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Panel Proceedings

INDIA – MEASURES CONCERNING SUGAR AND SUGARCANE

(DS580)

AUSTRALIA'S INTEGRATED EXECUTIVE SUMMARY

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<i>China – Agricultural Producers</i>	Panel Report, <i>China – Domestic Support for Agricultural Producers</i> , WT/DS511/R and Add.1, adopted 26 April 2019
<i>EC and certain member States – Large Civil Aircraft (Article 21.5 – US)</i>	Panel Report, <i>European Communities and Certain Member States – Measures Affecting Trade in Large Civil Aircraft – Recourse to Article 21.5 of the DSU by the United States</i> , WT/DS316/RW and Add.1, adopted 28 May 2018, as modified by Appellate Body Report WT/DS316/AB/RW, DSR 2018:VI, p. 2519
<i>India – Export Related Measures</i>	Panel Report, <i>India – Export Related Measures</i> , WT/DS541/R and Add.1, circulated to WTO Members 31 October 2019 [appealed by India 19 November 2019]
<i>Korea – Various Measures on Beef</i>	Appellate Body Report, <i>Korea – Measures Affecting Imports of Fresh, Chilled and Frozen Beef</i> , WT/DS161/AB/R, WT/DS169/AB/R, adopted 10 January 2001, DSR 2001:I, p. 5
<i>Korea – Various Measures on Beef</i>	Panel Report, <i>Korea – Measures Affecting Imports of Fresh, Chilled and Frozen Beef</i> , WT/DS161/R, WT/DS169/R, adopted 10 January 2001, as modified by Appellate Body Report WT/DS161/AB/R, WT/DS169/AB/R, DSR 2001:I, p. 59
<i>Peru – Agricultural Products</i>	Appellate Body Report, <i>Peru – Additional Duty on Imports of Certain Agricultural Products</i> , WT/DS457/AB/R and Add.1, adopted 31 July 2015, DSR 2015:VI, p. 3403
<i>US – Gambling</i>	Appellate Body Report, <i>United States – Measures Affecting the Cross-Border Supply of Gambling and Betting Services</i> , WT/DS285/AB/R, adopted 20 April 2005, DSR 2005:XII, p. 5663 (and Corr.1, DSR 2006:XII, p. 5475)
<i>US – Gasoline</i>	Appellate Body Report, <i>United States – Standards for Reformulated and Conventional Gasoline</i> , WT/DS2/AB/R, adopted 20 May 1996, DSR 1996:I, p. 3
<i>US – Large Civil Aircraft (2nd complaint)</i>	Appellate Body Report, <i>United States – Measures Affecting Trade in Large Civil Aircraft (Second Complaint)</i> , WT/DS353/AB/R, adopted 23 March 2012, DSR 2012:I, p. 7
<i>US – Wool Shirts and Blouses</i>	Appellate Body Report, <i>United States – Measure Affecting Imports of Woven Wool Shirts and Blouses from India</i> , WT/DS33/AB/R, adopted 23 May 1997, and Corr.1, DSR 1997:I, p. 323

LIST OF ACRONYMS, ABBREVIATIONS AND SHORT FORMS

Abbreviation	Full Form or Description
AAP	Applied Administered Price
AMS	Aggregate Measurement of Support
DFIA	Duty Free Import Authorisation
FERP	Fixed External Reference Price
FRP	Fair and Remunerative Price
GATT 1994	General Agreement on Tariffs and Trade 1994
INR	Indian Rupees
MAEQ	Maximum Admissible Export Quantities
MIEQ	Minimum Indicative Export Quotas
QEP	Quantity of Eligible Production
SAP	State Advised Price
Schedule	Schedule of Concessions on Goods
SCM Agreement	Agreement on Subsidies and Countervailing Measures

I. INTRODUCTION

1. Australia has brought this dispute because it is concerned that the significant support India provides to its producers of sugarcane and sugar is inconsistent with India's obligations under the Agreement on Agriculture and the Agreement on Subsidies and Countervailing Measures (SCM Agreement). Australia does not take issue with India's right to support its sugarcane farmers and sugar industry. However, India must do so consistently with its WTO obligations. Australia is a major exporter of sugar and considers that India's measures have a detrimental impact on Australia's interests.

2. The evidence and arguments Australia has set out in its submissions establish a *prima facie* case that India maintains domestic support for sugarcane producers that vastly exceeds its permissible level under the Agreement on Agriculture, and provides export subsidies for sugar in violation of its commitments under both the Agreement on Agriculture and the SCM Agreement. Further, Australia has demonstrated that India has breached its obligations under those Agreements (or, in the alternative, under the General Agreement on Tariffs and Trade 1994 (GATT 1994)) by failing to notify the WTO Membership of its measures relating to sugarcane and sugar.

3. As Australia has demonstrated in its submissions, India has failed to provide any legal or factual basis to rebut Australia's *prima facie* case in respect of any of the claims advanced. Australia asks the Panel to dismiss India's flawed defence of its measures, which is underpinned by unpersuasive legal arguments based on clear misinterpretations of India's obligations.

4. Australia notes that India, in its first written submission, requested the Panel make a preliminary ruling that certain "measures" challenged by Australia were outside the scope of the Panel's terms of reference.¹ Australia argued in response that India had failed to establish that the Panel lacked the authority to assess any elements of Australia's claims.² Australia's arguments on the substantive issues before the Panel are summarized below.

II. MEASURES AT ISSUE

A. DOMESTIC SUPPORT

5. India provides domestic support for sugarcane producers in excess of its permitted level under the Agreement on Agriculture through the following measures.

1. Fair and Remunerative Price

6. The key element of India's support for its sugarcane producers is the Fair and Remunerative Price (FRP). The FRP is a mandatory minimum price, or floor price, set by the

¹ India's first written submission, paras. 32–46.

² Australia's comments on India's request for a preliminary ruling; Australia's comments on India's response regarding India's request for a preliminary ruling.

Central government for each sugar season³ and payable by producers of sugar (sugar mills) for sugarcane.⁴

7. The Sugarcane (Control) Order 1966, made under the Essential Commodities Act 1955, provides that the Central government may determine the FRP by notification in the Gazette of India.⁵ Sub-clause 3(2) of that Order prohibits the sale or purchase of sugarcane at a price lower than the FRP. Penalties for non-compliance include imprisonment and fines.⁶

8. India does not dispute that it fixes the FRP or the prices set in the sugar seasons from 2014–15 to 2019–20, as established by Australia's evidence.⁷

2. State Advised Prices

9. In addition to the Central-level FRP, some Indian States also set minimum prices that must be paid for sugarcane. These are known as State Advised Prices (SAPs) and exist in parallel with the FRP. In those States where a SAP applies, the sugar mills must pay the SAP instead of the FRP, and the SAPs are the same as, or higher than, the FRP.⁸

10. Like the FRP, the SAPs are mandatory. The relevant State regulatory instruments generally provide that contravention is an offence punishable by fines and imprisonment.⁹

11. Australia claims – and India does not contest¹⁰ – that, during various sugar seasons between 2014–15 and 2018–19, six Indian States (Bihar, Haryana, Punjab, Tamil Nadu, Uttarakhand and Uttar Pradesh) set SAPs.¹¹

3. Other State-level programmes

12. Three Indian State governments maintain or have maintained programmes that provide assistance to sugarcane producers in addition to the support provided by the minimum sugarcane price.

(a) Andhra Pradesh: Purchase tax remittance

13. Andhra Pradesh offered a purchase tax remittance of INR 60 per metric tonne in the 2014–15 and 2015–16 sugar seasons. Under this programme, the purchase tax that would

³ India's sugar season begins on 1 October and ends on 31 September of the following year.

⁴ Australia's first written submission, para. 23.

⁵ Sugarcane (Control) Order 1966 (**Exhibit JE-45**); Essential Commodities Act 1955 (**Exhibit JE-43**); Australia's first written submission, paras. 24–26.

⁶ Essential Commodities Act 1955 (**Exhibit JE-43**), Section 7; Australia's first written submission, para. 37.

⁷ India's first written submission, paras. 16–18, 41; Australia's first written submission, Table 2.

⁸ Australia's first written submission, para. 41.

⁹ Australia's first written submission, para. 43.

¹⁰ India does not dispute that Haryana, Punjab, Uttarakhand and Uttar Pradesh set SAPs: India's first written submission, paras. 29–30. India argues that Bihar and Tamil Nadu no longer set SAPs but does not dispute that those States did, in the relevant past sugar seasons, set SAPs: India's first written submission, paras. 30, 42(vii). *See also*, Australia's second written submission, paras. 18–20.

¹¹ For details of the applicable sugar seasons and the SAPs in these States, see Australia's first written submission, paras. 48–61, Tables 4–9.

otherwise have been payable by sugar mills was foregone, and the benefit was passed on to sugarcane farmers who therefore received a price higher than the FRP.¹²

14. India claims that no expenditure was made under this programme.¹³ Australia disagrees.¹⁴

(b) Karnataka: Incentive price payment

15. In the 2017–18 sugar season, Karnataka provided a "Payment of Incentive Price for Sugar Cane through Sugar Factories" under which sugarcane farmers received – via the sugar mills – an incentive sugarcane price higher than the FRP.¹⁵

16. India argues that no expenditure was made under this programme.¹⁶ Australia disagrees.¹⁷

(c) Tamil Nadu: Production incentive payment

17. Under Tamil Nadu's "production incentive to sugarcane farmers" programme, the State government pays, directly to sugarcane farmers, the difference between Tamil Nadu's SAP for the 2016–17 sugar season and the relevant season's base FRP.¹⁸ Australia has adduced evidence of the amounts disbursed under this programme in the 2017–18 and 2018–19 sugar seasons.¹⁹ India has not challenged that evidence.

4. Other measures involving payments to maintain the FRP and SAPs

18. India implements a range of other measures at both the Central and State levels that provide domestic support in favour of sugarcane producers. Those measures are production subsidies; soft loans; buffer stock subsidies; transport, freight and marketing subsidies; and other State-level measures. Although the measures are directed to sugar mills, the funds are paid to mills to support their payment of the FRP or applicable SAP, or are paid to sugarcane farmers on mills' behalf to clear the mills' sugarcane price debts.²⁰

19. With one minor exception, India does not dispute the facts regarding these measures.²¹ Australia also challenges some of the same measures as providing export subsidies.

¹² Australia's first written submission, paras. 190–192; Australia's responses to Panel questions 28(c) (paras. 84–86), 28(d) (paras. 87–91).

¹³ India's responses to Panel questions 28(d) (p. 20), 74(b) (p. 11).

¹⁴ Australia's comments on India's response to Panel question 74(b), paras. 31–32.

¹⁵ Australia's first written submission, para. 195; Australia's response to Panel question 77, paras. 94–98.

¹⁶ India's response to Guatemala's question 3, p. 2.

¹⁷ Australia's comments on India's response to Guatemala's question 3, paras. 60–61.

¹⁸ Australia's first written submission, paras. 198–201. The "base FRP" is the minimum price payable for sugarcane at or below the FRP's basic recovery rate (or quality). In the 2018–19 sugar season, sugarcane with a recovery rate below the FRP's basic recovery rate received a minimum price lower than the base FRP: Australia's first written submission, paras. 28–35, Table 2.

¹⁹ Australia's response to Panel question 73, paras. 71–75.

²⁰ These measures are listed in Australia's first written submission, paras. 181–184, Annexes A–E.

²¹ India's first written submission, para. 43; Australia's second written submission, paras. 22–23.

B. EXPORT SUBSIDIES

20. India violates its obligations under the Agreement on Agriculture and the SCM Agreement through the measures described below, which provide export-contingent subsidies.

21. A central feature of India's regime of export subsidies for sugar are its Minimum Indicative Export Quotas (MIEQ) and Maximum Admissible Export Quantities (MAEQ), under which India allocates sugar export quotas to sugar mills on a per-mill basis. India ties MIEQ and MAEQ to direct payment schemes, making financial assistance, or the value of that assistance, contingent upon compliance with government orders or directives imposing MIEQ and MAEQ.²²

1. Production subsidy schemes operating in conjunction with Minimum Indicative Export Quota orders

22. India provides production subsidies to sugar mills to help clear their debts to sugarcane farmers arising from the obligation to pay the FRP. These schemes are the "Scheme for extending production subsidy to sugar mills", implemented in the 2015–16 sugar season, and the "Scheme for Assistance to Sugar Mills", implemented in the 2017–18 and 2018–19 sugar seasons. Mills' eligibility to receive the subsidy is, under each iteration of the scheme, subject to compliance with MIEQ orders.²³

2. Buffer stock subsidy schemes operating in conjunction with Minimum Indicative Export Quota orders

23. India provides buffer stock subsidies to assist sugar mills to clear sugarcane price debts arising from the obligation to pay farmers the FRP. These schemes are the "Scheme for Creation and Maintenance of Buffer Stock of 30 Lakh MT", introduced in 2018, and the "Scheme for the Creation and Maintenance of Buffer Stock of 40 Lakh MT", introduced in 2019. The 2018 iteration of the scheme linked compliance with MIEQ with eligibility to receive payments, while the 2019 iteration linked favourable MIEQ performance with the value of available payments.²⁴

3. Purported transport, freight and marketing subsidy scheme operating in conjunction with Maximum Admissible Export Quantities orders

24. India provides self-described "transport, freight and marketing" subsidies to sugar mills to help them clear sugarcane price debts arising from the obligation to pay the FRP. India provides these subsidies through the "Scheme for providing assistance to sugar mills for expenses on marketing costs including handling, upgrading and other processing costs and

²² Australia's first written submission, paras. 219–220.

²³ Australia's first written submission, para. 230.

²⁴ Australia's first written submission, paras. 231–233, Annex C.

costs of international and internal transport and freight charges on export of sugar" (MAEQ scheme), which applied from 1 October 2019 to 31 December 2020. Eligibility to receive the subsidy is subject to mills exporting at least 50% of their MAEQ allocations.²⁵

4. Duty Free Import Authorisation scheme

25. India incentivizes mills to export sugar during seasons of overproduction by offering to forego sugar import duties in subsequent seasons. In March 2018, India amended its Duty Free Import Authorisation (DFIA) scheme in order to entitle sugar mills that exported refined sugar during a six-month period in the 2017–18 sugar season to import raw sugar duty free during the 2019–20 and 2020–21 seasons.²⁶

C. FAILURE TO NOTIFY MEASURES

26. India has not notified Members of its annual domestic support for sugarcane subsequent to 1995–1996, and India has not submitted an export subsidy notification for sugar since 2009–10.²⁷ India does not dispute these facts. This failure to submit notifications of its measures breaches India's obligations under the Agreement on Agriculture and the SCM Agreement or, in the alternative, under the GATT 1994.

III. INDIA'S DOMESTIC SUPPORT IN FAVOUR OF SUGARCANE PRODUCERS VIOLATES ITS OBLIGATIONS UNDER THE AGREEMENT ON AGRICULTURE

27. Under the Agreement on Agriculture, India may provide domestic support in favour of its agricultural producers, provided that support does not exceed its commitment levels. In the context of the Agreement on Agriculture, domestic support is expressed in numerical – monetary – terms²⁸ as an annual level of support, referred to as the "Aggregate Measurement of Support" (AMS). Domestic support may be product-specific support provided for an agricultural product in favour of the producers of that product, or it may be non-product-specific support provided in favour of agricultural producers in general.²⁹ A Member's Total AMS is the sum of all of its non-exempt domestic support in favour of agricultural producers, excluding support that does not exceed a permitted *de minimis* level.³⁰

28. Articles 6.4 and 7.2(b) of the Agreement on Agriculture provide that, where a developing country Member has no Total AMS commitment in Part IV of its Schedule of Concessions on Goods (Schedule), the Member must not provide non-exempt, product-

²⁵ Australia's first written submission, para. 234, Annex D-03; Australia's opening statement at the first substantive meeting, para. 76.

²⁶ Australia's first written submission, para. 235; Australia's second written submission, paras. 214–217.

²⁷ Australia's first written submission, paras. 450–466.

²⁸ Agreement on Agriculture, Article 1(a) and Annex 3, paragraph 6. *See also*, Australia's first written submission, para. 84.

²⁹ Agreement on Agriculture, Article 1(a). *See also*, Article 6.4(a) and Annex 3; Australia's first written submission, para. 86.

³⁰ Agreement on Agriculture, Articles 1(h), 6.4 and 7.2(a). *See also*, Australia's first written submission, paras. 87, 90, 94.

specific domestic support in excess of the *de minimis* level of 10 per cent of the total value of production of a basic agricultural product during the relevant year.³¹

29. India is a developing country Member and agrees that it has no Total AMS commitment in Part IV, Section I of its Schedule.³² Thus, India's non-exempt domestic support for sugarcane producers must not exceed 10 per cent of the total value of sugarcane production in any sugar season.³³

30. Some domestic support measures are exempt from reduction commitments pursuant to Articles 6.2 or 6.5, or Annex 2.³⁴ These measures are not included in the calculation of a Member's Total AMS.³⁵ India has not argued or adduced evidence that any of the domestic support measures challenged by Australia are exempt.³⁶

31. Annex 3 of the Agreement on Agriculture, which is titled "Domestic Support: Calculation of Aggregate Measurement of Support", describes how to calculate a Member's AMS.³⁷ Paragraph 1 of Annex 3 provides that the product-specific AMS shall be calculated for each basic agricultural product receiving "market price support, non-exempt direct payments, or any other subsidy not exempted from the reduction commitment ('other non-exempt policies')".³⁸ Annex 3 as well as Annex 4 stipulate how to quantify the monetary value of each of these kinds of support to calculate a product-specific AMS.

32. To determine whether non-exempt product-specific domestic support exceeds the *de minimis* percentage, the product-specific AMS is divided by the total value of production of the relevant basic agricultural product in the relevant year.³⁹

33. India's domestic support measures in favour of its sugarcane producers constitute market price support and other non-exempt support.

A. MARKET PRICE SUPPORT

1. The meaning of market price support

34. Australia considers that "market price support" must be interpreted in accordance with its ordinary meaning, read in context, and in light of the Agreement on Agriculture's

³¹ Australia's first written submission, paras. 98–100, 148. The Agreement on Agriculture provides in Article 1 that "unless the context otherwise requires... (i) 'year'... in relation to the specific commitments of a Member refers to the calendar, financial or marketing year specified in the Schedule relating to that Member."

³² India's response to Panel question 46, p. 4; Australia's first written submission, paras. 103–107.

³³ Australia's first written submission, para. 108.

³⁴ Australia's first written submission, para. 142.

³⁵ Agreement on Agriculture, Article 7.2(a).

³⁶ Australia's response to Panel question 51, para. 17.

³⁷ Agreement on Agriculture, Article 1(a)(ii).

³⁸ Agreement on Agriculture, Annex 3, paragraph 1.

³⁹ Agreement on Agriculture, Article 6.4(a)(i). See, for example, the panel's approach in *China – Agricultural Producers*, Tables 9–16, and para 7.412. See also, Australia's first written submission, paras. 145–147.

object and purpose.⁴⁰ Market price support will exist when a Member sets a price for a basic agricultural product through administrative action and determines the production eligible to receive that price.⁴¹

35. India, on the other hand, advocates for an unjustifiably narrow interpretation of market price support.⁴² A proper interpretation of the Agreement on Agriculture demonstrates that India's arguments are erroneous.

(a) Ordinary meaning

36. "Market price support" is not defined in Article 1 of the Agreement on Agriculture, which defines a range of terms used in the Agreement. Annex 4 of the Agreement states that market price support is "defined in Annex 3".⁴³

37. Paragraphs 1 and 8 of Annex 3 both refer to "market price support", so the interpretation of the term should begin with those paragraphs.

38. Australia recalls that paragraph 1 lists the three kinds of domestic support that are, subject to Article 6, to be included in the calculation of the product-specific AMS.⁴⁴

39. India argues that the phrase "or any other subsidy" in paragraph 1 means that market price support must take the form of a subsidy.⁴⁵ Australia disagrees. The words "any other" reflect an intent to ensure that all non-exempt domestic support – including support that is neither market price support nor a direct payment – is included in the AMS.⁴⁶

40. Building on the tenuous foundation of its interpretation of paragraph 1 of Annex 3, India contends – based on the words "shall include both" – that paragraph 2 of that Annex provides an exhaustive definition of what may constitute a subsidy under paragraph 1.⁴⁷ Again, Australia disagrees. Paragraph 2 simply provides that "both budgetary outlays and revenue foregone by governments or their agents"⁴⁸ are subsidies that are included in the

⁴⁰ Consistent with Article 31(1) of the Vienna Convention on the Law of Treaties, which forms part of the customary rules of interpretation of public international law: Appellate Body Report, *US – Gasoline*, p. 17. Article 3.2 of the Understanding on Rules and Procedures Governing the Settlement of Disputes provides that the WTO covered agreements are to be interpreted in accordance with these rules: Australia's second written submission, footnote 32.

⁴¹ Australia's second written submission, paras. 33, 50.

⁴² India's first written submission, paras. 62–63; India's responses to Panel questions 18(a) (p. 14), 25(b) (p. 18); India's opening statement at the first substantive meeting, para. 9; India's closing statement at the first substantive meeting, paras. 24–28.

⁴³ Agreement on Agriculture, Annex 4, para. 1.

⁴⁴ See paragraph 31 above. See also, Australia's second written submission, para. 56, citing Chairman's note on options in the agricultural negotiations, MTN.GNG/AG/W/1/Add.4 (**Exhibit JE-156**), para. 3.

⁴⁵ India's responses to Panel questions 18(a) (p. 14), 18(c) (p. 14); India's opening statement at the first substantive meeting, paras. 24–25; India's second written submission, paras. 16–18.

⁴⁶ Australia's second written submission, para. 57.

⁴⁷ India's opening statement at the first substantive meeting, paras. 26–28; India's closing statement at the first substantive meeting, para. 28; India's second written submission, paras. 20–24.

⁴⁸ Agreement on Agriculture, Annex 3, paragraph 2 (emphasis added).

AMS calculation. The term "includes" is not exclusive or restrictive, and the term "both" provides emphasis.⁴⁹

41. The critical flaws in India's arguments become even more apparent in light of the only other paragraph in Annex 3 that includes the words "market price support": paragraph 8. That paragraph undermines India's defence,⁵⁰ which is why India has opted either to ignore⁵¹ or to downplay⁵² its significance.

42. Paragraph 8 of Annex 3 provides:

Market price support: market price support shall be calculated using the gap between a fixed external reference price and the applied administered price multiplied by the quantity of production eligible to receive the applied administered price. Budgetary payments made to maintain this gap, such as buying-in or storage costs, shall not be included in the AMS.

43. The first sentence of paragraph 8 sets out the formula for calculating the value of market price support to be included in the AMS, which may be represented by the following equation:

(Applied Administered Price – Fixed External Reference Price) x Quantity of Eligible Production = value of market price support

44. The formula has three components: an Applied Administered Price (AAP), the Fixed External Reference Price (FERP) and a Quantity of Eligible Production (QEP). Pursuant to the second sentence of paragraph 8, budgetary payments made to maintain the "gap" between the FERP and the AAP are not included in the AMS.⁵³

45. An AAP is a price that is set, determined, made effective or brought to bear by administrative action (including regulatory action), rather than being determined only by market forces. It need not be a price that is achieved by government expenditure and it need not involve budgetary payments or procurement.⁵⁴ In *China – Agricultural Producers*, the panel found that "applied administered price" means "... the price set by the government at which specified entities will purchase certain basic agricultural products".⁵⁵

⁴⁹ Australia's second written submission, paras. 59–64.

⁵⁰ Australia's opening statement at the first substantive meeting, para. 48; Australia's opening statement at the second substantive meeting, para. 38.

⁵¹ Australia's opening statement at the first substantive meeting, para. 48; Australia's second written submission, para. 36; Australia's opening statement at the second substantive meeting, para. 35.

⁵² Australia's second written submission, paras. 25, 68–70; Australia's opening statement at the second substantive meeting, paras. 36–39.

⁵³ Australia's first written submission, paras. 113–115; Australia's opening statement at the first substantive meeting, para. 49.

⁵⁴ Australia's first written submission, paras. 116–119, citing Panel Report, *Korea – Various Measures on Beef*, para. 827.

⁵⁵ Australia's first written submission, para. 117, citing Panel Report, *China – Agricultural Producers*, para. 7.177.

46. The FERP is a reference price for the basic agricultural product from a base period (the years 1986–88 for original Members), which may be adjusted for quality differences as necessary.⁵⁶

47. The QEP is the quantity or volume of production entitled, fit or able to receive the AAP according to the terms of the measure – not the amount that actually receives the AAP.⁵⁷ As the panel in *China – Agricultural Producers* observed, "the pertinent question [to determine the QEP] is whether the [product] that was produced would be able to benefit from the [AAP] if the seller so desired".⁵⁸

48. Accordingly, market price support will exist and have a value measurable under paragraph 8 when a Member sets an AAP for a basic agricultural product that is higher than the relevant FERP, and determines the production eligible to receive the AAP.⁵⁹

49. Paragraph 8 does not stipulate or imply that the government or its agents must procure the product at the AAP. Thus, India's argument that market price support requires government procurement is incompatible with the ordinary meaning of paragraphs 1 and 8 of Annex 3 and reads into the text a limitation that is not there.⁶⁰

50. India seeks to diminish the importance of paragraph 8 by arguing that it only provides how to calculate market price support. According to India, it is paragraphs 1 and 2 of Annex 3 that determine when market price support will exist.⁶¹ India's argument finds no support in the text of Annex 3. As Australia has already outlined, the purpose of Annex 3 is to stipulate the method for calculating in monetary terms a Member's non-exempt domestic support or AMS.⁶² The Annex does not differentiate between when market price support exists and how to calculate the value of such support, as India argues.⁶³

(b) Context

51. Articles 6.1 and 6.2, and Annex 4, of the Agreement on Agriculture, as well as India's Schedule, each provide relevant context for interpreting "market price support" in this dispute, which serves to reinforce the ordinary meaning of the term.

52. Article 6.1 provides that a Member's domestic support commitments "apply to all of its [non-exempt] domestic support measures in favour of agricultural producers..."⁶⁴. The

⁵⁶ Agreement on Agriculture, Annex 3, paragraph 9. See also, Australia's first written submission, paras. 120–122.

⁵⁷ Appellate Body Report, *Korea – Various Measures on Beef*, para. 120. See also, Panel Report, *China – Agricultural Producers*, paras. 7.282–286; Australia's first written submission, paras. 123–130.

⁵⁸ Panel Report, *China – Agricultural Producers*, para. 7.314. See also, Australia's first written submission, paras. 123–130.

⁵⁹ Australia's second written submission, para. 33. Market price support may also exist in the absence of a FERP, in which case such support is calculated in accordance with the Agreement on Agriculture, Annex 4, para. 2.

⁶⁰ Australia's second written submission, paras. 34–35.

⁶¹ India's closing statement at the first substantive meeting, para. 14; India's second written submission, para. 39.

⁶² See paragraph 31 above.

⁶³ Australia's second written submission, paras. 68–70; Australia's opening statement at the second substantive meeting, paras. 35–39.

⁶⁴ Agreement on Agriculture, Article 6.1 (emphasis added).

Article confirms that the only domestic support measures that are not subject to a Member's commitments are those that are exempt.⁶⁵

53. Article 6.2 provides that both "direct" and "indirect" governmental measures of assistance are subject to domestic support reduction commitments unless they are exempt. It indicates that domestic support measures disciplined by the Agreement on Agriculture may be provided to producers directly by government (or its agents) or through indirect means, such as by regulating the price paid by consumers of a basic agricultural product.⁶⁶

54. Annex 4 describes how to calculate an equivalent measurement of support when market price support exists but it "is not practicable"⁶⁷ to calculate that component of the AMS. Budgetary outlays may only be used to calculate the value of market price support when it is not practicable to use the formula in paragraph 8 of Annex 3 or the alternative methodology in paragraph 2 of Annex 4. Also, the budgetary outlays are not limited to those used for government procurement of the product – the outlays must simply be used to maintain the price. Annex 4, therefore, adds further weight to the argument that market price support may exist in the absence of budgetary outlays used to procure the product at the AAP.⁶⁸

55. Finally, the tables of supporting material incorporated by reference in Part IV of India's Schedule confirm that India considered the Sugarcane (Control) Order 1966 in force during the base period had established an AAP and constituted market price support.⁶⁹ That Order, which was amended in 2009 to introduce the FRP, fixed the minimum price of sugarcane to be paid by all producers of sugar (the mills) to the producers of sugarcane (the farmers). Like the FRP, the floor price was paid by the mills, not by the Indian government.⁷⁰

56. India argues that Members' Schedules are not relevant to interpreting the meaning of "market price support", and that relying on Schedules would result in terms having multiple meanings.⁷¹ Australia disagrees. Members' Schedules may provide relevant context for interpreting Members' legal obligations.⁷² A Member's Schedule cannot override the ordinary meaning of the terms of the Agreement on Agriculture, as India implies it would, but a Schedule may provide relevant context for interpreting those terms. In this instance, the context provided by India's supporting tables reinforces the ordinary meaning of "market price

⁶⁵ Australia's second written submission, paras. 38–39.

⁶⁶ Australia's second written submission, para. 40.

⁶⁷ Agreement on Agriculture, Annex 4, para. 1.

⁶⁸ Australia's second written submission, para. 42.

⁶⁹ G/AG/AGST/IND, p. 28 incorporated by reference by India's Schedule, Part IV, Section I, Column 3. In notifying its market price support for the base period (1986–88), in a table titled "Aggregate Measurement of Support: Market Price Support", India lists the prices fixed by the Sugarcane (Control) Order 1966 then in force as an "Applied administered price" and uses that price to calculate its market price support for sugarcane.

⁷⁰ Australia's first written submission, para. 25; Australia's opening statement at the first substantive meeting, para. 54; Australia's second written submission, para. 43.

⁷¹ India's second written submission, para. 50. *See also*, India's responses to Panel questions 48(e) (p. 6), 63 (p. 5).

⁷² Australia's second written submission, para. 45, citing Panel Report, *China – Agricultural Producers*, para. 7.263 and Appellate Body Report, *US – Gambling*, paras. 178, 182.

support" and underscores India's own interpretation of the term at the time of constituting its Schedule.⁷³

(c) Object and purpose

57. The object and purpose of the Agreement on Agriculture support an interpretation of "market price support" that is not limited to government procurement of a product at the AAP. The Agreement's object and purpose, as stated in its preamble, is relevantly:

- to achieve "substantial progressive reductions in agricultural support" through specific binding commitments including with respect to "domestic support";⁷⁴ and
- to discipline and reduce domestic support measures, with a view to preventing distortions in world agricultural markets and establishing a "fair and market-oriented agricultural trading system".⁷⁵

58. Thus, the Agreement's objectives are broader than that of limiting domestic subsidies in favour of agricultural products. If Members' domestic support commitments were limited to subsidies, as India contends, the Agreement on Agriculture would simply refer to subsidies for agricultural products, rather than specifying three distinct kinds of domestic support, each with alternative methods of calculation.⁷⁶

59. India's argument that market price support requires procurement by government (or its agents) would also undermine the domestic support disciplines in the Agreement by enabling Members to easily circumvent their commitments by ensuring they (or their agents) did not procure the product.⁷⁷

60. Finally, India's interpretation of market price support would undermine the Agreement on Agriculture's goal of preventing distortions in global agricultural markets. The Agreement recognises price support as being inherently trade-distorting and as having production effects.⁷⁸ As demonstrated by India's FRP and SAP measures, government mandated floor prices for basic agricultural products impact production decisions and distort trade irrespective of who purchases the product.⁷⁹

⁷³ Australia's second written submission, paras. 44–45; Australia's comments on India's response to Panel question 63, paras. 7–11.

⁷⁴ Agreement on Agriculture, Preamble, recitals 3 and 4.

⁷⁵ Agreement on Agriculture, Preamble, recitals 2 and 3. *See also*, Australia's first written submission, para. 126.

⁷⁶ Australia's second written submission, para. 58.

⁷⁷ Australia's second written submission, para. 47.

⁷⁸ Agreement on Agriculture, Annex 2, paragraph 1(b). *See also*, Australia's first written submission, para. 126.

⁷⁹ See the evidence that India's FRP and SAP measures impact production decisions cited in footnote 171 of Australia's first written submission, para. 126. *See also*, Australia's second written submission, para. 47.

(d) Conclusion

61. "Market price support" under the Agreement on Agriculture will exist when a Member establishes an AAP and determines the production eligible to receive that AAP. India's argument that procurement at the AAP by a government (or its agent) is essential is incompatible with a proper interpretation of "market price support".⁸⁰

2. Calculation of India's market price support for sugarcane

(a) The FRP and SAP measures are AAPs

62. The FRP and SAPs are mandatory minimum prices for sugarcane that are determined by the administrative action of India's Central and State governments. The FRP and SAPs are, therefore, AAPs within the meaning of the Agreement on Agriculture.⁸¹

(b) India's FERP for sugarcane

63. India's supporting table incorporated by reference in Part IV of its Schedule confirms that its FERP is INR 156.16 per metric tonne for sugarcane with a recovery rate of 8.5 per cent. Australia recalls that the FERP may be adjusted for quality differences.⁸² As the average recovery rates – or quality – of sugarcane in India today are higher than this historical recovery rate, Australia considers it necessary to adjust India's FERP to allow the AAP and the FERP to be compared at the same quality level.⁸³

(c) QEP

64. All sugarcane in India is fit or entitled to receive the FRP and, in States where SAPs apply, all sugarcane produced is able to receive the relevant SAP. The relevant measures do not impose any conditions or limitations on sugarcane that is eligible to be purchased at the FRP or SAP.⁸⁴ The price payable may vary based on the quality of the sugarcane but all sugarcane – regardless of quality – is entitled to receive a minimum price.⁸⁵

(d) India's measures involving payments to maintain the "gap" between the FERP and the AAP

65. Australia considers that India maintains measures – at both the Central and State levels – that achieve or maintain the AAPs for sugarcane, being the FRP or SAPs.⁸⁶ Consistent with the second sentence of paragraph 8 of Annex 3, Australia has not included the budgetary outlays for these measures in calculating India's AMS for sugarcane. However, Australia

⁸⁰ Australia's second written submission, para. 50.

⁸¹ Australia's first written submission, paras. 153–156.

⁸² Agreement on Agriculture, Annex 3, paragraph 9. See paragraph 46 above.

⁸³ Australia's first written submission, paras. 158–162; Australia's response to Panel question 62(a), paras. 26–32.

⁸⁴ Australia's first written submission, para. 164.

⁸⁵ For instance, the FRP consists of a minimum or base price payable for sugarcane of a basic recovery rate but premiums are payable for cane with higher recovery rates. In the 2018–19 and 2019–20 sugar seasons, sugarcane with a recovery rate below the basic recovery rate received a lower floor price: Australia's first written submission, paras. 28–35, Table 2.

⁸⁶ These measures are listed in Australia's first written submission, paras. 182–183.

nonetheless considers that they are measures through which India is providing or has provided non-exempt domestic support, which should be covered by the Panel's findings.⁸⁷

(e) India's market price support exceeds its permitted level

66. Australia has calculated India's market price support for sugarcane producers in the sugar seasons 2014–15 to 2018–19 using the formula in Annex 3 of the Agreement on Agriculture and data from official Indian government instruments and publications. These calculations, a summary of which is at Annex A, demonstrate that India's market price support, provided through its FRP and SAP measures, vastly exceeds its permitted *de minimis* level.⁸⁸ Thus, through its market price support alone, India violates its obligations under the Agreement on Agriculture.

B. OTHER NON-EXEMPT DOMESTIC SUPPORT

67. In addition to market price support, India also provides other non-exempt domestic support to its sugarcane producers in the form of non-exempt direct payments or other policies.

1. Calculation of India's other non-exempt domestic support for sugarcane

68. Paragraphs 10, 12 and 13 of Annex 3 of the Agreement on Agriculture provide that the value of other non-exempt domestic support measures may be measured using budgetary outlays.⁸⁹ Australia recalls that the value of these measures should only be added to the product-specific AMS if the budgetary payments are not made to maintain the gap between the FERP and the AAP.⁹⁰

2. The Andhra Pradesh, Karnataka and Tamil Nadu programmes

69. The Andhra Pradesh purchase tax remittance, the Karnataka incentive price payment and the Tamil Nadu production incentive payment programmes constitute "non-exempt direct payments" or "other subsid[ies] not exempted from the reduction commitment".⁹¹ Under those programmes, the State governments provide funds not directed towards paying – or, in other words, maintaining – the FRP, which result in the sugarcane farmers receiving additional income. Thus, the budgetary outlays for these programmes may be added to India's AMS for sugarcane, as Australia has done in its calculations.⁹²

70. However, in view of the very marginal increases in India's AMS for sugarcane that arise from including the programmes' budgetary outlays, if the Panel finds that India's market

⁸⁷ Australia's first written submission, paras. 181–186; Australia's response to Panel question 20(b), paras. 47–51.

⁸⁸ Australia's domestic support calculations, Microsoft Excel workbooks, Revision 3 (**Exhibit AUS-1 (Revision 3)**).

⁸⁹ Australia's first written submission, paras. 135–143.

⁹⁰ Agreement on Agriculture, Annex 3, paragraph 8. See paragraph 44 above.

⁹¹ Agreement on Agriculture, Annex 3, paragraph 1; Australia's first written submission, paras. 189–202; Australia's responses to Panel questions 26(a) (paras. 61–62), 27 (paras. 71–83), 50 (paras. 8–12).

⁹² Australia's domestic support calculations, Microsoft Excel workbooks, Revision 3 (**Exhibit AUS-1 (Revision 3)**).

price support exceeds its permitted level, Australia considers that the Panel may decide to not to include these programmes in India's AMS. If the Panel were to exercise judicial economy, Australia considers that the Panel's ruling should nevertheless apply to all forms of India's non-exempt domestic support, whether or not these were included in the AMS.⁹³

C. INDIA'S AMS FOR SUGARCANE PRODUCERS VASTLY EXCEEDS ITS PERMITTED *DE MINIMIS* LEVEL

71. Australia has established, through argument and evidence, that India's domestic support in favour of its sugarcane producers – consisting of market price support and other non-exempt support – vastly exceeds its permitted *de minimis* level. Australia's calculations of India's domestic support in the sugar seasons from 2014–15 to 2018–19, as summarized in Annex A, demonstrate the magnitude of India's violation.⁹⁴

72. By India's own admission, the principal measures through which it maintains this level of domestic support – the FRP and SAPs – remain in effect.⁹⁵

IV. INDIA'S EXPORT SUBSIDIES FOR SUGAR ARE INCONSISTENT WITH ITS OBLIGATIONS UNDER THE AGREEMENT ON AGRICULTURE AND THE SCM AGREEMENT

73. Under the Agreement on Agriculture, India has committed to limit its export subsidies to producers of agricultural products. Pursuant to Articles 3.1(a) and 8 of the Agreement, India has also undertaken not to provide export subsidies otherwise than in conformity with its scheduled reduction commitments.

74. Under Article 3.3 of the Agreement on Agriculture, India has committed not to provide any export subsidies of the kinds listed in Article 9.1 for unscheduled agricultural products. Further, it has committed, under Article 10.1, not to use export subsidies of kinds not listed in Article 9.1, in a manner that results in, or threatens to lead to, circumvention of its export subsidies reduction commitments. The prohibition in Article 3.3 applies subject to Article 9.4, which concerns only export subsidies of the kinds listed in Articles 9.1(d) and (e).⁹⁶

75. India agrees that Part IV, Section II, of its Schedule contains no export subsidy reduction commitments in relation to sugar.⁹⁷ Sugar is, therefore, an unscheduled agricultural product, for which India must not provide any Article 9.1 export subsidies.⁹⁸

76. Articles 3.1(a) and 3.2 of the SCM Agreement also prohibit India from granting or maintaining export subsidies. Pursuant to Article 1.1. of the SCM Agreement, a "subsidy" is

⁹³ Australia's response to Panel question 23(a), paras. 53–54.

⁹⁴ Australia's domestic support calculations, Microsoft Excel workbooks, Revision 3 (**Exhibit AUS-1 (Revision 3)**).

⁹⁵ India's first written submission, paras. 16–18, 29–30; Australia's opening statement at the first substantive meeting, para. 8.

⁹⁶ Australia's first written submission, paras. 236–252; Australia's second written submission, para. 90.

⁹⁷ India's response to Panel question 38, pp. 25–26.

⁹⁸ Australia's first written submission, paras. 247–251; Australia's second written submission, para. 91.

deemed to exist where there is a "financial contribution" by a "government or public body" that confers a "benefit" on its recipient.⁹⁹

77. India's sugar export subsidies are contrary to its obligations under both agreements. Australia begins its analysis with the Agreement on Agriculture because, to the extent of any inconsistency between the two agreements, the Agreement on Agriculture prevails.¹⁰⁰ India acknowledges this hierarchy between the two Agreements.¹⁰¹

A. INDIA PROVIDES "DIRECT SUBSIDIES" THAT ARE "CONTINGENT ON EXPORT PERFORMANCE" WITHIN THE MEANING OF ARTICLE 9.1(A) OF THE AGREEMENT ON AGRICULTURE

78. Article 1(e) of the Agreement on Agriculture defines "export subsidies" as "subsidies contingent on export performance", including the practices listed in Article 9.1. Article 9.1(a) of the Agreement concerns direct subsidies including payments-in-kind, that are provided by governments or their agencies to a firm, an industry, producers of an agricultural product, a cooperative or other association of such producers, or to a marketing board, and that are contingent on export performance.¹⁰²

1. India's production subsidies, buffer stock subsidies and its MAEQ and DFIA schemes are Article 9.1(a) subsidies

79. India's production and buffer stock subsidies and its MAEQ and DFIA schemes are export subsidies within the meaning of Article 9.1(a).

80. Each scheme involves a direct transfer of economic resources from the Indian government to sugar mills for less than full consideration. Pursuant to the production and buffer stock subsidies and the MAEQ scheme, India's Department of Food and Public Distribution makes funds available to clear sugar mills' debts to sugarcane farmers. Under the DFIA scheme, the government foregoes import tax revenue that mills would otherwise owe it.

81. Sugar mills are "producers of an agricultural product".¹⁰³ However, noting the degree of overlap between the categories of subsidy recipient in Article 9.1(a),¹⁰⁴ they may also qualify individually as "firms" or collectively as an "industry". The characterization of mills, collectively, as "a cooperative or other association of such producers" may also be appropriate as Indian sugar mills are commonly owned and operated by cooperatives.¹⁰⁵ The schemes leave recipient mills better off than they would otherwise have been. Finally, all are export-

⁹⁹ Australia's first written submission, paras. 372–388.

¹⁰⁰ Agreement on Agriculture, Article 21.1. *See also*, Australia's first written submission, paras. 212–216; Australia's second written submission, para. 89.

¹⁰¹ India's first written submission, paras. 91–92.

¹⁰² Australia's first written submission, paras. 253–284; Australia's second written submission, paras. 94–95.

¹⁰³ Agreement on Agriculture, Article 9.1(a).

¹⁰⁴ Australia's first written submission, para. 275; Australia's response to Panel question 54, para. 25.

¹⁰⁵ Australia's first written submission, para. 296.

contingent, linking the availability of subsidies to the achievement of export quotas or targets, or to past export performance.¹⁰⁶

2. India misinterprets Article 9.1

82. Australia and India agree on the elements required to satisfy the legal standard under Article 9.1(a) and that the "subsidy" definition in Article 1.1 of the SCM Agreement is relevant to the interpretation of the terms "subsidy" and "subsidies" as they appear in the Agreement on Agriculture.¹⁰⁷ However, Australia and India do not agree on what is required to demonstrate the elements of a subsidy for the purposes of Article 9.1(a). Specifically, India bases its interpretation of the legal standard applicable under Article 9.1(a) on a flawed understanding of the two elements of the SCM Agreement's subsidy definition.¹⁰⁸

(a) Evidence of actual funds disbursements is not required

83. India insists that because the SCM Agreement deems a subsidy to exist where "there is a financial contribution",¹⁰⁹ Australia must provide evidence of actual disbursements of government funds to substantiate the existence of India's subsidies.¹¹⁰

84. Australia disagrees. Article 9.1(a) concerns the "provision" of subsidies. "To provide" funds, is "to make [them] available", as, for example, when a government provides the legislative authority to make payments under a scheme or makes a relevant budgetary allocation.¹¹¹

85. Further, the immediate context of Article 9.1(a) within the Agreement on Agriculture makes clear that the Agreement contemplates a subsidy being demonstrable on an allocation of funds alone. Specifically, Article 9.2(a)(i) provides that a Member's compliance with its scheduled export subsidy reduction commitments may be measured based on budgetary outlays "allocated or incurred."¹¹²

86. Article 1.1(a)(1)(i) of the SCM Agreement, similarly, provides that "potential direct transfers of [government] funds" may constitute a "financial contribution" for the purposes of a subsidy, thereby acknowledging that a subsidy may exist in situations where actual payments are prospective.¹¹³ In fact, the Appellate Body and previous panels have considered "conduct on the part of the government by which money, financial resources, and/or financial

¹⁰⁶ Australia's second written submission, para. 96. *See also*, Australia's first written submission, paras. 288–365.

¹⁰⁷ Australia's second written submission, paras. 98–99; India's responses to Panel questions 29 (p. 21), 54(a) (p. 9).

¹⁰⁸ SCM Agreement, Articles 1.1(a) and 1.1(b).

¹⁰⁹ SCM Agreement, Article 1.1(a)(1) (emphasis added); India's first written submission, para. 107; India's second written submission, paras. 69, 76, 89.

¹¹⁰ India's first written submission, paras. 105–109; India's second written submission, paras. 67–89.

¹¹¹ Australia's second written submission, paras. 101, 105; Australia's opening statement at the second substantive meeting, para. 57.

¹¹² Agreement on Agriculture, Article 9.2(a)(i) (emphasis added); Australia's second written submission, para. 106.

¹¹³ Australia's second written submission, para. 107.

claims are made available to a recipient"¹¹⁴ sufficient to demonstrate a "direct funds transfer", and that the phrase encompasses situations in which some payments under a measure are yet to be made.¹¹⁵

87. Australia does not accept either that the reference in Article 9.1(a) to "payments-in-kind" or the fact that the challenged measures involve "grants", support India's contention that only evidence of actual payments can demonstrate the existence of a "financial contribution" in relation to its export subsidies.¹¹⁶ The textual references India relies on are simply examples that illustrate the variety of forms a "financial contribution" may take.¹¹⁷

88. India's understanding of what is required to demonstrate the existence of a financial contribution is, in any event, moot because Australia has provided evidence of actual payments to sugar mills under the challenged measures.¹¹⁸

(b) Australia has demonstrated the existence of a "benefit"

89. India also alleges that Australia has failed to conduct the market comparison necessary to demonstrate the existence of a "benefit" for the purposes of the subsidy definition in the SCM Agreement. Australia disagrees. Australia accepts that the market provides a useful benchmark against which to test the existence of a benefit.¹¹⁹ However, the market comparison exercise required in this context is simple because it is readily apparent that the market for financial services involving the provision of funds does not offer the sort of non-reciprocal gifts or grants available to sugar mills under the challenged measures.¹²⁰

3. India has not established a defence under Article 9.4 in relation to the MAEQ scheme

90. In response to Australia's *prima facie* case that the MAEQ scheme is an Article 9.1(a) export subsidy, India has argued that the scheme falls within Article 9.4 of the Agreement on Agriculture. India has not substantiated that assertion with any evidence that the MAEQ scheme falls under either of Articles 9.1(d) or (e) of the Agreement, which identify the types of export subsidies to which the flexibility in Article 9.4 applies.

91. India has pointed to the MAEQ scheme's notification, which partially replicates the language of Articles 9.1(d) and (e).¹²¹ However, that language represents the extent of the scheme's connection with the transport, freight and marketing subsidies to which

¹¹⁴ Appellate Body Report, *US – Large Civil Aircraft (2nd complaint)*, para. 614; Australia's response to Panel question 59, para. 77.

¹¹⁵ Panel Report, *EC and certain member States – Large Civil Aircraft* (Article 21.5 – US), para. 6.290; Australia's response to Panel question 59, para. 77.

¹¹⁶ India's second written submission, paras. 72–74.

¹¹⁷ Australia's opening statement at the second substantive meeting, paras. 49–50, 60–61.

¹¹⁸ Australia's second written submission, paras. 112–113; Australia's response to Panel question 59, para. 82.

¹¹⁹ Australia's opening statement at the second substantive meeting, para. 69.

¹²⁰ Australia's second written submission, para. 110; Australia's opening statement at the second substantive meeting, paras. 69–72. *See also*, Australia's response to Panel question 53, paras. 20–22; Australia's first written submission, para. 269.

¹²¹ India's first written submission, paras. 119–120, 122.

Articles 9.1(d) and (e) apply. Merely pointing to WTO-consistent language in the scheme's notification is no substitute for an objective assessment of the scheme's design, operation and purpose – none of which reveals any link to the types of costs that Articles 9.1(d) and (e) contemplate.¹²²

92. To meet the legal standard applicable under Article 9.1(d), the subsidy in question must be provided for the distinct purpose of covering "costs of marketing exports of agricultural products", including "the costs of international transport and freight". Under Article 9.1(e), there must be evidence of governmental action taken for the distinct purpose of creating advantageous conditions for "internal transport and freight charges on export shipments" vis-à-vis domestic shipments. This relationship between the subsidy and the purposes identified in Articles 9.1(d) and (e) respectively must also be quantifiable, with the assistance provided reducing but not exceeding actual costs or charges.¹²³ India agrees that subsidies that fall within Articles 9.1(d) and (e) must not exceed the costs incurred.¹²⁴

93. Australia has adduced compelling evidence that the MAEQ scheme does not satisfy the legal standards applicable under Articles 9.1(d) and (e). The scheme's purposes, as indicated in its notification, are to help sugar mills offset the cost of buying sugarcane by satisfying debts owed to sugarcane farmers and to incentivize export by making eligibility to claim assistance conditional upon meeting an export target.¹²⁵

94. Moreover, the MAEQ scheme gives no indication of a link between assistance provided and actual costs of the kinds identified in Articles 9.1(d) and (e). The only metric used to calculate the subsidy's value is the number of tonnes of sugar exported.¹²⁶ India's contention that the subsidies improve sugar mills' financial position and therefore ultimately reduce transport, freight and marketing costs reflects an unacceptably broad interpretation of the applicable legal standards, which require evidence of a direct relationship between relevant subsidies and costs of the kinds identified in Articles 9.1(d) and (e).¹²⁷

95. Despite asserting that it determined the value of MAEQ payments following significant stakeholder consultation, India has not adduced any probative evidence of such consultations and, consequently, of the relationship required by the legal standards applicable under Articles 9.1(d) and (e).¹²⁸ Australia, on the other hand, has shown that the MAEQ

¹²² Australia's response to Panel question 43, para. 128; Australia's second written submission, paras. 128–133.

¹²³ Australia's second written submission, paras. 120–122; Australia's response to Panel question 56(a), para 39.

¹²⁴ India's response to Panel question 81, p. 14.

¹²⁵ Australia's second written submission, paras. 125, 130–133.

¹²⁶ Australia's second written submission, para. 131.

¹²⁷ India's opening statement at the first substantive meeting, para. 15; Australia's second written submission, paras. 138–140.

¹²⁸ India's opening statement at the first substantive meeting, para. 17; Australia's second written submission, paras. 141–146; Australia's response to Panel question 82, paras. 104–109.

scheme's design fails to ensure that the assistance provided does not exceed the actual transport, freight and marketing costs that sugar mills typically incur.¹²⁹

96. Finally, Australia does not accept India's assertion that the proper characterization of Article 9.4 is as an "autonomous right" rather than a typical "exception" or "defence", or India's related argument that Australia bore the burden of both raising and proving the provision did not apply to the MAEQ scheme in its first written submission.¹³⁰ To oblige a complainant to anticipate any provision a respondent may raise in its defence and to explain why that provision does not apply would place an unsustainable evidentiary burden on complainants and compromise the efficiency of dispute settlement.¹³¹ If a respondent asserts, in response to evidence and argument that it maintains Article 9.1(a) export subsidies, that those subsidies in fact fall within the meaning of Articles 9.1(d) or (e), it is for the respondent to prove the affirmative of that assertion.¹³² India's argument is, in any case, moot, given Australia's comprehensive evidence and argument that the scheme does not satisfy the legal standards applicable under Articles 9.1(d) and (e).¹³³

B. INDIA PROVIDES PROHIBITED SUBSIDIES WITHIN THE MEANING OF ARTICLE 3.1(A) OF THE SCM AGREEMENT

97. The Agreement on Agriculture does not authorize India's export subsidies, which therefore remain subject to the disciplines of the SCM Agreement and are inconsistent India's obligations under Articles 3.1(a) and 3.2.

1. India's production subsidies, buffer stock subsidies and its MAEQ and DFIA schemes are Article 3.1(a) subsidies

98. A measure that satisfies the definition of a "subsidy" in Article 1.1 of the SCM Agreement will involve a "financial contribution", by a "government or public body", that confers a "benefit" on its recipient. Article 3.1(a) "prohibits subsidies that are conditional upon... or are dependent for their existence on", or are "tied to" export performance.¹³⁴

99. Under each of India's production and buffer stock subsidies and its MAEQ scheme, there is a "financial contribution" in the form of a "government practice" involving the "direct transfer of funds" within the meaning of Article 1.1(a)(1)(i) of the SCM Agreement. Each scheme involves the transfer of funds from a government agency either to sugarcane farmers on behalf of mills or to sugar mills directly. Under the DFIA scheme, there is a "financial contribution" within the meaning of Article 1.1(a)(1)(ii), with a government agency foregoing

¹²⁹ Australia's second written submission, paras. 147–169; Australia's response to Panel question 84, para. 115.

¹³⁰ India's opening statement at the second substantive meeting, paras. 77–83; Australia's responses to Panel questions 92(a) (paras. 143–148), 92(b), (paras. 149–153, 156).

¹³¹ Australia's response to Panel question 92(b), para. 152; Panel Report, *India – Export Related Measures*, para. 7.11.

¹³² Australia's second written submission, para. 119, citing Appellate Body Report, *US – Wool Shirts and Blouses*, p. 14; Australia's response to Panel question 92(b), para. 152.

¹³³ Australia's response to Panel question 92(b), para. 154.

¹³⁴ Australia's second written submission, paras. 203–204.

revenue by waiving the customs duties sugar mills would otherwise owe it.¹³⁵ All schemes confer a "benefit" on recipient mills, leaving them better off, with respect to debts owed, funds accrued or tax liability, than they would otherwise be.¹³⁶ All schemes are export-contingent, with the availability of financial assistance tied to export performance.¹³⁷

2. India misinterprets the legal standard applicable for establishing the existence of an Article 1.1 subsidy

100. In response to Australia's *prima facie* case that India maintains export subsidies contrary to its obligations under Articles 3.1(a) and 3.2 of the SCM Agreement, India repeats its argument that evidence of actual funds transfers is required to demonstrate the existence of a "financial contribution" for the purposes of the "subsidy" definition in Article 1.1 of the SCM Agreement.¹³⁸ India also recycles its argument that a complex market comparison is needed to establish the "benefit" component of the Article 1.1 subsidy definition.¹³⁹ Australia disagrees, for the reasons outlined above in relation to India's subsidies under Article 9.1(a) of the Agreement on Agriculture.¹⁴⁰

3. India misinterprets Article 27 and Annex VII

101. India contends that it is exempt from the export subsidy prohibition in Article 3.1(a) of the SCM Agreement by virtue of the flexibility Article 27.2 of the Agreement affords developing country Members.¹⁴¹ Australia disagrees. Article 27.2(b) provides that the Article 3.1(a) prohibition shall not apply to "other developing country Members" – i.e. those not referred to in Annex VII to the Agreement – for a period of eight years after the WTO Agreement's entry into force. On a plain reading of the text of the provision itself, Article 27.2(b) expired on 1 January 2003.

102. Accepting "the clarity of the plain textual meaning"¹⁴² of Article 27.2(b) is consistent with customary rules of treaty interpretation¹⁴³ and does not render, as India argues, parts of the SCM Agreement useless or redundant vis-à-vis some developing country Members.¹⁴⁴ Nor does it undermine the mandatory language of Annex VII(b), pursuant to which listed developing countries "shall be subject to the provisions which are applicable to other developing country Members"¹⁴⁵ upon their graduation from the Annex. The mandatory language in Annex VII(b) concerns the applicability, to graduating developing country Members, of Article 27.2(b). It does not concern the provision's content, including its temporal

¹³⁵ Australia's first written submission, paras. 394–397, 405–408, 413–416, 426.

¹³⁶ Australia's first written submission, paras. 398–400, 409, 417, 427–427.

¹³⁷ Australia's first written submission, paras. 401–403, 410–411, 420–422, 430–431.

¹³⁸ India's first written submission, paras. 146–147. *See also*, India's second written submission, paras. 67–89.

¹³⁹ India's first written submission, para. 147. *See also*, India's second written submission, paras. 90–97.

¹⁴⁰ *See* paragraphs 83 to 88 above.

¹⁴¹ India's first written submission, paras. 129–145.

¹⁴² Appellate Body Report, *Peru – Agricultural Products*, para. 5.94.

¹⁴³ *See* footnote 40 above.

¹⁴⁴ India's first written submission, para. 137.

¹⁴⁵ SCM Agreement, Annex VII(b) (emphasis added).

limit. Moreover, as the inclusion in Annex VII(b) of the sub-clause "which are applicable to other developing country Members" makes clear, Article 27.2(b) applies to graduates from Annex VII(b) on exactly the same terms, including with respect to its expiry, as it does for "other developing country Members."¹⁴⁶

103. Further, a plain reading of Article 27.2(b) does not, as India claims, frustrate a harmonious reading of Article 27 as a whole. India contends, for example, that Article 27.4 anticipates different eight-year export subsidy phase out periods for different categories of developing country Member.¹⁴⁷ Australia disagrees. Article 27.4 both cross-references Article 27.2(b) and refers twice to "the eight-year period".¹⁴⁸ As this use of the definite article "the" makes clear, Article 27.4 refers to the specific eight-year period introduced in Article 27.2(b).¹⁴⁹

104. Far from denying developing country Members equal treatment as India argues,¹⁵⁰ a plain reading of Article 27.2(b) is consistent with the different levels of flexibility that Article 27 and Annex VII afford developing country Members according to their circumstances.¹⁵¹

105. India graduated from Annex VII(b) to the SCM Agreement in 2017. It was, thereafter, subject to the export subsidies prohibition in Article 3.1(a). Until 2017, India benefited from an extended period of exemption from the Agreement's export subsidies prohibition appropriate to its evolving income level.¹⁵²

4. The DFIA scheme does not fall within footnote 1

106. India's DFIA scheme is, as outlined above, an export subsidy within the meaning of Article 9.1(a) of the Agreement on Agriculture.¹⁵³ The DFIA scheme is not authorized by the Agreement on Agriculture. It does not, moreover, fall within the carve-out, in footnote 1 to the SCM Agreement, from that Agreement's definition of a "subsidy". The DFIA scheme therefore remains subject to the prohibition on export subsidies in Articles 3.1(a) and 3.2 of the SCM Agreement.

107. Footnote 1 to the SCM Agreement, read together with Annex I(i), provides that, a measure will not be deemed to be a subsidy if it comprises: (i) a remission or drawback, including full or partial exemption or deferral; (ii) of import charges; (iii) on imported inputs

¹⁴⁶ Australia's second written submission, paras. 185–190.

¹⁴⁷ India's first written submission, para. 141.

¹⁴⁸ SCM Agreement, Article 27.4 (emphasis added).

¹⁴⁹ Australia's second written submission, para. 192.

¹⁵⁰ India's first written submission, paras. 139–140.

¹⁵¹ Australia's second written submission, paras. 198–199.

¹⁵² Australia's second written submission, paras. 195–201.

¹⁵³ See paragraphs 79 to 81 above.

consumed in the production of an exported product; and (iv) the remission or drawback is not in excess of those charges levied on the inputs.¹⁵⁴

108. To satisfy the third element of this legal standard a measure must follow a sequencing that ensures it applies to imported inputs that are "consumed in the production of [an] exported product".¹⁵⁵ As the guidance in Annexes II to III to the SCM Agreement articulates, inputs so "consumed" include, relevantly, those "physically incorporated"¹⁵⁶, in the sense that they are "physically present",¹⁵⁷ in the exported product.¹⁵⁸

109. Australia recalls that the DFIA scheme permits mills that exported white sugar during a 6-month period in the 2017–18 sugar season to import raw sugar duty free during two subsequent seasons.¹⁵⁹ This sequencing reverses the logic of footnote 1, read with Annex I(i), and interpreted, as footnote 1 directs, in context with the guidance in Annexes II to III to the SCM Agreement. Raw sugar imported from 2019 to 2021 cannot be either "physically incorporated" or "physically present" in refined sugar exported in 2018.¹⁶⁰

110. Additionally, the existence of a verification system to ensure that the DFIA scheme's beneficiaries do not receive duty waivers for more imported raw sugar than they use to produce white sugar exports cannot guarantee that the scheme falls within footnote 1 to the SCM Agreement. The verification system associated with the DFIA scheme, regardless of its efficacy in preventing excess remissions, cannot alter the scheme's inconsistency with the temporal requirements of footnote 1, read with Annex I(i), to the SCM Agreement.¹⁶¹

111. Australia does not, as India claims, argue that footnote 1, read with Annex I(i), is so restrictive as to apply only when precisely the same inputs imported duty free are physically present in an exported product.¹⁶² Australia recognises that Annex I(i) allows "where appropriate" for "substitution."¹⁶³ This flexibility makes sense where domestic and imported inputs are commingled in the production of products destined for domestic and export markets. However, it does not follow that, in allowing an equivalent quantity of home market inputs to be substituted for imported inputs, Annex I(i) to the SCM Agreement also permits the substitution of future imported inputs for equivalent quantities of imported inputs used to produce past exports.¹⁶⁴

¹⁵⁴ Australia's response to Panel question 58(b), para. 65; Australia's second written submission, para. 211, citing Panel Report, *India – Export Related Measures*, para. 7.178, Table 2.

¹⁵⁵ SCM Agreement, Annex I(i) (emphasis added).

¹⁵⁶ SCM Agreement, footnote 61.

¹⁵⁷ SCM Agreement, Annex II(I)(3).

¹⁵⁸ Australia's response to Panel question 85, paras. 119–123.

¹⁵⁹ See paragraph 25 above.

¹⁶⁰ Australia's response to Panel question 85, paras. 119 and 126.

¹⁶¹ Australia's comments on India's response to Panel question 88, paras. 49–52.

¹⁶² India's opening statement at the second substantive meeting, para. 90; Australia's closing statement at the second substantive meeting, para. 24.

¹⁶³ SCM Agreement, Annex II(I)(2).

¹⁶⁴ Australia's comments on India's response to Panel question 88, paras. 53–54.

112. Finally, Australia does not accept India's contention, based on its position that footnote 1 to the SCM Agreement (read with Annex I(i)) is not a typical "exception" or "defence", that Australia bore the burden of proving no later than in its first written submission that the DFIA scheme did not fall within footnote 1.¹⁶⁵ As Australia articulated with respect to the allocation of burden under Article 9.4 of the Agreement on Agriculture,¹⁶⁶ the characterization of a provision other than as a typical exception or affirmative defence does not determine which party bears the initial burden of raising that provision. The proper characterization of footnote 1 and the implications of that characterization, including for the allocation of burden of proof, is in any case moot. Australia has addressed comprehensively the question of whether the DFIA scheme falls within footnote 1 and India had ample opportunity to respond.¹⁶⁷

V. INDIA HAS FAILED TO NOTIFY ITS DOMESTIC SUPPORT IN FAVOUR OF SUGARCANE PRODUCERS AND EXPORT SUBSIDIES FOR SUGAR IN BREACH OF ITS WTO OBLIGATIONS

113. Australia has established that India maintains domestic support for sugarcane producers and export subsidies for sugar. India has not submitted notifications of these measures, in breach of its obligations under the Agreement on Agriculture and the SCM Agreement, or, in the alternative, under the GATT 1994.

A. INDIA'S NOTIFICATION OBLIGATIONS UNDER THE AGREEMENT ON AGRICULTURE, THE SCM AGREEMENT AND THE GATT 1994

1. Agreement on Agriculture

114. Article 18 of the Agreement on Agriculture provides, in mandatory terms, that:

- progress in the implementation of commitments negotiated under the Uruguay Round reform programme shall be reviewed by the Committee on Agriculture (Article 18.1);
- the review process shall be undertaken on the basis of notifications submitted by Members in relation to such matters and at such intervals as shall be determined (Article 18.2);
- in addition to the notifications to be submitted to inform the review process (under Article 18.2), any new domestic support measure, or modification of an existing measure, for which exemption from reduction is claimed shall be notified promptly by Members (Article 18.3); and

¹⁶⁵ India's opening statement at the second substantive meeting, para. 89.

¹⁶⁶ See paragraph 96 above.

¹⁶⁷ Australia's comments on India's response to Panel question 86(a), paras. 44–46.

- domestic support notifications shall contain details of the relevant new or modified measure and its conformity with criteria set out in in the Agreement on Agriculture (Article 18.3).

115. Accordingly, India is required to submit notifications concerning its domestic support and export subsidies to the Membership through the Committee on Agriculture. Notifications are essential for ensuring transparency and enabling the Committee to monitor the implementation of Members' commitments effectively.¹⁶⁸

(a) India misinterprets Article 18 of the Agreement on Agriculture

116. India claims that Article 18 of the Agreement on Agriculture does not place any obligations on Members, but merely grants the Committee on Agriculture the discretion to determine how the review process is conducted.¹⁶⁹ In making this argument, India ignores the mandatory language and overall scheme of Article 18. Contrary to India's assertion, the Committee's role is not to be determined as a matter of discretion. Rather, the Committee shall review Members' progress in the implementation of their commitments and its review shall be undertaken on the basis of notifications to be submitted by Members.¹⁷⁰ If Members had no obligation to submit notifications, the Committee would be unable to discharge its mandatory function.

117. Further, India argues that Committee document G/AG/2, which sets out the notification requirements and formats under Article 18,¹⁷¹ uses hortatory language that is suggestive in nature and does not give rise to a binding obligation.¹⁷² India's argument is without merit. The document G/AG/2 is not a treaty-level instrument and does not modify Members' obligations under Article 18. Australia's claim is under Article 18, not under G/AG/2.¹⁷³

118. Australia asks the Panel to find that Article 18 imposes binding notification obligations on Members.

2. SCM Agreement

119. Article 25 of the SCM Agreement requires India to notify the Members of subsidies falling within Article 1.1, which are specific within the meaning of Article 2, that India grants

¹⁶⁸ Australia's first written submission, paras. 437–443; Australia's response to Panel question 44(b), para. 141; Australia's second written submission, paras. 223–224.

¹⁶⁹ India's first written submission, para. 158.

¹⁷⁰ Agreement on Agriculture, Articles 18.1 and 18.2.

¹⁷¹ G/AG/2, 30 June 1995, p. 24.

¹⁷² India's first written submission, para. 158.

¹⁷³ Australia's response to Panel question 44(b), para. 140; Australia's second written submission, paras. 225–229.

or maintains within its territory.¹⁷⁴ Such notifications must be submitted not later than 30 June of each year and must conform to Articles 25.2 to 25.6.¹⁷⁵

120. India does not dispute that Article 25 imposes mandatory notification obligations.¹⁷⁶

3. GATT 1994

121. India is obliged under Article XVI:1 of the GATT 1994 to notify other Members of the extent, nature and estimated effects on trade, of any subsidy it grants or maintains, including income or price support, which operates directly or indirectly to increase exports of any product from its territory.¹⁷⁷

122. India does not dispute that Article XVI:1 imposes mandatory notification obligations.¹⁷⁸

B. INDIA HAS BREACHED ITS NOTIFICATION OBLIGATIONS BY FAILING TO NOTIFY ITS DOMESTIC SUPPORT IN FAVOUR OF SUGARCANE PRODUCERS AND ITS EXPORT SUBSIDIES FOR SUGAR

123. India does not dispute that it last notified its domestic support to sugarcane in its 1995–96 notification to the Committee on Agriculture and that its most recent notification of its export subsidies for sugar was in 2009–10, which covered the marketing years 2004–05 to 2009–10. Thus, India has not met its legal obligations under the Agreement on Agriculture and the SCM Agreement to notify the Membership of its domestic support for sugarcane producers and its export subsidies for sugar.¹⁷⁹

124. In the alternative, India is in breach of its obligation pursuant to Article XVI:1 of the GATT 1994 to notify Members of India's subsidies that operate directly or indirectly to increase its sugar exports.¹⁸⁰

VI. CONCLUSION

125. For the foregoing reasons, Australia submits that:

- Through its market price support and other non-exempt domestic support, India maintains domestic support for sugarcane producers that exceeds the *de minimis* level of 10 per cent of the total value of production of sugarcane contrary to India's obligation under Article 7.2(b) of the Agreement on Agriculture.

¹⁷⁴ SCM Agreement, Article 25.2; Australia's first written submission, paras. 444–446.

¹⁷⁵ SCM Agreement, Article 25.1.

¹⁷⁶ India's first written submission, para. 157.

¹⁷⁷ Australia's first written submission, paras. 447–448.

¹⁷⁸ India's first written submission, para. 157.

¹⁷⁹ Australia's first written submission, para. 450–458.

¹⁸⁰ Australia's first written submission, paras. 459–466.

- India's production and buffer stock subsidies operating in conjunction with the MIEQ orders, and its MAEQ and DFIA schemes constitute:
 - export subsidies within the meaning of Article 9.1(a) of the Agreement on Agriculture, and are therefore inconsistent with India's obligations under Articles 3.3 and 8 of the Agreement on Agriculture, or, in the alternative Articles 8 and 10.1; and
 - prohibited export subsidies that are inconsistent with India's obligations under Articles 3.1(a) and 3.2 of the SCM Agreement.
- By failing to notify its annual domestic support for sugarcane and sugar subsequent to 1995–96 or to submit an export subsidy notification since 2009–10, India has acted inconsistently with its obligations under Articles 18.2 and 18.3 of the Agreement on Agriculture and Article 25 of the SCM Agreement, or, in the alternative, Article XVI:1 of the GATT 1994.

126. Australia respectfully requests the Panel to find accordingly.

ANNEX A Summary of Australia's calculations of India's AMS for sugarcane in the sugar seasons 2014–15 to 2018–19**Option 1**

	Unit	2014-15	2015-16	2016-17	2017-18	2018-19
Value of production	Million Rs.	784,330.00	746,600.00	724,410.00	989,670.00	1,055,920.00
MPS using AAP(FRP plus average premium)	Million Rs.	791,939.81	815,274.15	703,842.00	1,006,325.89	1,075,845.33
—as a percentage of production value	Per cent	100.97%	109.20%	97.16%	101.68%	101.89%
MPS using AAP(FRP or SAP)	Million Rs.	903,751.21	880,418.37	815,045.23	1,072,684.68	1,110,085.41
—as a percentage of production value	Per cent	115.23%	117.92%	112.51%	108.39%	105.13%
—difference between MPS using AAP(FRP plus average premium) and AAP(FRP or SAP)	Per cent	14.26%	8.73%	15.35%	6.71%	3.24%
Additional non-exempt domestic support						
—Andhra Pradesh (Annex B-01)	Million Rs.	66.00	66.00			
—Tamil Nadu (Annex B-02)	Million Rs.				1364.30	980.30
—Karnataka (Annex B-03)	Million Rs.				0.10	
Total additional non-exempt	Million Rs.	66.00	66.00	0.00	1364.40	980.30
AMS using AAP(FRP+SAP) and other non-exempt domestic support	Million Rs.	903,817.21	880,484.37	815,045.23	1,074,049.08	1,111,065.71
—as a percentage of production value	Per cent	115.23%	117.93%	112.51%	108.53%	105.22%
—difference between AMS including other non-exempt domestic support and MPS using AAP(FRP+SAP)	Per cent	0.01%	0.01%	0.00%	0.14%	0.09%

Option 2

	Unit	2014-15	2015-16	2016-17	2017-18	2018-19
Value of production	Million Rs.	965,290.00	958,640.00	946,980.00	1,173,510.00	1,230,490.00
MPS using AAP(FRP plus average premium)	Million Rs.	791,939.81	815,274.15	703,842.00	1,006,325.89	1,075,845.33
—as a percentage of production value	Per cent	82.04%	85.04%	74.32%	85.75%	87.43%
MPS using AAP(FRP or SAP)	Million Rs.	903,751.21	880,418.37	815,045.23	1,072,684.68	1,110,085.41
—as a percentage of production value	Per cent	93.62%	91.84%	86.07%	91.41%	90.21%
—difference between MPS using AAP(FRP plus average premium) and AAP(FRP or SAP)	Per cent	11.58%	6.80%	11.74%	5.65%	2.78%
Additional non-exempt domestic support						
—Andhra Pradesh (Annex B-01)	Million Rs.	66.00	66.00			
—Tamil Nadu (Annex B-02)	Million Rs.				1364.30	980.30
—Karnataka (Annex B-03)	Million Rs.				0.10	
Total additional non-exempt	Million Rs.	66.00	66.00	0.00	1364.40	980.30
AMS using AAP(FRP+SAP) and other non-exempt domestic support	Million Rs.	903,817.21	880,484.37	815,045.23	1,074,049.08	1,111,065.71
—as a percentage of production value	Per cent	93.63%	91.85%	86.07%	91.52%	90.29%
—difference between AMS including other non-exempt domestic support and MPS using AAP(FRP+SAP)	Per cent	0.01%	0.01%	0.00%	0.12%	0.08%

Notes:

- For calculations, refer to Australia's domestic support calculations, Microsoft Excel workbooks, Revision 3 (**Exhibit AUS-1 (Revision 3)**).
- Australia considers there are two potential options for India's total value of production, both of which are reasonable. Option 1 uses as the value of production the figures in Row 4.1 "Sugarcane" of India's Ministry of Statistics and Programme Implementation, National Accounts Statistics 2020, Statement 8.1.2 Crop-wise value of output (**Exhibit JE-147**). Option 2 uses as the value of production the sum of the figures in Rows 4.1 "Sugarcane" and 4.2 "gur" of Exhibit JE-147. See Australia's response to Panel question 60, paras. 1–14.
- "MPS" is market price support; "Rs" is Indian Rupees.