopers and Lybrand who had been asked by the Unions to verify the methodology used by the respondent. We believe that the constraints of the sugar industry cannot be positively addressed by inflicting heavy financial burden in its pay policy. Remuneration policy should be more performance based.

- Substantially the same quantity of canes are crushed from Monday to Saturday. The normal working hours on week days are 5 x 8 hours but in practice it is 5 x 6 and on Saturday it is 5 hours. About 60% to 70% of the canes are crushed on the same day and canes cut on Saturday are crushed on Mondays. Normally 20% of canes are cut by machines and about 80% manually. With the reforms ahead the percentage of cutting by machines may reach 50%. A worker can cut about 4 tons of canes daily and machines 160 tons. However the machine driver is assisted by at least two other workers.
- There are many operations in the Sugar Industry where non-agricultural and agricultural workers have to perform together. In order to optimize the quality of sugar from canes, it is important that they are sent to factories as early as possible after the cutting has been done. Leaving canes in the fields for longer time after cutting leads to fermentation which may impede production of sugar. Witness Christian Foo Kune clearly explained this although he was not in a position to confirm the percentage of fermentation. Other activities such as the clearing of the fields, manual weeding, application of fertilizers and the clearing of stones should be carried out as soon as the canes are cut. Those operations should be effected well on time, bearing in mind weather conditions.
- The Sugar Industry derives additional incomes from the production of electricity, the Integrated Resort Scheme, the tourism and the agro-industry.
- Faced with rising costs management inevitably takes measures to minimize effects through cost cutting or by using alternative strategies. Thus projected costs are often a worst case scenario as actual results are much better. By the same token revenues are estimated conservatively at least levels. These are in keeping with the concept of prudence for estimated results.
- Witness Dewnath conceded in cross-examination that the DCDM report was cross-checked by Coopers and Lybrand and the figures were confirmed to be more or less the same. It goes without saying that the cross-checking was done at the request of the Unions.

- The aggregation of results for the sugar industry is an arithmetic exercise which involves very disparate units with large capacity differentials and very unequal individual results. Conclusions from such an aggregation should not be drawn hastily especially as smaller inefficient units are to be closed down leading to major cost gain.
- From page 9 of the BDO De Chazal Du Mée report submitted by the MSPA (Table I), we note the following:-

For the years 1995 to 2004 the net outcome from sugar activity resulted in a profit ranging from Rs 23 million to Rs 964 million, except for two years (1999 and 2000) when there were losses.

When these results were supplemented by income from other activities, profits before tax varied from Rs 2163 million to Rs 512 million except for year 2000 when the loss was Rs 252 million.

- At page 9 of the report, using year 1995 as base (100) the movement of sugar income and sugar expenditure is as shown:

<i>Year</i>	<i>Income</i>	<i>Expenditure</i>
1995	100	98
1996	113	105
1997	114	111
1998	128	117
1999	107	112
2000	108	121
2001	129	128
2002	122	115
2003	130	120
2004	146	126

We come to the following conclusions:

- (a) That Income had risen from an index of 100 to 146 or by 46% whilst expenditure had risen from an index of 98 to 126 or by 28.6%.
 - (b) Therefore Income rose faster than expenditure during that period.
 - (c) VRS costs in 2004 to 2006 had not been credited with the full receipts from the sale of land.
- The plan of the **Mauritius Sugar Authority** as stated in their report aims to provide benefits to growing, milling and allied activities. There is as such no provision for workers who remain in the

industry. It should be noted that voluntary retirement scheme is an exit plan. It is only reasonable that those workers who remain in the industry be provided with some incentives.

- The 40 hour week excluding Saturdays is not an acquired right although the principle of it has already been established by *GN NO. 10 of 1995* during the inter-crop season. (See **MSPA v/s The Minister of Labour and Industrial Relations SCJ 302 of 2000**). It is a fact that non-agricultural workers used to work 45 hours a week i.e. 8 hours on week days and 5 hours on Saturdays – vide *paragraph 2 of the Second Schedule to the Sugar Industry (Non Agricultural Workers) (Remuneration Order) Regulations 1985*. The National Remuneration Board for the purpose of the introduction of the 40-hour week during the intercrop season recommended on 10 January 1995 that non-agricultural workers should work for 5 days only and for 8 hours per week day, making a total of 40 working hours. The recommendation was implemented by the Minister of Labour and Industrial Relations in the *Sugar Industry (Non Agricultural Workers) (Remuneration Order) (Amendment) Regulations 1995 – vide regulation 4 (b) of [GN No. 10 of 1995]* which prescribes (a) the working hours during the intercrop season to be “8 hours on every day other than Saturday or a public holiday” and (b) a higher rate of remuneration, in accordance with section 16 of the Labour Act, for work performed on a Saturday. When in its final recommendations made on 17 April 1995, the NRB stated that “as a corollary to the Board’s recommendations both agricultural and non-agricultural workers are not compelled to work on Saturdays and if they do perform work on that day they should be paid in accordance with section 16 of the Labour Act” it was in effect saying that as a natural consequence of its earlier recommendation which had since been implemented, a non-agricultural worker, just like an agricultural worker who is employed on task work, cannot be required, given the 40-hour week on the basis of a 5-day week, to work on a Saturday unless he consents to performing such work and is paid at the higher rate specified in *section 16 of the Labour Act*.
- Mr Martin Todd who was subjected to a thorough cross-examination, points out that Mauritius still remains an intermediate cost producer while Brazil, South Africa, Australia, Malawi, Swaziland and Zambia amongst others presently are more competitive. We cannot be out of international competitiveness and our labour costs are higher than other competitive countries. Total hours of work of a Mauritian field worker during crop is 738 (123 x 6 hours) and it is the lowest in the crop season of 12 countries found in Mr Todd’s report. Mauritius stands out as the country with the shortest working week. 12 countries were chosen to reflect 3 categories. The first included 3 of the world market players Australia, Brazil and Guatemala. The second includes ACP countries and the third other world players.
- A 40 hour 6-day week recommendation during the crop season will more likely than not mean that field workers will have to work 7 hours on week days and 5 hours on Saturdays. It necessarily entails more rest time daily and this should be beneficial to their health and it should enhance

productivity. The DCDM report confirms that there are no financial implications for agricultural workers who already work 6 days a week. As regards the non-agricultural workers, *“the 6day 40-hr week will not change their hourly wage but it will have an impact on their overtime. As a result of the 40-hr week, they will now get 5 hours of overtime every week. The financial impact is as follows:*

*“Rs 34.67 (hourly rate = Rs 7,211/26 days/8 hours) * 1.5* 5 hours of overtime.
4,118 (number of agricultural workers)* 20 Saturdays*
1.32 (bonus) = Rs 28.3 million.” (Appendix IV – Page 38).

- We must not lose sight of what the Supreme Court stated when quashing the Award of the then President of the Permanent Arbitration Tribunal, Mr H. Balgobin, **“It stands to reason that the first respondent in reconsidering this important issue should take into account the salary increases and other benefits it already granted to the workers of respondents No. 2 to 6”** (SCJ No. 212 of 2003). As regards the costs of other measures contained in previous Permanent Arbitration Tribunal Awards, we understand that the quasi-totality of those benefits have already been implemented and have been calculated by the DCDM to represent the combined cost of Rs 278 Million per year (including the wage increase of 14%).
- In the meantime, the following circumstances paved their way namely:-

 - (a) the Mauritian rupee has been considerably devalued;
 - (b) the Voluntary Retirement Scheme (VRS) has been implemented and will soon proceed on its second phase;
 - (c) mechanization of the industry is on the increase;
 - (d) centralisation of the mills is a matter of reality; and
 - (e) the reduction in the labour force.
- While we stress that the 40-hr 5day week to be detrimental to the restructuring of the sugar sector as at present, we consider that the latter has benefited substantially from factors we referred to in the preceding paragraph. The granting of the Rs 28 Million annually to meet the costs of the 40-hr week on a 6day basis to both agricultural and non-agricultural workers is to our mind a burden the sugar sector can bear. Indeed, it is a marginal cost that can be met by effecting savings on other items. We consider therefore that the respondent has the capacity to pay the 40-hr week on 6 days for both agricultural and non-agricultural workers. It is also an investment in good and harmonious industrial relations. It is interesting to feel the Unions’ pulse at para 4.2 of a Statement of Case filed on 10.02.2004:-

“4.2 Concerning the technical constraint element, the NRB has already recommended that *the 40 hour week based on 5 days during inter-crop and on 6 days during crop will not pose technical problems*. The Unions’ conclusions are that the 40 hours’ 6 days’ week can be awarded without any problem in both the plantations and the factories. The technical elements have already been subjected to an in-depth study by the NRB. The MSPA has had the opportunity to make representations to the NRB. The Union considers that there is no reason to come back over this issue.”

- We have been impressed by the testimony of witness Nandeo Lutchmun Roy who explained in no ambiguous terms the struggle of the workers which has been on for nearly four decades. In his very humble way, he gives us the portray of him as a sincere trade union leader who genuinely believes that all work and no play makes Jack a dull boy. To a lesser extent, witness Lall Dewnath has also brought home to us the importance of the workers’ cause although we could not make head and tail of his calculations regarding the billions of rupees the sugar sector has saved. On the other hand, we find a major part of witness Jack Bizlall’s testimony to suffer from subjective inferences from facts, disputable conclusions, erratic personal views, citations and events taken out of context, not to say his baseless allegations and casting of aspersions that smack of insolence and bad faith. (See **Dev Hurnam v/s The State of Mauritius and Others SCJ 140 of 2007**).
- True it is that in its effort to survive and be competitive, an enterprise has to save on every penny (and the pound will look after itself), everything cannot be done off the back of its employees. We fully join hands with the Unions’ struggle for their share in the benefits of the reform. Work in the sugar industry is hard and strenuous. Workers are exposed to weather caprices, rain, cold, drought and the burning sun and being there for long hours during the day must also be a matter of recognition. In other words, while undergoing reforms, the sugar industry cannot ignore the drench on the beings of those sweaty workers. A shorter working week should contribute substantially to the physical well being of all workers with less stress to face and more time for leisure.

AWARD

For the reasons stated above, we consider the Unions’ demand for a 40-hr week on 5 days to be at present unreasonable.

The Tribunal grants a 40 hour week on a 6-day basis to both agricultural and non-agricultural workers from Monday to Saturday. This Award is to be implemented as from the present crop season 2007.

This arbitration must not create winners or losers. Each side must share in the fruits of progress. Any decision must be effective and stand the test of time. In our endeavour to meet those guidelines, we could not do otherwise than putting the country first.

'Sweet is thy beauty, sweet is thy fragrance, around thee we gather...'

(sd) Rashid Hossen
Ag. President

(sd) Binnodh Ramburn
Member

(sd) Rajendranath Sumputh
Member

(sd) Ashoke Roy
Assessor

(sd) Michel Hardy
Assessor

This 22nd June 2007