

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

Claim No 2013 Folio 451

B E T W E E N:

SONG MAO & OTHERS

Claimants

- and -

(1) TATE & LYLE INDUSTRIES LIMITED
(2) T & L SUGARS LIMITED

Defendants



**DEFENCE AND COUNTERCLAIM OF THE
FIRST AND SECOND DEFENDANTS**

DEFENCE

1. In this Defence and Counterclaim:
 - 1.1 the Particulars of Claim is referred to as "the PoC";
 - 1.2 the Annex to the PoC is referred to as "the Annex";
 - 1.3 the Claimants are referred to as "the Villagers";
 - 1.4 the First Defendant, Tate & Lyle Industries Limited is referred to as "Tate & Lyle";
 - 1.5 the Second Defendant, T & L Sugars Limited, is referred to as "TLS";
 - 1.6 the Kingdom of Cambodia is referred to as "Cambodia";
 - 1.7 the Government of the Kingdom of Cambodia is referred to as "the Government";
 - 1.8 the Ministry of Agriculture, Forestry and Fisheries of the Government is referred to as "MAFF".

2. As to paragraph 1 of the PoC:
 - 2.1 the Defendants admit and assert that the Chikhor, Chhouk and Trapaing villages (“the Villages”) are located in the province of Koh Kong in Cambodia;
 - 2.2 2.2.1 by their very nature, the matters asserted in the PoC concerning the ownership of the land referred to in paragraph 1 of the PoC (and/or the entitlement of the Villagers to possession of that land) are not within the knowledge of the Defendants;
 - 2.2.2 in the circumstances (pending the provision of the Further Information the Defendants have requested from the Villagers) the Defendants make no admission as to whether the Villagers (or any of them) are:
 - (1) (a) residents of the Villages; and/or
 - (b) former residents of the Villages;
 - (2) the owners of and/or legally entitled to possession:
 - (a) of the land referred to in the Annex (“the Land”); and/or
 - (b) of the land marked on the maps included in the Annex
(or of any other land);
 - 2.3 except as stated above, the Defendants make no admissions.
3. As to paragraphs 2 and 3 of the PoC:
 - 3.1 the Defendants admit and assert:
 - 3.1.1 (1) that Tate & Lyle is a subsidiary of Tate & Lyle plc;
 - (2) that the details of Tate & Lyle’s incorporation and registration are as stated in paragraph 2 of the PoC;
 - (3) that at all relevant times until September 2010 Tate & Lyle carried on businesses including the importation and refining of sugar in England;
 - 3.1.2 that on 30 September 2010 Tate & Lyle sold its sugar refining business to TLS;
 - 3.1.3 (1) that the details of TLS’s incorporation and registration are as stated in paragraph 3 of the PoC;

- (2) that since September 2010 TLS has carried on businesses including the importation and refining of sugar in England;
- (3) that TLS is an indirect subsidiary of American Sugar Holdings Inc ("ASH");
- (4) that ASH:
 - (a) has at all relevant times carried on the business of refining sugar;
 - (b) is the world's largest sugar refiner;

3.2 the Defendants assert:

- 3.2.1 that the "Everything But Arms" ("the EBA Initiative") is an initiative of the European Union, which was introduced on 5 March 2001, with a view to encouraging the development of the most economically disadvantaged countries in the world;
- 3.2.2 that under the EBA Initiative, imports to the European Union from "Least Developed Countries" (or LDCs) are duty-free and quota-free;
- 3.2.3 that Cambodia has the status of an LDC for the purposes of the EBA Initiative;
- 3.2.4 that the raw sugar which was purchased by Tate & Lyle and by TLS (in the circumstances referred to in 17.3 and 19.3 below) was purchased under the auspices of the EBA Initiative.

4. As to paragraphs 4 to 6 of the PoC:

4.1 the Defendants admit and assert:

- 4.1.1 (1) that Koh Kong Plantation Co Ltd ("KPT") and Koh Kong Sugar Industry Co Ltd ("KSI") are Cambodian companies;
- (2) that both KPT and KSI are members of the KSL Group of companies;
- (3) that KPT and KSI were incorporated on 29 May 2006;
- (4) that KPT and KSI are involved in the agro-production and processing of sugar cane in Koh Kong Province;
- 4.1.2 that Chamroon Chinthammit is the President and CEO of the KSL Group;
- 4.1.3 that KSL:
 - (1) is incorporated in Thailand;

- (2) has premises at the address referred to in paragraph 6.1 of the PoC (in Bangkok);
- 4.2 4.2.1 the Defendants admit and assert that Ly Yong Phat ("Senator Ly"):
 - (1) is a Cambodian national;
 - (2) has been a senator of Cambodia since 2006;
- 4.2.2 (1) the Defendants admit that until 3 March 2010 Senator Ly was a shareholder in KPT;
- (2) the Defendants deny that since 3 March 2010 Senator Ly has been a shareholder in KPT;
- 4.2.3 (1) the Defendants admit that until 8 January 2010 Senator Ly was a shareholder in KSI;
- (2) the Defendants deny that since 8 January 2010 Senator Ly has been a shareholder in KSI;
- 4.3 4.3.1 the Defendants admit:
 - (1) that Ve Wong Corporation ("Ve Wong") is a Taiwanese corporation;
 - (2) that Ve Wong has premises at the address (in Taiwan) referred to in paragraph 6.2 of the PoC;
- 4.3.2 (1) the Defendants admit and assert:
 - (a) that between 15 November 2006 and 3 March 2010 Ve Wong was a 30% shareholder in KPT;
 - (b) that since 30 October 2007 Ve Wong has been a shareholder in KSI;
 - (c) that Ve Wong presently holds a 20% shareholding in KSI;
- (2) the Defendants deny that since 3 March 2010 Ve Wong has held any shareholding in KPT;
- 4.4 the Defendants admit and assert that since 8 October 2012 :
 - 4.4.1 the shareholders of KPT have been:
 - (1) Wynn In (80%); and
 - (2) Best Foundation (20%); and
 - 4.4.2 the shareholders of KSI have been:

- (1) Khon Kaen Sugar Industry Public Co Limited (80%); and
 - (2) Ve Wong (20%);
- 4.5 4.5.1 the Defendants admit that both KPT and KSI have offices at the address referred to in paragraph 6 of the PoC (in Phnom Penh);
- 4.5.2 the Defendants deny that KPT and KSI operate as a single joint venture;
- 4.6 except as stated above, the Defendants make no admissions.

5. As to paragraph 7 of the PoC:

- 5.1 by their very nature, the facts asserted are not within the knowledge of the Defendants;
- 5.2 in the circumstances (and pending the provision of the Further Information the Defendants have requested from the Villagers):
- 5.2.1 the Defendants make no admissions as to whether the Villagers (or any of the Villagers):
- (1) own the Land (or any part of it); or
 - (2) have at any time owned the Land (or any part of it);
 - (3) live on the Land (or any part of it); or
 - (4) have at any time lived on the Land (or any part of it);
 - (5) have, at any time, utilised the Land (or any part of it) whether for the purposes of maintaining a traditional subsistence lifestyle or otherwise;
- 5.2.2 if the Villagers (or any of them) have at any time owned and/or lived on the Land (or any part of it), the Defendants make no admissions:
- (1) as to when they became the owners of the land in question; or
 - (2) as to the period of time for which they have lived on the land in question;
- 5.3 5.3.1 the Defendants admit that the Cambodian Land Law of 2001 ("the 2001 Land Law") provides (in Article 30, as translated):
- (1) that:
"Any person who, for no less than five years prior to the promulgation of this law, enjoyed peaceful, uncontested possession of immovable property that can lawfully be privately possessed, has the right to request a definitive title of ownership";

(2) that:

"in case the granting of a definitive title to ownership is subject to an opposition, the claimant has to prove that he himself fulfils the conditions of peaceful, uncontested possession for no less than five years over the contested immovable property or to prove that he purchased the immovable property from the original possessor or his legal beneficiary or from the person to whom the ownership was transferred, or from their successors."

5.3.2 if any of the Villagers have lived on the Land (or any part of it) for a period of five years, the Defendants make no admission as to whether the Villager (or Villagers) in question:

- (1) has/have requested a definitive title of ownership; or
- (2) is/are in a position to fulfil/fulfil the condition of peaceful, uncontested possession for no less than five years.

6. As to paragraph 8 of the PoC:

6.1 the Defendants admit and assert:

6.1.1 that the Cambodian Land Law of 2001 ("the 2001 Land Law") contains in (in Chapter 5 of Title II) a regime for "Land Concessions";

6.1.2 that Article 49 of the 2001 Land Law (which is within Chapter 5 of Title II) states (as translated):

"Land concessions responding to an economic purpose allow the beneficiaries to clear the land for industrial agricultural exploitation of land in the territory of the Kingdom of Cambodia";

6.2 the Defendants do not admit that the Government (whether acting by armed military police or otherwise) "cleared" the Land from around 19 May 2006 (or at any other time);

6.3 if (which the Defendants do not admit) the Land was "cleared":

6.3.1 (1) the Defendants deny that any of those involved in "clearing" the Land were acting on behalf of KSI and/or KPT (or either of them);

(2) in particular, but without prejudice to the generality of the denial in (1) above it is asserted that (as stated in 4.1 above):

- (a) (i) KSI was not incorporated until 29 May 2006;
- (ii) KPT was not incorporated until 29 May 2006;

- (b) (i) KPT did not obtain the land concession referred to in 8.1.1(1) below until 2 August 2006;
- (ii) KSI did not obtain the land concession referred to in 8.1.1(2) below until 2 August 2006;

6.3.2 the Defendants make no admission:

- (1) as to whether the Land was "cleared" without prior warning;
- (2) (a) as to the purpose for which the Land was "cleared"; and
- (b) in particular as to whether the Land was "cleared" for the purpose of granting land concessions (whether for the establishment of a plantation on which sugar cane was to be grown, or otherwise);

6.4 except as stated above, the Defendants make no admissions.

7. As to paragraphs 9 and 10 of the PoC:

7.1 the Defendants admit:

7.1.1 that Article 58 of the 2001 Land Law ("Article 58") (which is within Chapter 5 of Title II) states amongst other things (as translated):

"A land concession can only be granted on lands that are part of the private property of the State."

7.1.2 that Article 59 of the 2001 Land Law ("Article 59") (which is within Chapter 5 of Title II) states (as translated):

"Land concessions areas shall not be more than 10,000 hectares;

Existing concessions which exceed such limit shall be reduced. However, if such reduction would result in compromising the exploitation in progress, a concessionaire may obtain a specific exemption. The procedures for reductions and specific exemptions shall be determined by sub-decree.

The issuance of land concession titles on several places relating to surface areas that are greater than those authorized by the first paragraph in favour of one specific person or several legal entities controlled by the same natural persons is prohibited."

7.2 the Defendants deny that Article 58 contains any reference to "the private property of individuals".

7.3 further, to the extent that the same is alleged, the Defendants deny that KPT and KSI were "controlled by the same natural persons".

8. As to paragraphs 11 and 12 of the PoC:

8.1 the Defendants admit and assert:

8.1.1 that on 2 August 2006 MAFF entered into written agreements ("the Land Concessions Agreements") granting the following land concessions ("the Land Concessions"):

(1) a land concession to KPT for a period of 90 years in respect of an area within the Land; and

(2) a land concession to KSI for a period of 90 years in respect of an area within the Land ("the KSI Land Concession");

8.1.2 that the provisions of the Land Concessions Agreements referred to in 8.1.1 above were (*mutatis mutandis*) identical;

8.1.3 that Article 3 of the Land Concessions Agreements recited that KPT/KSI was to make business production involving:

(1) the plantation of sugar cane and/or other crops;

(2) the processing of sugar, ethanol and/or sugar/ethanol by-products and/or added value products from sugar cane and/or other crops;

(3) the generation of electricity by using sugar cane, other crops, by-products and/or added value products as fuel; and/or

(4) any other business related to the business referred to in (1), (2) and (3) above;

8.1.4 that Article 13 of the Land Concessions Agreements recited that those agreements were to be governed by the laws of Cambodia;

8.2 the Defendants assert that, at the time the Land Concessions were granted to KPT and KSI, the areas referred to in 8.1.1 above were the private property of the Government;

8.3 the Defendants:

8.3.1 do not admit that the grant of the Land Concessions to KPT and KSI respectively was intended to circumvent Article 59;

8.3.2 deny that the grant of the Land Concessions was "illegal" (whether for the reasons set out in paragraph 12 of the PoC or otherwise);

- 8.4 further or in the alternative, if (contrary to the denial in 8.3.2 above) the grant of the Land Concessions (or of either of those concessions) was "illegal", the Defendants deny that KPT and or KSI were thereby prevented from exercising their rights under the Land Concessions;
- 8.5 further or in the further alternative, the Defendants will contend:
- 8.5.1 that the grant of the Land Concessions was a governmental act by the Government of a recognised foreign state, namely Cambodia, within the limits of its own territory;
- 8.5.2 that, in the circumstances, the English Court cannot adjudicate upon, or call into question, the grant of the Land Concessions;
- 8.6 except as stated above, the Defendants make no admissions.
9. As to paragraph 13 of the PoC:
- 9.1 the Defendants repeat the matters stated in 6.3 above (concerning the alleged clearance of the Land);
- 9.2 9.2.1 by their very nature, the facts asserted in paragraph 13 of the PoC (concerning the nature and occurrence of alleged "abuses") are not within the knowledge of the Defendants;
- 9.2.2 in the circumstances (and pending the provision of the Further Information the Defendants have requested from the Villagers concerning the alleged abuses) the Defendants make no admissions:
- (1) concerning the allegation that the Villagers were subjected to abuses of their human rights; and, in particular
- (2) concerning the matters pleaded in paragraphs 13.1, 13.2, 13.3 and 13.4 of the PoC.
10. As to paragraph 14 of the PoC:
- 10.1 the Defendants repeat the matters stated in 9.2 above (concerning the alleged abuses);
- 10.2 10.2.1 the Defendants admit that a meeting took place on about 12 November 2006 between KPT's plantation manager, representatives of the Government and representatives of the residents of the Villages;
- 10.2.2 the Defendants make no admissions:

- (1) concerning the discussions which took place at that meeting;
- (2) concerning any agreement which may have been made at that meeting.

10.3 further, the Defendants admit and assert:

- 10.3.1 (1) that Title VI of the 2001 Land Law provides for the establishment of a Cadastral Commission under the supervision of the Ministry of Land Management, Urban Planning and Construction;
- (2) that Article 226 of the 2001 Land Law (which is within Title VI) provides that the Cadastral Commission shall have the competence to identify properties, establish cadastral index maps, issue ownership titles, register lands and inform all persons as to the status of a parcel of land;
- 10.3.2 (1) that on 26 February 2007 7 Plaintiffs representing 207 families ("the Cambodia Plaintiffs") filed a complaint with the Koh Kong Provincial Court requesting the cancellation of the KSI Land Concession;
- (2) that on 22 June 2010 the Cambodia Plaintiffs sought to amend the basis of their complaint from a basis involving the cancellation of the KSI Land Concession to a basis involving the abrogation/nullity of the KSI Land Concession;
- (3) that on August 2012 the Cambodia Plaintiffs filed a motion for the inclusion of an additional ground, to the effect that paddy rice and farm lands affected by the KSI Land Concession have a total surface area of 1,405.847 hectares (comprising land in Chikhor village with a surface area of 789.65 hectares, land in Chhouk village with a surface area of 559.65 hectares and land in Trapaing Kandal village with a surface area of 57.6 hectares);
- (4) that on 30 August 2012 the First Instance Court of the Koh Kong Provincial Court:
 - (a) concluded that many of the letters and documents which had been submitted to it by the Cambodian Plaintiffs had not been submitted to the Cadastral Commission;
 - (b) transferred the complaint referred to in (1) above to the Cadastral Commission for its consideration;

10.4 10.4.1 except as stated in 10.2 and 10.3 above, the facts asserted in paragraphs 14.1 to 14.5 of the PoC (concerning the documentation and publication of the alleged abuses) by their very nature are not within the knowledge of the Defendants;

10.4.2 in the circumstances (and pending the provision of the Further Information the Defendants have requested from the Villagers concerning those matters) the

Defendants make no further admissions concerning the matters alleged in paragraphs 14.1 to 14.5 of the PoC.

11. As to paragraph 15 of the PoC:

- 11.1 the Defendants repeat the matters stated in 9.2 above (concerning the alleged abuses);
- 11.2 11.2.1 it is the understanding of the Defendants that paragraph 15 of the PoC is concerned with the Villagers' receipt of compensation and/or consideration from parties other than the Defendants;
 - 11.2.2 to the extent that the same is alleged, the Defendants deny that the Villagers (or any of them) are entitled to compensation from the Defendants;
- 11.3 the Defendants have requested Further Information from the Villagers concerning various aspects of paragraph 15 of the PoC, including:
 - 11.3.1 the level of compensation to which they claim to be entitled;
 - 11.3.2 (1) whether they have already received any compensation; and, if so
 - (2) (a) the amount of compensation they have already received; and
 - (b) from whom they have received that compensation;
- 11.4 11.4.1 by their very nature, the facts asserted in paragraph 15 of the PoC (concerning the receipt of compensation and/or consideration by the Villagers) are not within the knowledge of the Defendants;
 - 11.4.2 in the circumstances, and pending the receipt of the Further Information referred to in 11.3 above, the Defendants make no admissions concerning the matters alleged in paragraph 15 of the PoC.

12 As to paragraph 16 of the PoC:

- 12.1 it is admitted and asserted:
 - 12.1.1 that Community Legal Education Center ("CLEC") is a non-governmental organisation which is concerned with achieving "legal empowerment" in Cambodia;
 - 12.1.2 that in about July 2010:
 - (1) CLEC produced a report (dated 12 July 2010) which was entitled "Illegal Economic Land Concessions for Sugar Production in the Province of Koh Kong, Cambodia" ("CLEC's Report");

- (2) a copy of CLEC's Report was provided to Tate & Lyle;
 - 12.2 the Defendants do not admit the accuracy of any of the matters stated in CLEC's Report;
 - 12.3 except as stated above, the Defendants make no admissions.

- 13. As to paragraph 17 of the PoC:
 - 13.1 it is admitted:
 - 13.1.1 that from about July 2010 (when Tate & Lyle received a copy of CLEC's Report) Tate & Lyle was aware that CLEC was making the allegations which were set out in CLEC's Report;
 - 13.1.2 that from about December 2010 TLS was aware that CLEC was making the allegations which were set out in CLEC's Report;
 - 13.2 if (which is not admitted) the events described in paragraph 13 of the PoC (or any of those events) occurred, it is specifically denied:
 - 13.2.1 (1) that Tate & Lyle was at any relevant time aware that those events had occurred;
 - (2) that Tate & Lyle ought at any relevant time to have been aware that those events had occurred;
 - 13.2.2 that TLS (which was not incorporated until July 2010):
 - (1) was at any relevant time aware that those events had occurred; or
 - (2) ought at any relevant time to have been aware that those events had occurred;
 - 13.3 except as stated above, the Defendants make no admissions.

- 14. As to paragraph 18 of the PoC:
 - 14.1 the Defendants repeat the non-admissions in 5.2 above (concerning the Villagers' ownership of the Land);
 - 14.2 the Defendants admit and assert:
 - 14.2.1 that from about 2006 onwards KPT and KSI cultivated sugar cane on the Land;
 - 14.2.2 that in October 2008 KSI commenced the construction of the Sre Ambel sugar mill ("the Sre Ambel Mill");

- 14.2.3 that the Sre Ambel Mill began operating in December 2009;
- 14.2.4 that since December 2009 the sugar cane cultivated on the Land has been processed into raw sugar at the Sre Ambel Mill;
- 14.2.5 that the Sre Ambel Mill is owned by KSI.

15. As to paragraphs 19, 20 and 21 of the PoC:

- 15.1 the Defendants admit and assert that Article 95 of the 2001 Land Law (which is within Title III) states (as translated):

"The fruits resulting from cultivation of land belong to the owner of such land, provided he pays third parties for the cost of ploughing and harrowing works, labor done by them and seeds."

- 15.2 the Defendants deny that any of the Villagers have at any time made any payment to KPT and/or KSI:

- 15.2.1 for the costs of ploughing and harrowing works carried out by them in cultivating the sugar cane on the Land;

- 15.2.2 for the costs of labour undertaken by them (including the work undertaken in processing the sugar cane into raw sugar at the Sre Ambel Mill); and/or

- 15.2.3 for the costs of the seeds utilised in cultivating sugar cane on the Land;

- 15.3 in the circumstances, if (which the Defendants do not admit) the Villagers (or any of them) were the owners of the Land (or any part of it) it is denied:

- 15.3.1 that any of the Villagers were (or became) the owners of (or were entitled to possession of) any of the sugar cane cultivated upon the Land (or on any part of it);

- 15.3.2 that KPT and/or KSI unlawfully dealt with the sugar cane;

- 15.4 15.4.1 the Defendants admit that the words quoted in paragraph 19 of the PoC appear in Article 94 of the 2001 Land Law ("Article 94");

- 15.4.2 by reason of the matters pleaded in 15.1 and 15.2 above the Defendants deny that Article 94 has any application to the ownership of the sugar cane;

- 15.5 except as stated above, the Defendants make no admissions.

16. As to paragraph 22 of the PoC:

- 16.1 the Defendants admit and assert:
- 16.1.1 that PAPL is (and was at all relevant times) a consulting firm, with expertise in technical agricultural matters;
 - 16.1.2 that from about August 2010 PAPL was engaged to provide technical agricultural services to KSI in relation to its cultivation of sugar cane on the Land;
- 16.2 the Defendants assert that prior to its engagement in August 2010 (for the purposes referred to in 16.1.2 above) PAPL had no experience of working in Cambodia;
- 16.3 except as stated above, the Defendants make no admissions.

17. As to paragraph 23 of the PoC:

- 17.1 17.1.1 the Defendants repeat the denial in 15.3.1 above (that any of the Villagers were the owners of any of the sugar cane cultivated upon the Land);
- 17.1.2 if (contrary to the denial in 15.3.1 above) any of the Villagers were the owners of (or entitled to possession of) any of the sugar cane which was processed by KSI:
- (1) the Defendants will contend that those Villagers ceased to be the owners of that sugar cane (and/or ceased to be entitled to possession of that sugar cane) when the same was processed into raw sugar in the manner referred to in paragraph 18 of the PoC (and in 14.2.4 above);
 - (2) it is denied that those Villagers were (or became) the owners of (or were entitled to possession of) the raw sugar which resulted from that processing;
- 17.2 in particular, but without prejudice to the generality of the denial in 17.1.2(1) above, the Defendants will contend:
- 17.2.1 that the process referred to in 17.1.2(1) above was not reversible;
- 17.2.2 that once that process had taken place:
- (1) the sugar cane was changed into a different species;
 - (2) the sugar cane no longer existed (and the title to the same had been extinguished);
 - (3) through specification KPT/KSI became the owner of the raw sugar;
- 17.3 it is asserted:

- 17.3.1 that on 2 May 2007, KSI entered into a contract with Tate & Lyle ("the Tate & Lyle Contract") whereby KSI agreed to nominate between 51% and 100% of its production of sugar (from sugar cane grown in Cambodia) to Tate & Lyle from 2008 to 2014 in respect of the crop year commencing in or about November each year;
- 17.3.2 that the price payable for the sugar referred to in 17.3.1 above was to be based on the price defined by the EU or the Thai FOB price for raw sugar (at KSI's option);
- 17.4 in the circumstances, the Defendants deny:
- 17.4.1 that KSI required the authority or consent of the Villagers (or of any of them) to enter into the Tate & Lyle Contract; or
- 17.4.2 that KSI acted unlawfully in entering into the Tate & Lyle Contract;
- 17.5 except as stated above, the Defendants deny the matters stated in paragraph 23 of the PoC.
18. As to paragraphs 24, 25, 26 and 27 of the PoC:
- 18.1 it is admitted and asserted:
- 18.1.1 that in or about June 2010 Tate & Lyle took delivery of a consignment of 9,989 tonnes of raw sugar pursuant to the Tate & Lyle Contract;
- 18.1.2 that Tate & Lyle took delivery of the consignment at Thames Refinery, Factory Road, Silvertown, London E16 2EW;
- 18.2 TLS does not admit that any of the raw sugar referred to in 18.1.1 above had been processed from sugar cane grown on the 1,364 hectares of land referred to in paragraph 1 of the PoC;
- 18.3 18.3.1 if any of the raw sugar referred to in 18.1.1 above had been processed from sugar cane grown on the land referred to in 18.2 above and if (which is not admitted) the Villagers (or any of them) were the owners of (or entitled to possession of) that land (or of any part of it):
- (1) for the reasons stated in 15.2 above, it is denied that the Villagers in question were the owners of (or entitled to possession of) the sugar cane in question; and
- (2) further or in the alternative, for the reasons stated in 17.1.2 above, it is denied that the Villagers in question were the owners (or entitled to possession of) of the raw sugar in question;

18.3.2 further or in the alternative, if (contrary to the Defendants' denial) the Villagers (or any of them) were the owners of (or entitled to possession of) the raw sugar referred to in 18.1.1 above, it is denied that (whether by reason of its position as a leading player in the sugar market or otherwise):

- (1) Tate & Lyle knew that the Villagers (or any of them) were the owners of (or entitled to possession of) that raw sugar;
- (2) Tate & Lyle ought to have known that the Villagers (or any of them) were the owners of (or entitled to possession of) that raw sugar;

18.4 in the circumstances it is denied:

18.4.1 that Tate & Lyle required the consent of the Villagers (or of any them) to take delivery of that raw sugar;

18.4.2 that Tate & Lyle (wrongfully or otherwise) deprived the Villagers (or any of them) of the ownership, use and/or possession:

- (1) of any of the sugar cane grown on the Land; or
- (2) of any of the raw sugar processed from it;

18.4.3 that Tate & Lyle converted any of that sugar cane or raw sugar;

18.5 further or in the alternative, if (which is denied) Tate & Lyle converted the sugar cane (or any of it), it is not admitted that the Villagers (or any of them) have suffered any loss or damage.

19. As to paragraph 28 of the PoC:

19.1 the Defendants repeat the matters stated in paragraph 3.1.3 above (concerning the sale of Tate & Lyle's sugar refining business to TLS);

19.2 the Defendants deny that Tate & Lyle novated the Tate & Lyle Contract (or any other contract relating to the supply of raw sugar) in favour of TLS;

19.3 it is admitted and asserted that on 3 August 2011 TLS entered into a contract with KSI ("the TLS Contract") whereby KSI agreed to supply to TLS with 100% of its raw sugar production for the crop years 2011-2012 and 2012-2013.

20. As to paragraph 29 of the PoC:

20.1 TLS admits and asserts that it has acquired the following quantities of raw sugar pursuant to the TLS Contract:

- 20.1.1 in May 2011, 22,497 tonnes; and
 - 20.1.2 in July 2012, 15,385 tonnes;
 - 20.2 TLS does not admit that any of the raw sugar referred to in 20.1 above had been processed from sugar cane grown on the 1,364 hectares of land referred to in paragraph 1 of the PoC;
 - 20.3 if (contrary to the non-admission in 20.2 above) any of the raw sugar referred to in 20.1 above had been processed from sugar cane grown on the land referred to in 18.2 above, and if (which is not admitted) the Villagers (or any of them) were the owners of (or entitled to possession of) that land (or of any part of it):
 - 20.3.1 for the reasons stated in 15.2 above, it is denied that the Villagers in question were the owners of (or entitled to possession of) the sugar cane in question; and
 - 20.3.2 further or in the alternative, for the reasons stated in 17.1.2 above, it is denied that the Villagers in question were the owners (or entitled to possession of) of the raw sugar in question;
 - 20.4 in the circumstances it is denied:
 - 20.4.1 that TLS (wrongfully or otherwise) deprived the Villagers (or any of them) of the ownership, use and/or possession of any of the sugar cane grown on the Land;
 - 20.4.2 that Tate & Lyle converted any of that sugar cane;
 - 20.5 further or in the alternative, if (which is denied) TLS converted the sugar cane (or any of it), it is not admitted that the Villagers (or any of them) have suffered any loss or damage.
- 21 As to paragraph 30 of the PoC, the Defendants make no admissions as to:
- 21.1 the amount of sugar cane which each hectare of the Land would produce per year;
 - 21.2 the annual value of the sugar cane which is capable of being produced on the Land.
22. As to paragraph 31 of the PoC, the Defendants admit:
- 22.1 that Jones Day are the solicitors for the Villagers;
 - 22.2 that on 1 February 2012 Jones Day sent a letter to Tate & Lyle requesting certain information and certain documentation;
 - 22.3 that on 1 June 2012, Jones Day:
 - 22.3.1 provided TLS with a copy of the letter referred to in 22.2 above;

22.3.2 requested that TLS should respond to that letter (which Jones Day had sent to Tate & Lyle).

23. As to paragraphs 32 and 33 of the PoC, in the circumstances the Defendants deny that the Villagers (or any of them) are entitled to the relief claimed or to any relief.

COUNTERCLAIM

24. The Defendants repeat their Defence.

25. In the circumstances:

- 25.1 25.1.1 Tate & Lyle will contend that (contrary to the allegations made in paragraph 26 of the PoC) it became the owner of (and/or was at all relevant times entitled to possession of) the consignment of 9,989 tonnes of raw sugar referred to in 18.1.1 above ("the Tate & Lyle Sugar");
- 25.1.2 Tate & Lyle is entitled to, and seeks, a declaration it became the owner of (and/or was at all relevant times entitled to possession of) the Tate & Lyle Sugar;
- 25.2 25.2.1 TLS will contend that (contrary to the allegations made in paragraph 29 of the PoC) it became the owner of (and/or was at all relevant times entitled to possession of) the consignments in the sum of 37,882 tonnes of raw sugar referred to in 20.1 above ("the TLS Sugar");
- 25.2.2 TLS is entitled to, and seeks, a declaration that it became the owner of (and/or was at all relevant times entitled to possession of) the TLS Sugar.

AND

- (1) Tate & Lyle counterclaims the declaratory relief set out in 25.1.2 above;
- (2) TLS counterclaims the declaratory relief set out in 25.2.2 above.

RORY McALPINE

STATEMENT OF TRUTH

I believe that the facts stated in this Defence and Counterclaim are true. I am duly authorised by the First Defendant to sign this statement.

Signed: 

Name: ROBERT GIBER

Date: 1/5/13

Position held: DIRECTOR

I believe that the facts stated in this Defence and Counterclaim are true. I am duly authorised by the Second Defendant to sign this statement.

Signed: 

Name: PAUL STEBBINGS

Date: 2/5/13

Position held: Company Secretary

Served this 2nd day of May 2013 by Skadden, Arps, Slate, Meagher & Flom LLP, 40 Bank Street, London E14 5DS (telephone: 020 759 7000), solicitors for the Defendant.

Claim No 2013 Folio 451

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

B E T W E E N:

SONG MAO & OTHERS

Claimants

-and-

(1) TATE & LYLE INDUSTRIES LIMITED
(2) T & L SUGARS LIMITED

Defendants

DEFENCE AND COUNTERCLAIM OF THE
FIRST AND SECOND DEFENDANTS

Skadden, Arps, Slate, Meagher & Flom (UK) LLP
40 Bank Street
London E14 5DS

Telephone: 020 759 7000
Fax: 020 7519 7070

Solicitors for the Defendants