

INDIA – MEASURES CONCERNING SUGAR AND SUGARCANE

(DS 580)

AUSTRALIA'S FIRST WRITTEN SUBMISSION

16 January 2020

TABLE OF CONTENTS

I. Introduction	28
II. Procedural background	32
III. India's non-exempt domestic support in favour of sugarcane producers exceeds the level permitted under the Agreement on Agriculture.....	33
A. Measures at issue: Domestic support for sugarcane	33
1. India sets a minimum price for sugarcane through the Fair and Remunerative Price ..	34
2. Some Indian state governments also set minimum prices for sugarcane.....	40
(a) Andhra Pradesh	41
(b) Bihar.....	42
(c) Haryana.....	43
(d) Punjab.....	44
(e) Tamil Nadu	45
(f) Uttar Pradesh	46
(g) Uttarakhand	47
3. India sets a minimum price for sugar through the Minimum Selling Price	48
4. India provides support to sugarcane producers through other measures	49
(a) Production subsidies	50
(b) Soft loans	50
(c) Buffer stock subsidies.....	51
(d) Transport, freight and marketing subsidies	51
(e) Other state-level measures providing support	52
B. Legal standard: India's domestic support commitments under the Agreement on Agriculture.....	52
1. Product coverage and scope of the Agreement on Agriculture	53
2. Domestic support commitments under the Agreement on Agriculture	53
(a) Measurement of domestic support	55
(b) Domestic support must not exceed certain levels	57
3. India's domestic support commitment.....	58
4. Calculation of product-specific Aggregate Measurement of Support	60
(a) Calculation of Market Price Support.....	60
i. The Applied Administered Price	61
ii. The Fixed External Reference Price	62
iii. Quantity or volume of eligible production.....	62
iv. Payments made to maintain the price "gap"	64
(b) Other non-exempt direct payments or other non-exempt subsidies	65
5. Whether non-exempt product-specific support exceeds the <i>de minimis</i> level	67
C. India's non-exempt product-specific domestic support exceeds the permissible level	68
1. Calculation of India's product-specific Aggregate Measurement of Support for sugarcane: market price support	69
(a) Components of the market price support calculation	69

i. The Fair and Remunerative Price and State Advised Prices are Applied Administered Prices	69
ii. India's Fixed External Reference Price for sugarcane	70
iii. Quantity of eligible sugarcane production	72
(b) India provides market price support in excess of <i>de minimis</i> through the base Fair and Remunerative Price alone.....	73
(c) India provides market price support in excess of <i>de minimis</i> through the Fair and Remunerative Price with average premiums	75
(d) India provides market price support in excess of <i>de minimis</i> through applicable State Advised Prices.....	77
(e) India applies measures involving payments to maintain the sugarcane price "gap"..	78
2. Calculation of India's product-specific Aggregate Measurement of Support: Non-exempt direct payments.....	81
(a) Andhra Pradesh: Purchase tax remittance	81
(b) Karnataka: Incentive price payment	83
(c) Tamil Nadu: Production incentive payment	84
(d) India's total product-specific domestic support provided through non-exempt direct payments	86
3. Conclusion: India's domestic support for sugarcane significantly exceeds its permissible level under the Agreement on Agriculture	86
IV. Export subsidies: Order of analysis.....	87
V. India's export subsidies are inconsistent with its obligations under the Agreement on Agriculture	88
A. Measures at issue: Export subsidies.....	90
1. Minimum Indicative Export Quotas and Maximum Admissible Export Quantities	90
2. Production subsidies	92
3. Buffer stock subsidies	92
4. Transport, freight and marketing subsidies	94
5. Duty Free Import Authorisation	94
B. Legal standard: India must not offer non-exempt export subsidies.....	95
1. Relevant provisions of the Agreement on Agriculture	95
2. India's export subsidy commitments.....	96
3. Export subsidies within the meaning of Articles 9.1(a).....	98
(a) "provi[ded] by governments or their agencies"	98
(b) "direct subsidies, including payments-in-kind"	99
(c) "to a firm, to an industry, to producers of an agricultural product, to a cooperative or other association of such producers, or to a marketing board"	101
(d) "contingent on export performance"	102
C. India's export subsidies are inconsistent with its obligations under the Agreement on Agriculture.....	104
1. India's production subsidies are export subsidies within the meaning of Article 9.1(a).....	105
(a) India's production subsidies are "provi[ded] by governments or their agencies"	105

(b) India's production subsidies are "direct subsidies"	105
(c) India's production subsidies are provided "to a firm, to an industry, to producers of an agricultural product, to a cooperative or other association of such producers, or to a marketing board"	106
(d) India's production subsidies are "contingent on export performance"	107
2. India's buffer stock schemes operate with Minimum Indicative Export Quotas to provide export subsidies within the meaning of Article 9.1(a)	109
(a) India's buffer stock subsidies are "provi[ded] by governments or their agencies..."	109
(b) India's buffer stock subsidies are "direct subsidies"	109
(c) India's buffer stock subsidies are provided "to a firm, to an industry, to producers of an agricultural product, to a cooperative or other association of such producers, or to a marketing board..."	110
(d) India's buffer stock subsidies are "contingent on export performance"	110
i. India's buffer stock subsidies are, in the first instance, <i>de jure</i> "contingent on export performance"	110
ii. India's buffer stock subsidies are, in the alternative, <i>de facto</i> "contingent on export performance"	112
3. India's transport, freight and marketing subsidies are export subsidies within the meaning of Article 9.1(a)	118
(a) India's transport, freight and marketing subsidies are "provi[ded] by governments or their agencies"	118
(b) India's transport, freight and marketing subsidies are "direct subsidies"	119
(c) India's transport, freight and marketing subsidies are provided "to a firm, to an industry, to producers of an agricultural product, to a cooperative or other association of such producers, or to a marketing board"	119
(d) India's transport, freight and marketing subsidies are "contingent on export performance"	120
4. India's Duty Free Import Authorisation is an export subsidy within the meaning of Article 9.1(a)	120
(a) India's Duty Free Import Authorisation subsidies are "provi[ded] by governments or their agencies..."	121
(b) India's Duty Free Import Authorisation subsidies are "direct subsidies"	121
(c) India's Duty Free Import Authorisation subsidies are provided "to a firm, to an industry, to producers of an agricultural product, to a cooperative or other association of such producers, or to a marketing board..."	122
(d) India's Duty Free Import Authorisation subsidies are "...contingent on export performance"	122
5. Conclusion: India's export subsidies are inconsistent with its obligations under the Agreement on Agriculture	123
VI. India's export subsidies are inconsistent with its obligations under the Agreement on Subsidies and Countervailing Measures	123
A. Legal standard: India's obligations under Article 3 of the SCM Agreement.....	124
1. "Subsidies" within the meaning of Article 1.1	124
(a) "...financial contribution..."	125

(b) "...government or any public body..."	126
(c) "...benefit..."	126
2. "Contingent... upon export performance" within the meaning of Article 3.1(a)...	127
3. Applicability of Article 27 of the SCM Agreement.....	128
B. India's export subsidies are inconsistent with Article 3 of the SCM Agreement	128
1. India's production subsidies are inconsistent with Articles 3.1(a) and 3.2	128
(a) India's production subsidies involve a "financial contribution"	128
(b) India's production subsidies involve a financial contribution by a "government"	129
(c) India's production subsidies confer a "benefit"	129
(d) India's production subsidies are "contingent upon export performance"	130
2. India's buffer stock subsidies are inconsistent with Articles 3.1(a) and 3.2.....	130
(a) India's buffer stock subsidies involve a "financial contribution"	130
(b) India's buffer stock subsidies involve a financial contribution by a "government"	131
(c) India's buffer stock subsidies confer a "benefit"	131
(d) India's buffer stock subsidies are "contingent upon export performance"	132
3. India's transport, freight and marketing subsidies are inconsistent with Articles 3.1(a) and 3.2.....	132
(a) India's transport, freight and marketing subsidies involve a "financial contribution"	132
(b) India's transport, freight and marketing subsidies involve a financial contribution by a "government"	133
(c) India's transport, freight and marketing subsidies confer a "benefit"	133
(d) India's transport, freight and marketing subsidies are "contingent upon export performance"	133
4. India's Duty Free Import Authorisation scheme is inconsistent with Articles 3.1(a) and 3.2.....	134
(a) India's Duty Free Import Authorisation scheme involves a "financial contribution"	134
(b) India's Duty Free Import Authorisation scheme involves a financial contribution by a "government"	134
(c) India's Duty Free Import Authorisation scheme confers a "benefit"	135
(d) India's Duty Free Import Authorisation scheme confers a benefit that is "contingent upon export performance"	135
5. Conclusion: India's export subsidies are inconsistent with its obligations under the SCM Agreement	136

VII. India's failure to notify its domestic support and export subsidies is inconsistent with its obligations under the Agreement on Agriculture, the SCM Agreement and the General Agreement on Tariffs and Trade 1994..... 136

A. Legal standard: India's notification obligations under the Agreement on Agriculture, SCM Agreement and the GATT 1994 137

1. Notification obligation under the Agreement on Agriculture	137
---	-----

2. Notification obligation under the SCM Agreement.....	138
3. Notification obligation under the GATT 1994.....	139
B. India has failed to notify its domestic support and subsidies concerning sugar and sugarcane	139
1. India has failed to notify its support and subsidies for sugar and sugarcane as required by the Agreement on Agriculture.....	139
2. India has failed to notify its subsidies as required by the SCM Agreement	141
3. India has failed to notify its subsidies as required by the GATT 1994.....	141
4. Conclusion: India has failed to meet its notification obligations with respect to sugar and sugarcane	143
VIII. Conclusion	144
 ANNEX A: PRODUCTION SUBSIDIES	 147
ANNEX B: SOFT LOANS	151
ANNEX C: BUFFER STOCK SUBSIDIES	154
ANNEX D: TRANSPORT, FREIGHT AND MARKETING SUBSIDIES	157
ANNEX E: OTHER STATE-LEVEL MEASURES PROVIDING SUPPORT	162
ANNEX F: DUTY FREE IMPORT AUTHORISATION SCHEME	169
ANNEX G: APPLICABILITY OF ARTICLE 27 OF THE SCM AGREEMENT	171
ANNEX H: TABLES OF CALCULATIONS	174

TABLE OF CASES

Short Title	Long Title
<i>Brazil – Taxation</i>	Panel Report, <i>Brazil – Certain Measures Concerning Taxation and Charges</i> , WT/DS472/R, Add.1 and Corr.1 / WT/DS497/R, Add.1 and Corr.1, adopted 11 January 2019, as modified by Appellate Body Reports WT/DS472/AB/R / WT/DS497/AB/R
<i>Canada – Aircraft</i>	Appellate Body Report, <i>Canada – Measures Affecting the Export of Civilian Aircraft</i> , WT/DS70/AB/R, adopted 20 August 1999, DSR 1999:III, p. 1377
<i>Canada – Aircraft</i>	Panel Report, <i>Canada – Measures Affecting the Export of Civilian Aircraft</i> , WT/DS70/R, adopted 20 August 1999, upheld by Appellate Body Report WT/DS70/AB/R, DSR 1999:IV, p. 1443
<i>Canada – Aircraft (Article 21.5 – Brazil)</i>	Appellate Body Report, <i>Canada – Measures Affecting the Export of Civilian Aircraft – Recourse by Brazil to Article 21.5 of the DSU</i> , WT/DS70/AB/RW, adopted 4 August 2000, DSR 2000:IX, p. 4299
<i>Canada – Aircraft Credits and Guarantees</i>	Panel Report, <i>Canada – Export Credits and Loan Guarantees for Regional Aircraft</i> , WT/DS222/R and Corr.1, adopted 19 February 2002, DSR 2002:III, p. 849
<i>Canada – Autos</i>	Appellate Body Report, <i>Canada – Certain Measures Affecting the Automotive Industry</i> , WT/DS139/AB/R, WT/DS142/AB/R, adopted 19 June 2000, DSR 2000:VI, p. 2985
<i>Canada – Dairy</i>	Appellate Body Report, <i>Canada – Measures Affecting the Importation of Milk and the Exportation of Dairy Products</i> , WT/DS103/AB/R, WT/DS113/AB/R, and Corr.1, adopted 27 October 1999, DSR 1999:V, p. 2057
<i>Canada – Dairy (Article 21.5 – New Zealand and US)</i>	Appellate Body Report, <i>Canada – Measures Affecting the Importation of Milk and the Exportation of Dairy Products – Recourse to Article 21.5 of the DSU by New Zealand and the United States</i> , WT/DS103/AB/RW, WT/DS113/AB/RW, adopted 18 December 2001, DSR 2001:XIII, p. 6829
<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 – Bananas III</i>	Appellate Body Report, <i>European Communities – Regime for the Importation, Sale and Distribution of Bananas</i> , WT/DS27/AB/R, adopted 25 September 1997, DSR 1997:II, p. 591

Short Title	Long Title
<i>EC – Chicken Cuts</i>	Appellate Body Report, <i>European Communities – Customs Classification of Frozen Boneless Chicken Cuts</i> , WT/DS269/AB/R, WT/DS286/AB/R, adopted 27 September 2005, and Corr.1, DSR 2005:XIX, p. 9157
<i>EC – Export Subsidies on Sugar</i>	Appellate Body Report, <i>European Communities – Export Subsidies on Sugar</i> , WT/DS265/AB/R, WT/DS266/AB/R, WT/DS283/AB/R, adopted 19 May 2005, DSR 2005:XIII, p. 6365
<i>EC and certain member States – Large Civil Aircraft</i>	Appellate Body Report, <i>European Communities and Certain Member States – Measures Affecting Trade in Large Civil Aircraft</i> , WT/DS316/AB/R, adopted 1 June 2011, DSR 2011:I, p. 7
<i>EC and certain member States – Large Civil Aircraft</i>	Panel Report, <i>European Communities and Certain Member States – Measures Affecting Trade in Large Civil Aircraft</i> , WT/DS316/R, adopted 1 June 2011, as modified by Appellate Body Report WT/DS316/AB/R, DSR 2011:II, p. 685
<i>India – Export Related Measures</i>	Panel Report, <i>India – Export Related Measures</i> , WT/DS541/R and Add.1, circulated 31 October 2019, appealed 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>US – Anti-Dumping and Countervailing Duties (China)</i>	Appellate Body Report, <i>United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China</i> , WT/DS379/AB/R, adopted 25 March 2011, DSR 2011:V, p. 2869
<i>US – FSC</i>	Appellate Body Report, <i>United States – Tax Treatment for “Foreign Sales Corporations”</i> , WT/DS108/AB/R, adopted 20 March 2000, DSR 2000:III, p. 1619
<i>US – FSC</i>	Panel Report, <i>United States – Tax Treatment for “Foreign Sales Corporations”</i> , WT/DS108/R, adopted 20 March 2000, as modified by Appellate Body Report WT/DS108/AB/R, DSR 2000:IV, p. 1675

Short Title	Long Title
<i>US – FSC (Article 21.5 – EC)</i>	Appellate Body Report, <i>United States – Tax Treatment for “Foreign Sales Corporations” Recourse to Article 21.5 of the DSU by the European Communities</i> , WT/DS108/AB/RW, adopted 29 January 2002, DSR 2002:I, p. 55
<i>US – FSC (Article 21.5 – EC)</i>	Panel Report, <i>United States – Tax Treatment for “Foreign Sales Corporations” Recourse to Article 21.5 of the DSU by the European Communities</i> , WT/DS108/RW, adopted 29 January 2002, as modified by Appellate Body Report WT/DS108/AB/RW, DSR 2002:I, p. 119
<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 – Large Civil Aircraft (2nd complaint)</i>	Panel Report, <i>United States – Measures Affecting Trade in Large Civil Aircraft (Second Complaint)</i> , WT/DS353/R, adopted 23 March 2012, as modified by Appellate Body Report WT/DS353/AB/R, DSR 2012:II, p. 649
<i>US – Upland Cotton</i>	Appellate Body Report, <i>United States – Subsidies on Upland Cotton</i> , WT/DS267/AB/R, adopted 21 March 2005, DSR 2005:I, p. 3
<i>US – Upland Cotton</i>	Panel Report, <i>United States – Subsidies on Upland Cotton</i> , WT/DS267/R, Add.1 to Add.3 and Corr.1, adopted 21 March 2005, as modified by Appellate Body Report WT/DS267/AB/R, DSR 2005:II, p. 299

LIST OF ACRONYMS, ABBREVIATIONS AND SHORT FORMS

Abbreviation	Full form or description
AAP	Applied Administered Price
AMS	Aggregate Measurement of Support
CACP	Commission for Agricultural Costs and Prices
CCEA	Cabinet Committee on Economic Affairs
CIF	Cost, Insurance and Freight
DFPD	Department of Food and Public Distribution
DSB	Dispute Settlement Body

Abbreviation	Full form or description
DSU	WTO Understanding on Rules and Procedures governing the Settlement of Disputes (Dispute Settlement Understanding)
FERP	Fixed External Reference Price
FRP	Fair and Remunerative Price
FTP	Foreign Trade Policy 2015-2020
GATT 1994	WTO General Agreement on Tariffs and Trade 1994
HS	Harmonized System
INR	Indian rupee
kg, kilo	kilogram
MAEQ	Maximum Admissible Export Quantities
MIEQ	Minimum Indicative Export Quota
MOSPI	Ministry of Statistics and Programme Implementation
MSP	Minimum Selling Price or Minimum Sales Price for sugar
MPS	Market Price Support
mT	metric tonne
QEP	Quantity of eligible production
qtl	quintal
RR	recovery rate
Rs	Indian rupees
SAP	State Advised Price
SCM Agreement	WTO Agreement on Subsidies and Countervailing Measures
SDT	special and differential treatment
SMP	Statutory Minimum Price
USDA	United States Department of Agriculture

LIST OF JOINT EXHIBITS¹

Exhibit No.	Exhibit Name
JE-1	Commission for Agricultural Costs and Prices (CACP), Price Policy for Sugarcane (the 2014-15 sugar season), August 2013
JE-2	Ministry of Consumer Affairs, Food & Public Distribution, Fixation of Fair and Remunerative Price payable by sugar mills for 2014-15 sugar season, 14 February 2014
JE-3	Cabinet Committee on Economic Affairs (CCEA), Determination of Fair and Remunerative Price payable by sugar mills for 2015-16 sugar season, 16 January 2015
JE-4	Ministry of Consumer Affairs, Food & Public Distribution, Fixation of Fair and Remunerative Price payable by sugar mills for 2015-16 sugar season, 2 February 2015
JE-5	CACP, Price Policy for Sugarcane (the 2016-17 Sugar Season), August 2015
JE-6	CCEA, A farmer friendly step: Cabinet approves Fair and Remunerative Price payable by sugar mills for 2017-18 sugar season, 24 May 2017
JE-7	Ministry of Consumer Affairs, Food & Public Distribution, Fixation of Fair and Remunerative Price payable by sugar mills for 2017-18 sugar season, 1 June 2017
JE-8	CCEA, Determination of Fair and Remunerative Price payable by sugar mills for 2018-19 sugar season, 18 July 2018
JE-9	Communication No. 3(1)/2017-SP-I, Ministry of Consumer Affairs, Food and Public Distribution, 20 July 2018
JE-10	CCEA, Cabinet approves Determination of "Fair and Remunerative Price" of sugarcane payable by sugar mills for 2019-20 sugar season, 24 July 2019
JE-11	Indian Sugar Mills Association, "Fair and Remunerative Price of Sugarcane in the Country", available at https://www.indiansugar.com/PDFS/FRP.pdf
JE-12	India Sugar Mills Association, Presentation during the brainstorming session under the Chairmanship of Joint Secretary (sugar), 11 June 2019
JE-13	United States Department of Agriculture (USDA), India – Sugar Annual 2011, 15 April 2011

¹ The joint exhibits are filed with the WTO Secretariat on behalf of the co-complainants by Brazil, to avoid duplication and facilitate the efficient and timely operation of the dispute settlement process, in accordance with the Working Procedures. Australia hereby incorporates the joint exhibits as an integral part of its submission.

Exhibit No.	Exhibit Name
JE-14	USDA, Sugar: World Markets and Trade, May 2019
JE-15	USDA, India – Sugar Annual 2013, 16 April 2013
JE-16	Press Information Bureau, Ministry of Consumer Affairs, Food and Public Distribution, "Sugar Industries" (Press Release), 23 July 2019
JE-17	Order S.O.2346(E) of 7 June 2018 of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution
JE-18	Order S.O.874(E) of 14 February 2019 of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution
JE-19	Press Information Bureau, Cabinet Committee on Economic Affairs, "Government hikes Minimum Selling Price (MSP) of Sugar to Rs 31 per Kilo for the year 2019-20" (Press Release), 14 February 2019
JE-20	Order No. S.O. 2347(E) of 7 June 2018
JE-21	Order F. No. 5-1/2018-Sugar Control of the Ministry of Consumer Affairs, Food & Public Distribution of 29 June 2018
JE-22	Order F. No. 5-1/2018-Sugar Control of the Ministry of Consumer Affairs, Food & Public Distribution of 30 July 2018
JE-23	Order F. No. 5-1/2018-Sugar Control of the Ministry of Consumer Affairs, Food & Public Distribution of 31 August 2018
JE-24	Order F. No. 5-1/2018-Sugar Control of the Ministry of Consumer Affairs, Food & Public Distribution of 28 September 2018
JE-25	Order F. No. 5-1/2018-Sugar Control of the Ministry of Consumer Affairs, Food & Public Distribution of 31 October 2018
JE-26	Order F. No. 5-1/2018-Sugar Control of the Ministry of Consumer Affairs, Food & Public Distribution of 30 November 2018
JE-27	Order F. No. 5-1/2018-Sugar Control of the Ministry of Consumer Affairs, Food & Public Distribution of 28 December 2018
JE-28	Order F. No. 5-1/2019-Sugar Control of the Ministry of Consumer Affairs, Food & Public Distribution of 31 January 2019
JE-29	Order F. No. 5-1/2019-Sugar Control of the Ministry of Consumer Affairs, Food & Public Distribution of 28 February 2019
JE-30	Order F. No. 5-1/2019-Sugar Control of the Ministry of Consumer Affairs, Food & Public Distribution of 25 March 2019

Exhibit No.	Exhibit Name
JE-31	Order F. No. 5-1/2019-Sugar Control of the Ministry of Consumer Affairs, Food & Public Distribution of 30 April 2019
JE-32	Order F. No. 5-1/2019-Sugar Control of the Ministry of Consumer Affairs, Food & Public Distribution of 31 May 2019
JE-33	Order F. No. 5-1/2019-Sugar Control of the Ministry of Consumer Affairs, Food & Public Distribution of June 2019
JE-34	Order F. No. 5-1/2019-Sugar Control of the Ministry of Consumer Affairs, Food & Public Distribution of 31 July 2019
JE-35	Order F. No. 5-1/2019-Sugar Control of the Ministry of Consumer Affairs, Food & Public Distribution of 30 August 2019
JE-36	Order F. No. 5-1/2019-Sugar Control of the Ministry of Consumer Affairs, Food & Public Distribution of 30 September 2019
JE-37	Order F. No. 5-1/2019-Sugar Control of the Ministry of Consumer Affairs, Food & Public Distribution of 31 October 2019
JE-38	Order F. No. 5-1/2019-Sugar Control of the Ministry of Consumer Affairs, Food & Public Distribution of 29 November 2019
JE-39	Order F. No. 5-1/2019-Sugar Control of the Ministry of Consumer Affairs, Food & Public Distribution of 31 December 2019
JE-40	The Economist, India's indigestible sugar lump – A sickly tale of price distortions, 28 September 2019
JE-41	The Constitution of India, Part XI
JE-42	Ministry of Consumer Affairs, Food and Public Distribution, Order S.O. 2665(E)/Ess Com./Sugarcane, 22 October 2009, amending Sugarcane (Control) Order 1966
JE-43	The Essential Commodities Act 1955
JE-44	The Sugar (Control) Order 1966
JE-45	The Sugarcane (Control) Order 1966 (Amended to 2013)
JE-46	Ministry of Consumer Affairs, Food and Public Distribution, Lok Sabha Unstarred Question No. 1754, "FRP for Sugarcane", answered on 22 July 2014
JE-47	India Today, Govt keeps cane FRP unchanged at Rs 230 per qtl for 2016-17, 6 April 2016

Exhibit No.	Exhibit Name
JE-48	Practical Action technical brief: Sugar Production from Sugar Cane
JE-49	Judgement of the Supreme Court of India, <i>U.P. Co-operative Cane Unions Federations v. West U.P. Sugar Mills Association & Ors. Etc.</i> , 5 May 2004
JE-50	Bihar Sugarcane (Regulation of Supply and Purchase) Act 1981
JE-51	Bihar Sugarcane (Regulation of Supply and Purchase) (Amendment) Bill 2007
JE-52	CACP, Price Policy for Sugarcane (2018–19 sugar season), August 2017
JE-53	CACP, Price Policy for Sugarcane (2019–20 sugar season), August 2018
JE-54-A	Notification No. 2-02/2007-2316 of the State government of Bihar, 24 November 2016
JE-54-B	Notification No. 2-02/2007-2316 of the State government of Bihar, 24 November 2016 (English translation)
JE-55	Riga Sugar Company Limited, Annual Report 2018–19
JE-56	Punjab Sugarcane (Regulation of Purchase and Supply) Haryana Amendment Act 2004
JE-57	Haryana Sugarcane (Regulation of Purchase and Supply) Rules 1992
JE-58	Finance Department of the State of Haryana, Budget 2019–20: Explanatory Memorandum on Welfare and Development Schemes
JE-59	Punjab Sugarcane (Regulation of Purchase and Supply) Act 1953
JE-60	Punjab Sugarcane (Regulation of Purchase and Supply) Rule 1958
JE-61	Notification of the State Government of Punjab, SAP for the 2018/19 season, 28 November 2019
JE-62	Order G.O.(Ms).No.15 of the Agriculture (S1) Department of the Government of Tamil Nadu of 14 January 2015
JE-63	Order G.O.(Ms).No.20 of the Agriculture (S1) Department of the Government of Tamil Nadu of 11 January 2016
JE-64	Order G.O.(Ms).No.5 of the Agriculture (S1) Department of the Government of Tamil Nadu of 5 January 2017
JE-65	Tamil Nadu Sugarcane (Regulation of Purchase Price) Act 2018

Exhibit No.	Exhibit Name
JE-66	Notification of the Agriculture Department of the State government of Tamil Nadu of 11 September 2018
JE-67	Tamil Nadu Sugar Factories Control Act 1949
JE-68	Uttar Pradesh Sugarcane (Regulation of Supply and Purchase) Act 1953
JE-69-A	Notification No. 24/2018/2077/46-3-18-3(48)/98-99 of the State government of Uttar Pradesh, 1 December 2018
JE-69-B	Notification No. 24/2018/2077/46-3-18-3(48)/98-99 of the State government of Uttar Pradesh, 1 December 2018 (English translation)
JE-70-A	Notification No. 2489/46-3-17-3(48)/98-99 issued by the Sugar Industry Section-3, Government of Uttar Pradesh, 26 October 2017
JE-70-B	Notification No. 2489/46-3-17-3(48)/98-99 issued by the Sugar Industry Section-3, Government of Uttar Pradesh, 26 October 2017 (English translation)
JE-71	Uttarakhand Sugarcane (Regulation of Supply and Purchase) (Amendment) Act 2013
JE-72-A	Notification 788/XIV-2/2018/07(6)/2013 of the State government of Uttarakhand, 20 December 2018
JE-72-B	Notification 788/XIV-2/2018/07(6)/2013 of the State government of Uttarakhand, 20 December 2018 (English translation)
JE-73	CCEA, Cabinet approves comprehensive policy to deal with excess sugar production in the country, 26 September 2018
JE-74	Notification No. 1(14)/2018-S.P.-I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 5 October 2018 ("Scheme for assistance to sugar mills")
JE-75	Notification No. 1(5)/2018-S.P.-I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 9 May 2018
JE-76	Notification No. 20(43)/2015-S.P.-I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 2 December 2015
JE-77	Notification No. 1(8)/2019-SP-I. of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 31 July 2019

Exhibit No.	Exhibit Name
JE-78	Notification No. 1(6)/2018-SP-I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 15 June 2018
JE-79	Notification No. 1(14)/2018-S.P.-I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 5 October 2018 ("Scheme for defraying expenditure towards internal transport, handling and other charges on export")
JE-80	Notification G.S.R. 128(E). of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 28 February 2014
JE-81-A	Notification of the Sugarcane Department of the State government of Bihar of 5 March 2019
JE-81-B	Notification of the Sugarcane Department of the State government of Bihar of 5 March 2019 (English translation)
JE-82	Notification 1(4)/2019-S.P.-I. of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 2 March 2019
JE-83	Notification No. 1(5)/2015-S.P.-I. of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 23 June 2015
JE-84-A	Notification of the State government of Uttar Pradesh of 4 April 2019
JE-84-B	Notification of the State government of Uttar Pradesh of 4 April 2019 (English translation)
JE-85	The State of Andhra Pradesh's Budget Estimates 2018-19 for Industries and Commerce Department
JE-86	The State of Andhra Pradesh's Budget Estimates 2015-16 for Industries and Commerce Department
JE-87-A	Notification of the State government of Bihar, 24 July 2015
JE-87-B	Notification of the State government of Bihar, 24 July 2015 (English translation)
JE-88	Notification of the Agriculture Department of the State government of Tamil Nadu of 17 September 2018

Exhibit No.	Exhibit Name
JE-89	Speech of Thiru O. Panneerselvam, Hon'ble Deputy Chief Minister, Government of Tamil Nadu, presenting the Budget for the year 2018-2019 to the Legislative Assembly on 15th March 2018
JE-90	The State government of Karnataka's Detailed Budget Estimates of Expenditure for the year 2019-20
JE-91	Government of Bihar, Department of Sugarcane Industry, Notification SO. No. 02/Regu-01-505/2017-805
JE-92	Government of Gujarat, Sugar Director, Scheme (1), "Interest relief against Purchase tax / Soft loan to Sugar Co-operative societies", 18 June 2018
JE-93	Government of Gujarat, Sugar Director, Scheme (4), "Liquidity support to Sugar Co-operative Societies", 18 June 2018
JE-94	"State subsidies for farmers to improve mills' liquidity, clear cane dues", Business Standard, 19 October 2018
JE-95	Maharashtra Purchase Tax on Sugarcane Act 1962
JE-96	Government of Maharashtra, Finance Department of the Notification, No. SCPT-1117/CR-03/Taxation-3, 19 April 2017
JE-97	Press Information Bureau, Ministry of Consumer Affairs, Food and Public Distribution, "Payment of Dues to Sugarcane-Growing Farmers" (Press Release), 19 July 2019
JE-98	Government of Telangana, Industries and Commerce Department, Budget Estimates 2018-19
JE-99	Mid-term Review of the Uruguay Round
JE-100	WTO, "Supporting Tables for commitments on agricultural subsidization"
JE-101	Oxford English Dictionary, OED Online, "applied. adj."
JE-102	Oxford English Dictionary, OED Online, "administered. adj."
JE-103	Oxford English Dictionary, OED Online, "maintain, v."
JE-104	Oxford English Dictionary, OED Online, "exempt, v."
JE-105	Oxford English Dictionary, OED Online, "dependent. adj."
JE-106	Ministry of Statistics and Programme Implementation (MOSPI), National Accounts Statistics 2019, Statement 8.1.2 Crop-wise value of output

Exhibit No.	Exhibit Name
JE-107	DFPD Order of 28 March 2018, "Allocation of sugar factory-wise Minimum Indicative Export Quotas (MIEQ) under tradable export scrip schemes"
JE-108	DFPD Order of 28 September 2018, "Allocation of sugar factory-wise Minimum Indicative Export Quotas (MIEQ) of sugar for export in sugar season 2018-19 under tradable export scrip schemes"
JE-109	DFPD Order of 18 September 2015, "Allocation of sugar factory-wise Minimum Indicative Export Quotas (MIEQ) under tradable export scrip schemes"
JE-110	Ministry of Consumer Affairs, Department of Food and Public Distribution, F. No. 1(4)/2018-SP-I, 11 November 2019
JE-111	Notification No. 1(4)/2018-S.P.-I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 9 May 2018
JE-112	Notification No. 1(6)/2018-SP-I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 31 December 2018
JE-113	CCEA, "Cabinet approves Sugar export policy for evacuation of surplus stocks during sugar season 2019-20: about 60 lakh tons sugar to be exported this financial year", 28 August 2019
JE-114	Notification No. 1(14)/2019-S.P.-I. of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 12 September 2019
JE-115	Notification F.No.1(14)/2019-SP-I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 16 September 2019
JE-116	Notification F.No.1(14)/2019-SP.I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 16 December 2019, "Review of the export performance against Maximum Admissible Export Quantity (MAEQ) for export during Sugar Season 2019-20"
JE-117	Notification F.No.1(14)/2019-SP.I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 3 January 2020, "Guidelines to review of the export performance against Maximum Admissible Export Quantity (MAEQ) for export during Sugar Season 2019-20"

Exhibit No.	Exhibit Name
JE-118	World Customs Organization, HS Nomenclature, 2017 edition, http://www.wcoomd.org/en/topics/nomenclature/instrument-and-tools/hs-nomenclature-2017-edition/hs-nomenclature-2017-edition.aspx
JE-119	Oxford English Dictionary, OED Online, "subsidy, n."
JE-120	Oxford English Dictionary, OED Online, "direct. adj. and adv."
JE-121	The Central Government of India's 2019-20 Expenditure Budget
JE-122	Press Information Bureau, Government of India, Government advises Sugar Mills to undertake export of sugar as per their allocated quantity of 'Minimum Indicative Export Quotas', 14 December 2018
JE-123	DFPD Order of 29 June 2018 regarding the final allocation of 30 Lakh MT of buffer stock to sugar mills
JE-124	DFPD Order of 23 August 2018, "Revised allocation of sugar factory-wise Minimum Indicative Export Quotas (MIEQ) under tradable export scrip schemes"
JE-125	The Central Government of India's 2017-18 Expenditure Budget
JE-126	Press Information Bureau, Cabinet Committee on Economic Affairs, "Direct subsidy to sugarcane growers" (Press Release), 18 November 2015
JE-127	Ministry of Consumer Affairs, Food and Public Distribution, Order, 26 July 2019
JE-128	Ministry of Consumer Affairs, Food and Public Distribution, Notification S.O. 6322(E), 26 December 2018
JE-129	Ministry of Consumer Affairs, Food and Public Distribution, G.S.R.326(E), 7 May 2014
JE-130	Notification G.S.R. 127(E). of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 27 February 2015, Sugar Development Fund (Amendment) Rules, 2015
JE-131	Ministry of Consumer Affairs, Food and Public Distribution, G.S.R. 572(E), 8 August 2014
JE-132	Ministry of Consumer Affairs, Food and Public Distribution, Notification No. 1(7)/2015-S.P.-I., 18 August 2015
JE-133	Ministry of Consumer Affairs, Food and Public Distribution, Notification No.1(7)/2015-S.P.-I, 5 October 2015

Exhibit No.	Exhibit Name
JE-134	The State of Andhra Pradesh's Budget Estimates for Industries and Commerce Department 2016-2017
JE-135	State of Andhra Pradesh's Budget Estimates for Industries and Commerce Department 2017-18
JE-136	Government of Tamil Nadu, Agriculture (S1) Department, Order G.O.(Ms) No.61, 7 March 2019
JE-137	The State of Tamil Nadu's 2019-2020 Budget publication- Industries Department
JE-138	Speech of Thiru O. Panneerselvam, Hon'ble Deputy Chief Minister, Government of Tamil Nadu, Budget Speech 2019-20, 8 February 2019
JE-139	Annual Report of the Commissioner for Cane Development and Director of Sugar for the Year 2017-18
JE-140	Directorate of Sugarcane Development, Sugarcane in India: State wise Production
JE-141	Department of Agriculture & Farmers Welfare, 1st advance estimates for 2019-20

LIST OF AUSTRALIA'S EXHIBITS

Exhibit No.	Exhibit Name
AUS-1	Australia's domestic support calculations, Microsoft Excel workbooks
AUS-2	Green Pool, "India Analysis", 9 November 2018
AUS-3	United States Department of Agriculture, Foreign Agricultural Service, <i>Sugar: World Markets and Trade</i> , November 2019
AUS-4	"Indian Sugar Glut Pushes Prices Close to Decade Lows; New Delhi is expected to renew subsidy program that will boost exports from the world's biggest sugar producer", <i>Wall Street Journal</i> , 26 August 2019
AUS-5	Tarun Sawhney, President, India Sugar Mills Association (ISMA), "The Current Sugarcane Pricing Policy and its Critical Analysis"
AUS-6	Abinash Verma, "Sugar Reform: Threat or Challenge?", Indian Sugar Mills Association (ISMA), November 2018

Exhibit No.	Exhibit Name
AUS-7	Indian Sugar Mills Association, "Presentation to 'Task Force on Sugarcane & Sugar Industry'", National Institution for Transforming India (NITI Aayog)", 21 January 2019
AUS-8	"Report of the Committee on the Regulation of Sugar Sector in India: The Way Forward", 5 October 2012 (Rangarajan Committee Report)
AUS-9	"No mill can sell sugar below Rs 29/kg: Government order", <i>The Economic Times</i> , 7 June 2018
AUS-10	Sangeeta Shroff and Jayanti Kajale, "Sugar Sector: Is it Sustained by Subsidies?", <i>Indian Journal of Agricultural Economics</i> , Vol. 69, No. 3, July–September 2014, pp. 375–384
AUS-11	CRISIL, Impact Note, "Sugar exports seen up 20%, prices 8%", September 2019
AUS-12	David Orden, David Blandford and Tim Josling, "Introduction" in Orden, Blandford and Josling (eds.), <i>WTO Disciplines on Agricultural Support: Seeking a Fair Basis for Trade</i> (Cambridge University Press, 2011), pp. 3–6
AUS-13	World Trade Organization, <i>The WTO Agreements Series: 3. Agriculture</i> (World Trade Organization, 2003), pp. 1–5, p. 13, p.17 and p. 55
AUS-14	Ministry of Consumer Affairs, Food and Public Distribution, Order S.O. 33(E)/Ess. Com./Sugarcane, 7 January 2010, amending Sugarcane (Control) Order 1966
AUS-15	Press Information Bureau, Ministry of Consumer Affairs, Food and Public Distribution, "Fair and Remunerative Price of Sugarcane" (Press Release), 31 July 2018
AUS-16	Department of Agriculture, Cooperation and Farmers Welfare, Directorate of Economics and Statistics, "Minimum Support Prices (MSP) and bonus for Rabi Crops of 2017-2018 season to be marketed in 2018-19"
AUS-17	Order G.S.R. 697(E)/Ess.Com./Sugarcane, Ministry of Consumer Affairs, Food and Public Distribution, 22 October 2013
AUS-18	Order G.S.R. 240(E)/Ess.Comm./Sugarcane, Ministry of Consumer Affairs, Food and Public Distribution, 31 March 2015
AUS-19	Order G.S.R. 752(E), Ministry of Consumer Affairs, Food and Public Distribution, 1 October 2015

Exhibit No.	Exhibit Name
AUS-20	Notification G.S.R. 932(E), Ministry of Consumer Affairs, Food and Public Distribution, 30 September 2016
AUS-21	Notification G.S.R. 142(E), Ministry of Consumer Affairs, Food and Public Distribution, 17 February 2017
AUS-22	Notification G.S.R. 1205(E), Ministry of Consumer Affairs, Food and Public Distribution, 27 September 2017
AUS-23	Notification No. 20-90/2013-SP.-II, Ministry of Consumer Affairs, Food and Public Distribution, 3 January 2014
AUS-24	Notification No. 1(5)/2015-S.P.-I., Ministry of Consumer Affairs, Food and Public Distribution, 23 June 2015
AUS-25	Notification No. 1(4)/2019-S.P.-I, Minister of Consumer Affairs, Food and Public Distribution, 2 March 2019
AUS-26	Communication F. No. 3/77/2013-AC, Ministry of Finance, Department of Financial Services, Operational Guidelines for "Scheme for Extending Financial Assistance to Sugar Undertakings", 9 January 2014
AUS-27	Communication CPP/AKS/613, State Bank of India, 5 February 2014
AUS-28	Order File No. 1-2/2007/SPF, Ministry of Consumer Affairs, Food and Public Distribution, 19 April 2007
AUS-29	Order File No. 1-2/2007/SPF, Ministry of Consumer Affairs, Food and Public Distribution, 27 July 2007
AUS-30	Order G.S.R. 442(E), Ministry of Consumer Affairs and Public Distribution, 21 June 2002
AUS-31	Notification G.S.R. 1204(E), Ministry of Consumer Affairs, Food and Public Distribution, 27 September 2017
AUS-32	Haryana Detailed Estimate of Capital Expenditure 2018–19
AUS-33	Government of Haryana, Directorate of Information, Public Relations and Languages, "Haryana Government has released Rs.350 crore to the cooperative sugar mills to provide major relief to sugarcane farmers", 28 May 2019
AUS-34	Communication F. No. 3/77/2013-AC of the Ministry of Finance, Department of Financial Services, 27 January 2014
AUS-35	"India Approves 5 Mil MT of Sugar Exports with Subsidy for 2018-2019 Season", <i>Sugar Asia Magazine</i> , 1 October 2018

Exhibit No.	Exhibit Name
AUS-36	Communication No. 1(1)/2014-SP-I, Ministry of Consumer Affairs, Food and Public Distribution, 19 February 2014
AUS-37	Notification No. 1(1)/2014-SDF, Ministry of Consumer Affairs, Food and Public Distribution, 7 August 2014
AUS-38	Customs Tariff Act 1975
AUS-39	Foreign Trade (Development and Regulation) Act 1992
AUS-40	Notification 01/2015-2020, Foreign Trade Policy, 2015-2020
AUS-41	Notification No. 57/2015-2020, Department of Commerce, 28 March 2018
AUS-42	Government of India, Department of Revenue, Ministry of Finance, "Tariff (as on 02.02.2018)", http://www.cbic.gov.in/htdocs-cbec/customs/cst1718-020218/cst1718-0202-idx#
AUS-43	Order No. 1(4)/2018-SP-1, Department of Food and Public Distribution, 20 November 2018
AUS-44	Order F. No. 5-5 (Clarification of Stock Holding Order April 2019)/2019-SC/453, Department of Consumer Affairs, Food & Public Distribution, 29 March 2019
AUS-45	Government of India, Department of Food and Public Distribution, Ministry of Consumer Affairs, Food and Public Distribution, "Functions (As per Allocation of Business Rules)", https://dfpd.gov.in/fun.htm
AUS-46	Government of India, Department of Food and Public Distribution, Ministry of Consumer Affairs, Food and Public Distribution, "Sugar and Sugarcane Policy", https://dfpd.gov.in/sugar-sugarcane-policy.htm
AUS-47	Central Government of India's 2016-17 Expenditure Budget
AUS-48	Central Government of India's 2018-19 Expenditure Budget
AUS-49	First Advance Estimates of Production of Foodgrains for 2019-20, Ministry of Agriculture and Farmers Welfare, 23 September 2019
AUS-50	Trade Circular No.VAT/AMD-2017/1A/2/Adm-8, Amendments to the Maharashtra Value Added Tax Act, Sugarcane Purchase Tax Act, Profession Tax Act and Extra Tax Rules, 20 April 2017
AUS-51	Maharashtra Regulation of Sugarcane Price (Supplied to Factories) Act 2013
AUS-52	Karnataka Sugarcane (Regulation of Purchase and Supply) Act 2013

Exhibit No.	Exhibit Name
AUS-53	Order G.O.(Ms).No.171, Government of Tamil Nadu, Agriculture (S1) Department, 10 July 2017
AUS-54	Order G.O.(Ms).No.191, Government of Tamil Nadu, Agriculture (S1) Department, 24 July 2018
AUS-55	Government of Tamil Nadu, Budget Estimate 2019–20, Industries Department, Demand 27
AUS-56	"Ahead of new pricing policy, a measure of relief for cane farmers", <i>The Hindu</i> , 11 October 2018
AUS-57	"HC directs State to constitute Sugarcane Control Board", <i>The Hindu</i> , 6 August 2019, https://www.thehindu.com/news/cities/Madurai/hc-directs-state-to-constitute-sugarcane-control-board-madurai/article28838390.ece
AUS-58	"HC: Form Sugarcane Control Board in 2 mths", <i>The Times of India</i> , 7 August 2019, https://timesofindia.indiatimes.com/city/madurai/hc-form-sugarcane-control-board-in-2-mths/articleshow/70564184.cms
AUS-59	Andhra Pradesh Sugarcane (Regulation of Supply and Purchase) Amendment Act 1990
AUS-60	Andhra Pradesh Sugarcane (Regulation of Supply and Purchase) (Amendment Act) 1995
AUS-61	Andhra Pradesh Sugarcane (Regulation of Supply and Purchase) (Amendment) Act 2000
AUS-62	State of Andhra Pradesh's Budget Estimates for Industries and Commerce Department 2017-18, Loans to co-operative sugar factories
AUS-63	Notification No. 649-Agri.II(3)-219/3493, Haryana Government, Agriculture and Farmers Welfare Department, 8 March 2019
AUS-64-A	"Haryana Government enhances Rs 10/- per quintal on all cane varieties", 28 December 2018 (Original)
AUS-64-B	"Haryana Government enhances Rs 10/- per quintal on all cane varieties", 28 December 2018 (English translation)
AUS-65	Government of Haryana, Budget 2019-20, Annual Financial Statement and Explanatory Memorandum on the Budget

Exhibit No.	Exhibit Name
AUS-66	"Punjab Govt to pay Rs 25 per quintal directly to cane farmers", <i>The Tribune</i> , 6 December 2018, https://www.tribuneindia.com/news/archive/pvt-sugar-mill-owners-to-clear-payments-of-cane-growers-capt-amarinder-693812
AUS-67	"No Hike in Uttar Pradesh Sugar cane price a blessing", <i>LiveMint</i> , 3 December 2018, https://www.livemint.com/Money/mVwSQGL8u2mZfpxZtRmQzK/No-hike-in-Uttar-Pradesh-sugar-cane-price-a-blessing.html
AUS-68	"UP Govt decides not to raise cane price, SAP stays at Rs 315 a quintal", <i>Business Standard</i> , 30 November 2018, https://www.business-standard.com/article/economy-policy/up-govt-decides-not-to-raise-cane-price-sap-stays-at-rs-315-a-quintal-118113000853_1.html
AUS-69-A	"Good news for farmers: Cane may soar up to Rs 327/-per quintal in 2018-19", <i>Amar Ujalar</i> , 21 December 2018, https://www.amarujala.com/dehradun/sugarcane-purchase-price-increased-in-uttarakhand-for-farmers#
AUS-69-B	"Good news for farmers: Cane may soar up to Rs 327/-per quintal in 2018-19", <i>Amar Ujalar</i> , 21 December 2018, https://www.amarujala.com/dehradun/sugarcane-purchase-price-increased-in-uttarakhand-for-farmers# (English translation)
AUS-70	CRISIL, "Policy boost for sugar mills: Exports to pick up despite weak international prices", 3 October 2018
AUS-71	Resolution No. 02/Regulation – 01-506/2018-363, Government of Bihar, 5 March 2019
AUS-72	Government of Gujarat, Budget Estimates of Agriculture, Farmers Welfare and Co-operation Department for 2019-20
AUS-73-A	Communication No. 1112/एस.ची.उ.अनु-1/13-2503/2010, Sugarcane and Sugar Commissioner Uttar Pradesh, 25 November 2014
AUS-73-B	Communication No. 1112/एस.ची.उ.अनु-1/13-2503/2010, Sugarcane and Sugar Commissioner Uttar Pradesh, 25 November 2014 (English translation)
AUS-74-A	Communication No. 1/2016/119/एस.ची.उ.अनु-1/16-2503/2010, Sugarcane and Sugar Commissioner Uttar Pradesh, 28 January 2016

Exhibit No.	Exhibit Name
AUS-74-B	Communication No. 1/2016/119/एस.ची.उ.अनु-1/16-2503/2010, Sugarcane and Sugar Commissioner Uttar Pradesh, 28 January 2016 (English translation)
AUS-75-A	Communication No. 11/2015/1081 एस.सी/18-2-2015/2014, Government of Uttar Pradesh, 24 September 2015
AUS-75-B	Communication No. 11/2015/1081 एस.सी/18-2-2015/2014, Government of Uttar Pradesh, 24 September 2015 (English translation)
AUS-76-A	Communication No. 1/2018/434/46-2-2018-102 (1)/18, Government of Uttar Pradesh, 12 May 2018
AUS-76-B	Communication No. 1/2018/434/46-2-2018-102 (1)/18, Government of Uttar Pradesh, 12 May 2018 (English translation)
AUS-77	"Sweet & Sour: UP offers Rs 4000 crore loan, subsidy to clear cane dues", <i>Financial Express</i> , 26 September 2018, https://www.financialexpress.com/industry/sweet-sour-up-offers-rs-4000-crore-loan-subsidy-to-clear-cane-dues/1326772/
AUS-78	Press Information Bureau, Information and Public Relations Department, Uttar Pradesh, "Chief Minister reviews operations of sugar mills, cane purchase and payments at a high-level meeting", 20 November 2018
AUS-79	Press Information Bureau, Cabinet Committee on Economic Affairs, "Cabinet approves financial assistance to sugar mills for clearing cane dues of farmers" (Press Release), 2 May 2018
AUS-80	Oxford English Dictionary, OED Online, "government, n."
AUS-81	Oxford English Dictionary, OED Online, "contingent, adj. and n."
AUS-82	Oxford English Dictionary, OED Online, "eligible, adj."
AUS-83	Oxford English Dictionary, OED Online, "payment, n."
AUS-84	Oxford English Dictionary, OED Online, "transfer, n."
AUS-85	Oxford English Dictionary, OED Online, "fund, n."
AUS-86	Oxford English Dictionary, OED Online, "revenue, n."
AUS-87	"Maharashtra sugar mills still await subsidy claim for 2007-09", <i>Financial Express</i> , 15 April 2017
AUS-88	Haryana Detailed Estimate of Capital Expenditure 2019–20

QUANTITY CONVERSION TABLE

1 quintal (qtl)	100 kilograms
1 metric tonne (mT)	1000 kilograms

INDIAN NUMBERING SYSTEM CONVERSION TABLE

Indian numbering system in words	Indian numbering system in numbers	International numbering system in words	International numbering system in numbers
One lakh	1,00,000	One hundred thousand	100,000
One crore	1,00,00,000	Ten million	10,000,000

I. INTRODUCTION

1. This dispute arises as a result of the significant support that India gives to its producers of sugarcane and sugar.² India's measures have created a highly distorted domestic market. Their impact, however, is not limited to India – because India is a significant, and growing, exporter of sugar.³ Its subsidized sugar exports have reportedly contributed to global sugar prices heading towards a 10-year low.⁴ This is contrary to the interests of all sugar-exporting Members, including Australia.

2. One of the objectives of the Agreement on Agriculture is to correct distortions in world agricultural markets.⁵ The Agreement on Agriculture disciplines the level of domestic support that Members may provide to agricultural products and the subsidisation of the export of such products.

3. Australia challenges the level of India's domestic support in favour of sugarcane producers, which vastly exceeds the level permitted under the Agreement on Agriculture. Australia also challenges India's export-contingent subsidies for sugar, which violate India's obligations under both the Agreement on Agriculture and the Agreement on Subsidies and Countervailing Measures (SCM Agreement).

4. India supports sugarcane and sugar through a large number of interrelated measures at the central and state levels. The key measures underpinning India's support to sugarcane farmers are the mandatory minimum prices for the purchase of sugarcane: the Fair and Remunerative Price (FRP) set by the Central Government and, in some states, the State Advised Prices (SAPs), which may be higher than the FRP.⁶

² In this submission, Australia uses the term "Central Government" to refer to the central or federal level of government, and "state government" to refer to the state or provincial level of government. "India" refers to the government in general, at either level.

³ India was the world's fourth largest exporter in 2018–19. See, for example, USDA, Foreign Agricultural Service, "Sugar: World Markets and Trade", May 2019 (**Exhibit JE-14**).

⁴ The global sugar price hit a decade-low of USD 0.0983 per pound on 27 September 2018; See Green Pool, "India Analysis", 9 November 2018 (**Exhibit AUS-2**). See also "Indian Sugar Glut Pushes Prices Close to Decade Lows; New Delhi is expected to renew subsidy program that will boost exports from the world's biggest sugar producer", *Wall Street Journal*, 26 August 2019 (**Exhibit AUS-4**). See also "India's indigestible sugar lump: A sickly tale of price distortions", *The Economist*, 28 September 2019 (**Exhibit JE-40**); "India Approves 5 Mil MT of Sugar Exports with Subsidy for 2018-2019 Season", *Sugar Asia Magazine*, 1 October 2018 (**Exhibit AUS-35**).

⁵ Agreement on Agriculture, preamble, recital 3.

⁶ In 2016–17 the SAPs were on average 22.7% higher than the FRP. See CACP, Price Policy for Sugarcane (2018–19 sugar season), August 2017 (**Exhibit JE-52**), p. 12.

5. By guaranteeing minimum prices, the FRP and SAPs encourage farmers to grow sugarcane instead of other crops, leading to oversupply.⁷

6. The main purchasers of sugarcane are sugar mills, which crush the cane to produce sugar and other sugarcane products. The cost of sugarcane, the mills' primary input, is fixed via the minimum prices, despite its overproduction. In fact, the base FRP – payable for all sugarcane regardless of quality – has more than doubled since 2009.⁸ In 2018, increased production of sugarcane led to a "sharp decline" in the price of refined sugar, the mills' key output.⁹

7. The financial pressures on sugar mills result in them being unable to pay the full minimum sugarcane price.¹⁰ Instead, the mills accumulate large debts (or arrears) to the sugarcane farmers.

8. To facilitate the payment by sugar mills of the FRP or applicable SAP to farmers, India has adopted a range of other measures. The majority of these are directly linked, through the terms of the measures themselves, to the payment of the mills' sugarcane price arrears to farmers.

⁷ Tarun Sawhney, President, India Sugar Mills Association (ISMA), "The Current Sugarcane Pricing Policy and its Critical Analysis" (**Exhibit AUS-5**), p.14: "Sugarcane gives highest return as compared to wheat and paddy". See also Abinash Verma, "Sugar Reform: Threat or Challenge?", Indian Sugar Mills Association (ISMA), November 2018 (**Exhibit AUS-6**), p. 10 (comparing sugarcane price with paddy and wheat), p. 21: "With high cane prices, sugarcane is the most attractive crop in India; So surplus cane and sugar is certain". See also Indian Sugar Mills Association, "Presentation to 'Task Force on Sugarcane & Sugar Industry', National Institution for Transforming India (NITI Aayog)", 21 January 2019 (**Exhibit AUS-7**), p. 18: "Better remuneration: Farmers get 50-60% higher returns from sugarcane as compared to any competing crop... Assured price: Farmer gets full cane price fixed by Central or State Govt. even if late, which is not the case for other crops", p. 21: "With high cane prices, sugarcane is the most attractive crop in India; So surplus cane and sugar is certain"; India Sugar Mills Association, Presentation during the brainstorming session under the Chairmanship of Joint Secretary (sugar), 11 June 2019 (**Exhibit JE-12**).

⁸ See Table 2 and Figure 1 in Section III.A.1 of this submission.

⁹ CACP, Price Policy for Sugarcane (2019–20 sugar season), August 2018 (**Exhibit JE-53**), p. 12, para. 2.7; p. 47, para. 6.1.

¹⁰ See, for example, "No mill can sell sugar below Rs 29/kg: Government order", *The Economic Times*, 7 June 2018 (**Exhibit AUS-9**): "Sugar mills are incurring losses as prices have fallen below production cost on account of record output of 31.5 million tonnes in the 2017-18 season ending September as against the annual domestic demand of 25 million tonnes". See also Sangeeta Shroff and Jayanti Kajale, "Sugar Sector: Is it Sustained by Subsidies?", *Indian Journal of Agricultural Economics*, Vol. 69, No. 3, July–September 2014, pp. 375–384 (**Exhibit AUS-10**), noting a "disconnect between sugarcane and sugar prices" and that the FRP and higher SAPs "[have] led to cane arrears as sugar factories are caught in a price-cost squeeze with low sugar prices but relatively high price to be paid to cane farmers", at p. 383. The Indian Government body that sets the prices, the Commission for Agricultural Costs and Prices, states: "The Governments of Bihar, Haryana, Punjab, Uttarakhand and Uttar Pradesh announce State Advised Price (SAP), much higher than the FRP, hence making it difficult for sugar mills to pay to farmers. The SAP is neither decided scientifically nor linked to sugar recovery, and therefore, does not promote efficiency. This distortionary policy has resulted in mounting cane price arrears to farmers and weak financial health of sugar mills. More so, increased production has created a situation of excess supply over demand leading to low prices of sugar." CACP, Price Policy for Sugarcane (2019–20 sugar season), August 2018 (**Exhibit JE-53**) p. 3. SAP "creates a distortion in the industry because SAP is neither linked to sugar recovery nor it takes in to account domestic and global prices and other relevant parameters": CACP, Price Policy for Sugarcane (2018–19 sugar season), August 2017 (**Exhibit JE-52**), pp. 3 and 12.

9. First, India offers soft loans under which the Central Government finances sugar mills' interest liabilities up to the limit and for the period set by the schemes.

10. Second, the Central Government provides subsidies that are contingent on the export of sugar. In addition to supporting the payment of sugarcane price arrears to farmers, these measures have the effect of reducing the oversupply of sugar within India.

11. Third, to improve the financial situation of the sugar mills, the Central Government introduced a mandatory minimum price for refined sugar sold on the domestic market: the Minimum Selling Price (MSP). Thus, the minimum prices for both sugarcane and sugar are decoupled from supply and demand.

12. Finally, Indian state governments implement a variety of other measures to support sugarcane farmers at the state level including purchase tax rebates, production subsidies, soft loans and production incentive payments.

13. Under the Agreement on Agriculture, India's product-specific domestic support for sugarcane – excluding exempt support – must be limited to a *de minimis* level at or below 10 per cent of the value of production of sugarcane. As illustrated in Table 1, for at least the last five sugarcane seasons, India's non-exempt domestic support for sugarcane has been close to or has exceeded 100% of the total value of production.¹¹ This is contrary to India's obligations under Article 7.2 of the Agreement on Agriculture, or, alternatively, Articles 3.2 and 6.3.

¹¹ While Australia presents data in this submission from 2014 onwards, this does not exclude the possibility that India's non-exempt domestic support in favour of sugarcane producers exceeded its *de minimis* level in seasons prior to 2014–15.

TABLE 1 – Product-specific domestic support for sugarcane as a percentage of value of production (INR millions)

Sugar Season	Product-specific Aggregate Measurement of Support (AMS)	Value of production	Product-specific AMS as percentage of value of production¹²
	A	B	C=(A/B)
2014–15	903,824.51	784,330.00	115%
2015–16	880,484.37	746,600.00	118%
2016–17	817,099.84	724,950.00	113%
2017–18	1,076,850.41	1,015,740.00	106%
2018–19	1,147,868.60	1,222,234.07	94%

14. With respect to the export subsidy disciplines of the Agreement on Agriculture, India's export subsidies for sugar are inconsistent with its obligations under Articles 3.3 and 8 (or, in the alternative, under Articles 8 and 10.1). These measures are also contrary to India's obligations under Article 3 of the SCM Agreement because they are prohibited export subsidies.

15. To facilitate Members' monitoring of compliance with the Agreement on Agriculture, the SCM Agreement and the General Agreement on Tariffs and Trade 1994 (GATT 1994), those agreements require Members to submit notifications of domestic support and certain export subsidies. India has not notified Members of its annual domestic support for sugarcane in the Committee on Agriculture subsequent to 1995–1996, and India has not submitted an export subsidy notification for sugar since 2009–10. Consequently, India has failed to comply with its notification obligations under Article 18 of the Agreement on Agriculture and Article 25 of the SCM Agreement (or, alternatively, under Article XVI:1 of the GATT 1994).

16. Australia's submissions are structured in next seven sections as follows:

- Section II outlines the procedural background of the dispute.
- Section III establishes that India's domestic support in favour of sugarcane producers exceeds the level permitted under the Agreement on Agriculture.

¹² Figures in this column have been rounded to the nearest percentage.

- In Section IV, Australia addresses the interaction between the Agreement on Agriculture and the SCM Agreement, as they relate to export subsidies.
- Australia demonstrates that India maintains export subsidies for sugar that are contrary to its obligations under the Agreement on Agriculture (Section V) and the SCM Agreement (Section VI).
- Section VII establishes that India has failed to notify its domestic support and export subsidies for sugarcane and sugar, contrary to India's obligations under the Agreement on Agriculture and the SCM Agreement, or alternatively, under the GATT 1994.
- Finally, in Section VIII, Australia provides a brief conclusion and requests the Panel to make findings and recommendations in accordance with Article 19.1 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU).

II. PROCEDURAL BACKGROUND

17. On 1 March 2019, Australia requested consultations with India pursuant to Articles 1 and 4 of the DSU, Article 19 of the Agreement on Agriculture, Articles 4 and 30 of the SCM Agreement, and Article XXII:1 of the GATT 1994 with respect to domestic support India provides in favour of producers of sugarcane, export subsidies India maintains for sugar, and India's failure to notify such support and subsidies.¹³

18. Australia and India held consultations on 16 April 2019. Those consultations failed to reach a mutually agreeable solution to the matter. On 22 July 2019, Australia requested the Dispute Settlement Body (DSB) establish a panel to examine the matter,¹⁴ which was rejected by India. On 15 August 2019 Australia made its second request to the DSB, and a panel was established to examine the matter and make findings. The panel was composed on 28 October 2019.

¹³ WT/DS580/1.

¹⁴ WT/DS580/7.

III. INDIA'S NON-EXEMPT DOMESTIC SUPPORT IN FAVOUR OF SUGARCANE PRODUCERS EXCEEDS THE LEVEL PERMITTED UNDER THE AGREEMENT ON AGRICULTURE

19. India's non-exempt domestic support in favour of sugarcane producers violates India's obligations under the Agreement on Agriculture. Under the Agreement on Agriculture, India may provide non-exempt domestic support in favour of its agricultural producers so long as Aggregate Measurement of Support (AMS) for that product does not exceed a certain level (*de minimis*).

20. In this Section Australia will demonstrate that India is providing product-specific support for sugarcane, expressed as an AMS for sugarcane, that is in excess of India's *de minimis* limit,¹⁵ inconsistent with India's obligations under the Agreement on Agriculture. Australia firstly outlines the measures at issue, and secondly sets out India's legal obligations in relation to domestic support. Australia then applies the legal standard to the facts to establish that India provides non-exempt domestic support in excess of the permissible level under the Agreement on Agriculture.

A. MEASURES AT ISSUE: DOMESTIC SUPPORT FOR SUGARCANE

21. India provides domestic support in favour of agricultural producers of sugarcane by:

- setting a minimum price for sugarcane at the central level – the Fair and Remunerative Price (FRP);
- in some states, setting a minimum price for sugarcane that is higher than the FRP – through State Advised Prices (SAPs); and
- implementing a range of other measures at both the central and state government levels that provide product-specific support in favour of sugarcane producers.

22. In addition, India sets a minimum price for the main product produced using sugarcane (refined sugar) – the Minimum Selling Price for sugar (MSP).¹⁶

¹⁵ Australia has not challenged India's non-product specific non-exempt domestic support in this dispute.

¹⁶ In addition to these floor prices, India also sets central-level fixed remunerative prices for ethanol supplied for blending with petrol, under the Ethanol Blending Program (EBP). India also sets prices for other sugarcane products, such as molasses (including through its states). These additional set prices do not form part of this dispute but are noted here to provide the Panel context for some of the exhibits, which may refer to these prices. See, for example, Press Information Bureau,

1. India sets a minimum price for sugarcane through the Fair and Remunerative Price

23. The key element of India's support for sugarcane is the FRP, set by the Central Government. The FRP is a mandatory minimum price, or floor price, payable by producers of sugar (sugar factories, or mills) for sugarcane each sugar season.¹⁷

24. The Essential Commodities Act 1955 provides broad powers to the Central Government to control production, supply, distribution, and stockholding of certain essential commodities specified in the Schedule to the Act.¹⁸ Section 3 of the Act empowers the Central Government to issue orders regulating the production, supply and distribution of those essential commodities. The Central Government issued the Sugarcane (Control) Order 1966 under Section 3 of the Act.¹⁹

25. Before 2009, the Sugarcane (Control) Order 1966 established the minimum price payable by sugar mills to sugarcane farmers – the Statutory Minimum Price (SMP).²⁰ This pre-2009 SMP included a "revenue sharing" component, whereby the farmers shared the actual profits of the mills, determined at the end of the season.²¹ In 2009, the FRP was introduced by an amendment to the Sugarcane (Control) Order 1966.²²

Ministry of Consumer Affairs, Food and Public Distribution, "Sugar Industries" (Press Release), 23 July 2019 (**Exhibit JE-16**); Press Information Bureau, Cabinet Committee on Economic Affairs, "Direct subsidy to sugarcane growers" (Press Release), 18 November 2015 (**Exhibit JE-126**). Although Australia does not challenge these prices in this dispute, this does not necessarily mean Australia considers these prices to be consistent with India's WTO obligations.

¹⁷ The Indian sugar season, or "sugar year", commences on 1 October and concludes on 30 September of the following year. See Ministry of Consumer Affairs, Food and Public Distribution, Lok Sabha Unstarred Question No. 1754, "FRP for Sugarcane", answered on 22 July 2014 (**Exhibit JE-46**).

¹⁸ The Schedule to the Essential Commodities Act 1955 includes "foodstuffs, including edible oilseeds and oils" and "seeds of food-crops". The Essential Commodities Act 1955, Clause 2(b), explicitly defines "Food-crops" to include crops of sugarcane. Sugar is also covered under the Essential Commodities Act 1955. Clause 2(e) of the Essential Commodities Act 1955 provides that "'Sugar' means (i) any form of sugar containing more than ninety per cent of sucrose, including sugar candy; (ii) khandsari sugar or bura sugar or crushed sugar or any sugar in crystalline or powdered form; or (iii) sugar in process in vacuum pan sugar factory or raw sugar produced therein". Clause (e) was inserted by Act No. 36 of 1967, with effect from 30 December 1967. Explanation 2 to Clause 3 provides that "'production'... includes manufacture of edible oils and sugar". Clause (3-C), (3-D) and (3-E) exclusively concern sugar, including the selling of sugar to the Central Government, State Government, or any other person or class of persons and stockholding and "pledging" of sugar. See Essential Commodities Act 1955 (**Exhibit JE-43**).

¹⁹ See Sugarcane (Control) Order 1966 (**Exhibit JE-45**).

²⁰ See Sugarcane (Control) Order 1966 (**Exhibit JE-45**); Ministry of Consumer Affairs, Food and Public Distribution, Order S.O. 2665(E)/Ess Com./Sugarcane, 22 October 2009, amending Sugarcane (Control) Order 1966 (**Exhibit JE-42**). See also Ministry of Consumer Affairs, Food and Public Distribution, Order S.O. 33(E)/Ess. Com./Sugarcane, 7 January 2010, amending Sugarcane (Control) Order 1966 (**Exhibit AUS-14**).

²¹ This is described by India as "revenue sharing", though it may refer to profit sharing. See, for example, CACP, Price Policy for Sugarcane (2018–19 sugar season) (**Exhibit JE-52**), p. 3. See also "Report of the Committee on the Regulation of Sugar Sector in India: The Way Forward", 5 October 2012 (Rangarajan Committee Report) (**Exhibit AUS-8**).

²² Ministry of Consumer Affairs, Food and Public Distribution, Order S.O. 2665(E)/Ess Com./Sugarcane, 22 October 2009, amending Sugarcane (Control) Order 1966 (**Exhibit JE-42**). See also Ministry of Consumer Affairs, Food and Public Distribution, Order S.O. 33(E)/Ess. Com./Sugarcane, 7 January 2010, amending Sugarcane (Control) Order 1966 (**Exhibit**

26. The Sugarcane (Control) Order 1966, as amended, provides at Clause 3:

- (1) The Central Government may, after consultation with such authorities, bodies or associations as it may deem fit, by notification in the Official Gazette, from time to time, fix the fair and remunerative price of sugarcane to be paid by producers of sugar or their agents for the sugarcane purchased by them...
- (2) No person shall sell or agree to sell sugarcane to a producer of sugar or his agent, and no such producer or agent shall purchase or agree to purchase sugarcane, at a price lower than that fixed under sub-clause (1).²³

27. The FRP is fixed through notifications in the Gazette of India by the Department of Food and Public Distribution of the Ministry of Consumer Affairs, Food and Public Distribution (DFPD). The FRP is also announced ahead of, or early in, the sugar season, via a letter from the DFPD to the Chief Secretaries of all sugar producing states, or an announcement through the Central Government's Press Information Bureau.²⁴

28. The FRP consists of several components. The first component is a base price payable by sugar mills upon receipt of sugarcane. This base price is payable regardless of the proportionate amount of juice, or sugar, that the sugarcane produces when crushed (the sugar recovery rate).²⁵ That is, the base price is payable for all cane including cane that produces no, or minimal, sugar (recovery rate of 0%) up to a nominal, or basic, recovery rate. This nominal recovery rate is set ahead of the end of each sugar season, with reference to the average national recovery rate from previous seasons.

AUS-14); United States Department of Agriculture (USDA), India – Sugar Annual 2011, 15 April 2011 (**Exhibit JE-13**); USDA, India – Sugar Annual 2013, 16 April 2013 (**Exhibit JE-15**).

²³ Ministry of Consumer Affairs, Food and Public Distribution, Order S.O. 2665(E)/Ess Com./Sugarcane, 22 October 2009, amending Sugarcane (Control) Order 1966 (**Exhibit JE-42**), Clause 3(1)-(2). See also Ministry of Consumer Affairs, Food and Public Distribution, Order S.O. 33(E)/Ess. Com./Sugarcane, 7 January 2010, amending Sugarcane (Control) Order 1966 (**Exhibit AUS-14**). "Price" is also defined in the Order, as "price, or fair and remunerative price".

²⁴ See, for example, Ministry of Consumer Affairs, Food & Public Distribution, Fixation of Fair and Remunerative Price payable by sugar mills for 2014-15 sugar season, 14 February 2014 (**Exhibit JE-2**); Cabinet Committee on Economic Affairs (CCEA), Determination of Fair and Remunerative Price payable by sugar mills for 2015-16 sugar season, 16 January 2015 (**Exhibit JE-3**); Ministry of Consumer Affairs, Food & Public Distribution, Fixation of Fair and Remunerative Price payable by sugar mills for 2015-16 sugar season, 2 February 2015 (**Exhibit JE-4**); Notification G.S.R. 1205(E), Ministry of Consumer Affairs, Food and Public Distribution, 27 September 2017 (**Exhibit AUS-22**); Ministry of Consumer Affairs, Food & Public Distribution, Fixation of Fair and Remunerative Price payable by sugar mills for 2017-18 sugar season, 1 June 2017 (**Exhibit JE-7**); CCEA, Determination of Fair and Remunerative Price payable by sugar mills for 2018-19 sugar season, 18 July 2018 (**Exhibit JE-8**); Communication No. 3(1)/2017-SP-I, Ministry of Consumer Affairs, Food and Public Distribution, 20 July 2018 (**Exhibit JE-9**), Press Information Bureau, Ministry of Consumer Affairs, Food and Public Distribution, "Fair and Remunerative Price of Sugarcane" (Press Release), 31 July 2018 (**Exhibit AUS-15**); CCEA, Cabinet approves Determination of "Fair and Remunerative Price" of sugarcane payable by sugar mills for 2019-20 sugar season, 24 July 2019 (**Exhibit JE-10**).

²⁵ See Practical Action technical brief: Sugar Production from Sugar Cane (**Exhibit JE-48**).

29. If a specific mill's average recovery rate exceeds the nominal recovery rate, a second component (a premium), is payable by the mill to all farmers from which the mill bought cane (irrespective of the quality of the cane provided by the individual farmer).²⁶ This premium is payable for every 0.1% above the nominal recovery rate that a mill has, on average, recovered over the season.

30. To determine the final FRP amount each mill must pay to sugarcane farmers, mills must report to the Central Government their average recovery rate – the average proportion of sugar extracted from cane – at the end of the season. Once a mill reports its average seasonal recovery rate, the government calculates and notifies the mill of its mill-specific, or mill-wise, sugarcane price.²⁷ The difference between the base price and the mill-wise price is owed by the mills to the farmers, who must come forward to claim it.

31. In calculating the mill-specific price that incorporates the premium, the government may also apply minor rebates for "burnt cane or stale cane or dried cane or rejected [unrecommended] varieties of cane",²⁸ the weight of bundling material,²⁹ and cane transport costs borne by the mill.³⁰

32. The value of the various FRP components is decided by the Central Government prior to the commencement of the sugar season, on the basis of the recommendations of the Commission for Agricultural Costs and Prices (CACP) after consulting with state governments and sugar industry bodies.³¹

²⁶ See Sugarcane (Control) Order 1966 (**Exhibit JE-45**), Clause 3(1) and (2); Ministry of Consumer Affairs, Food & Public Distribution, Fixation of Fair and Remunerative Price payable by sugar mills for 2017–18 sugar season, 1 June 2017 (**Exhibit JE-7**); Department of Agriculture, Cooperation and Farmers Welfare, Directorate of Economics and Statistics, "Minimum Support Prices (MSP) and bonus for Rabi Crops of 2017-2018 season to be marketed in 2018-19" (**Exhibit AUS-16**); Press Information Bureau, Ministry of Consumer Affairs, Food and Public Distribution, "Fair and Remunerative Price of Sugarcane" (Press Release), 31 July 2018 (**Exhibit AUS-15**).

²⁷ See Order G.S.R. 697(E)/Ess.Com./Sugarcane, Ministry of Consumer Affairs, Food and Public Distribution, 22 October 2013 (**Exhibit AUS-17**); Order G.S.R. 240(E)/Ess.Comm./Sugarcane, Ministry of Consumer Affairs, Food and Public Distribution, 31 March 2015 (**Exhibit AUS-18**); Order G.S.R. 752(E), Ministry of Consumer Affairs, Food and Public Distribution, 1 October 2015 (**Exhibit AUS-19**); Notification G.S.R. 932(E), Ministry of Consumer Affairs, Food and Public Distribution, 30 September 2016 (**Exhibit AUS-20**); Notification G.S.R. 142(E), Ministry of Consumer Affairs, Food and Public Distribution, 17 February 2017 (**Exhibit AUS-21**).

²⁸ Sugarcane (Control) Order 1966 (**Exhibit JE-45**), Clause 3A(ii).

²⁹ Sugarcane (Control) Order 1966 (**Exhibit JE-45**), Clause 3A(iii).

³⁰ Sugarcane (Control) Order 1966 (**Exhibit JE-45**), Clauses 3A(i) and (iv).

³¹ The factors to which the Central Government must have regard in fixing the FRP are: the cost of production of sugarcane; return to the farmers from alternative crops and the general trend of prices of agricultural commodities; availability of sugar to consumers at a fair price; the price at which sugar produced from sugarcane is sold by sugar producers; the recovery rate of sugar from sugarcane; the realization made from the sale of by-products such as molasses, bagasse and press mud or their imputed value; and reasonable margins for sugarcane farmers on account of risk and profits. See Sugarcane (Control) Order 1966 (**Exhibit JE-45**), Section 3(1).

33. For sugar season 2018–19, the FRP provided an arrangement for a transition to a new nominal recovery rate. The price comprised the following elements:

- a fixed FRP of INR 275 per quintal (qtl) for a basic recovery rate of 10%;
- a premium of INR 2.75 per qtl for every 0.1% increase above a recovery rate of 10%;
- the FRP to reduce proportionately by INR 2.75 per qtl for every 0.1% decrease in the recovery rate, in respect of those mills whose recovery is below 10% but above 9.5%;
- a fixed FRP of INR 261.25 per qtl for mills having a recovery rate of 9.5% or less.³²

34. For sugar season 2019–20, the Cabinet Committee on Economic Affairs approved the recommendation of the CACP, which was that the Central Government fix the FRP at "the same price for the 2019–20 sugar season as it was for the sugar season 2018–19".³³

35. The FRP announced by India for the sugar seasons 2014–15 to 2019–20, in INR per metric tonne, are set out in Table 2.

³² Communication No. 3(1)/2017-SP-I, Ministry of Consumer Affairs, Food and Public Distribution, 20 July 2018 (**Exhibit JE-9**). See also CCEA, Determination of Fair and Remunerative Price payable by sugar mills for 2018-19 sugar season, 18 July 2018 (**Exhibit JE-8**), and Press Information Bureau, Ministry of Consumer Affairs, Food and Public Distribution, "Fair and Remunerative Price of Sugarcane" (Press Release), 31 July 2018 (**Exhibit AUS-15**). Government of Tamil Nadu, Agriculture (S1) Department, Order G.O.(Ms) No.61, 7 March 2019 (**Exhibit JE-136**), para. 6. See also Indian Sugar Mills Association, "Fair and Remunerative Price of Sugarcane in the Country" (**Exhibit JE-11**).

³³ CCEA, Cabinet approves Determination of "Fair and Remunerative Price" of sugarcane payable by sugar mills for 2019-20 sugar season, 24 July 2019 (**Exhibit JE-10**).

TABLE 2 – FRP announced by India from 2014–15 to 2019–20 (INR per metric tonne)

Sugar Season	Base price	Basic / nominal recovery rate	Premium per 0.1% above basic RR	Weighted average ³⁴
	INR/mT		INR/mT	INR/mT
2014–15 ³⁵	2200	9.5%	23.2	2374
2015–16 ³⁶	2300		24.2	2536
2016–17 ³⁷	2300		24.2	2487
2017–18 ³⁸	2550	10%	26.8	2844
2018–19 ³⁹	2750*		27.5	Not available
2019–20 ⁴⁰	2750*		27.5	Not available

* INR 2750 per metric tonne was payable for a nominal recovery rates of 10%; INR 2612.5 per metric tonne was payable for recovery rates of 0–9.5%, with a proportionate reduction of INR 27.5 per metric tonne for every 0.1% decrease in recovery rate between 10% and 9.5%⁴¹

³⁴ The weighted average is the average final FRP amount paid by mills, based on average recovery rates for each sugar producing State, as set out in CACP, Price Policy for Sugarcane (2019–20 sugar season), August 2018 (**Exhibit JE-53**), p. 14. See also CACP, Price Policy for Sugarcane (2018–19 sugar season), August 2017 (**Exhibit JE-52**), p. 15.

³⁵ Ministry of Consumer Affairs, Food & Public Distribution, Fixation of Fair and Remunerative Price payable by sugar mills for 2014–15 sugar season, 14 February 2014 (**Exhibit JE-2**); Order G.S.R. 752(E), Ministry of Consumer Affairs, Food and Public Distribution, 1 October 2015 (**Exhibit AUS-19**); See also Commission for Agricultural Costs and Prices (CACP), Price Policy for Sugarcane (the 2014–15 sugar season), August 2013 (**Exhibit JE-1**).

³⁶ Cabinet Committee on Economic Affairs (CCEA), Determination of Fair and Remunerative Price payable by sugar mills for 2015–16 sugar season, 16 January 2015 (**Exhibit JE-3**); Ministry of Consumer Affairs, Food & Public Distribution, Fixation of Fair and Remunerative Price payable by sugar mills for 2015–16 sugar season, 2 February 2015 (**Exhibit JE-4**); Notification G.S.R. 932(E), Ministry of Consumer Affairs, Food and Public Distribution, 30 September 2016 (**Exhibit AUS-20**).

³⁷ CACP, Price Policy for Sugarcane (2016–17 Sugar Season), August 2015 (**Exhibit JE-5**); India Today, Govt keeps cane FRP unchanged at Rs 230 per qtl for 2016–17, 6 April 2016 (**Exhibit JE-47**); Notification G.S.R. 1205(E), Ministry of Consumer Affairs, Food and Public Distribution, 27 September 2017 (**Exhibit AUS-22**).

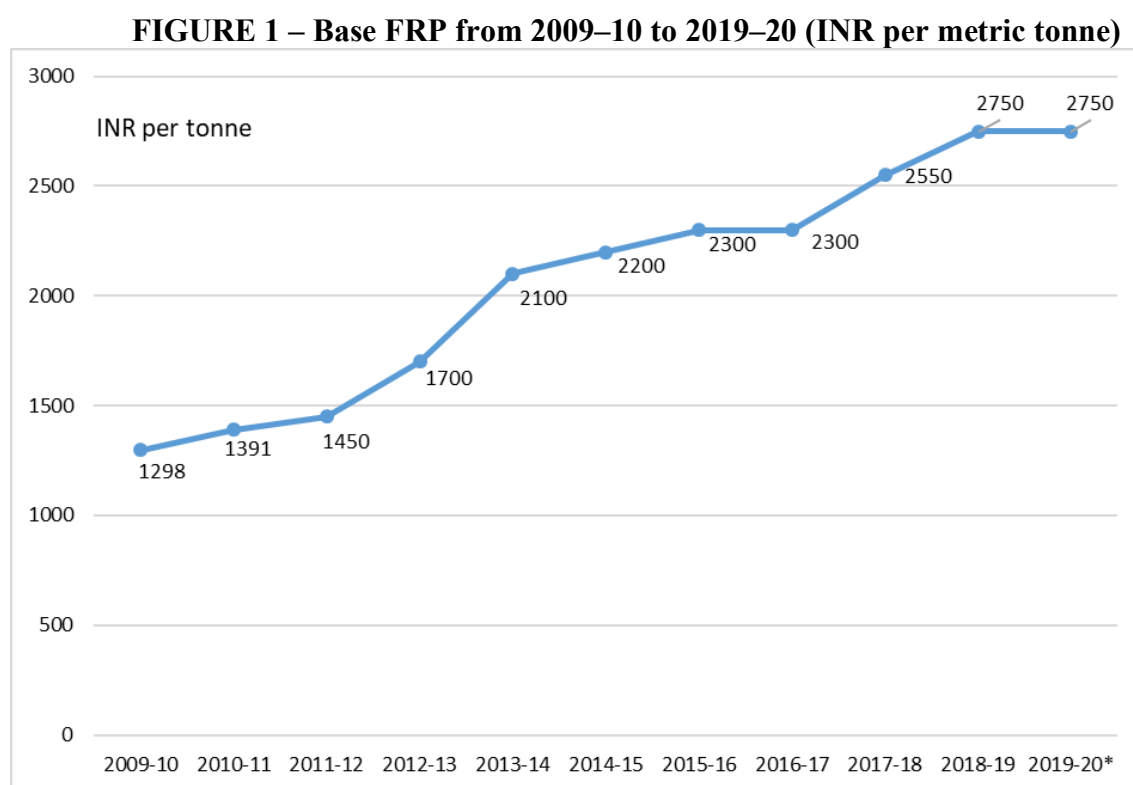
³⁸ CCEA, 'A farmer friendly step: Cabinet approves Fair and Remunerative Price payable by sugar mills for 2017–18 sugar season', 24 May 2017 (**Exhibit JE-6**); Ministry of Consumer Affairs, Food & Public Distribution, Fixation of Fair and Remunerative Price payable by sugar mills for 2017–18 sugar season, 1 June 2017 (**Exhibit JE-7**).

³⁹ See CCEA, Determination of Fair and Remunerative Price payable by sugar mills for 2018–19 sugar season, 18 July 2018 (**Exhibit JE-8**); Press Information Bureau, Ministry of Consumer Affairs, Food and Public Distribution, "Fair and Remunerative Price of Sugarcane" (Press Release), 31 July 2018 (**Exhibit AUS-15**). See also Indian Sugar Mills Association, "Fair and Remunerative Price of Sugarcane in the Country" (**Exhibit JE-11**).

⁴⁰ CCEA, Cabinet approves Determination of "Fair and Remunerative Price" of sugarcane payable by sugar mills for 2019–20 sugar season, 24 July 2019 (**Exhibit JE-10**): "The CACP has recommended the same price for the sugar season as it was for the sugar season 2018–19"; See also Government of Tamil Nadu, Agriculture (S1) Department, Order G.O.(Ms) No.61, 7 March 2019 (**Exhibit JE-136**).

⁴¹ Communication No. 3(1)/2017-SP-I, Ministry of Consumer Affairs, Food and Public Distribution, 20 July 2018 (**Exhibit JE-9**). See also CCEA, Determination of Fair and Remunerative Price payable by sugar mills for 2018–19 sugar season, 18 July 2018 (**Exhibit JE-8**); See also Government of Tamil Nadu, Agriculture (S1) Department, Order G.O.(Ms.) No.61, 7 March 2019 (**Exhibit JE-136**), para. 6.

36. The base FRP has more than doubled since 2009. This may be seen in Figure 1.



* The base FRP in 2018–19 and 2019–20 is based on 10% recovery rate. For recovery rates between 0% and 9.5% the base FRP is 2612.5.

37. The FRP is mandatory. It is enforceable under the Essential Commodities Act 1955, which imposes penalties, including imprisonment and fines, on any person that contravenes an order made under Section 3 of the Act.⁴² If a person does not pay an amount owing under such an order, the government may recover the debt, plus interest, as if the debt was unpaid land revenue.⁴³

38. The Sugarcane (Control) Order 1966 also grants the government the power to recover from mills sugarcane price debts, including interest, owing to sugarcane farmers.⁴⁴

39. Under the Sugarcane (Control) Order 1966 the amount of FRP that is due ("dues"⁴⁵) must be paid within 14 days of delivery of the sugarcane, unless the mill and the seller agree a

⁴² Essential Commodities Act 1955 (Exhibit JE-43), Section 7.

⁴³ Essential Commodities Act 1955 (Exhibit JE-43), Section 7A.

⁴⁴ Sugarcane (Control) Order 1966 (Exhibit JE-45), Clause 3(8)-(14).

⁴⁵ While the term "dues" is not used in the Sugarcane (Control) Order 1966 (Exhibit JE-45), many Government of India instruments use the term "dues" to refer to sugarcane price amount payable to the sugarcane farmers. See for example, Notification No. 20(43)/2015-S.P.-I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 2 December 2015 (Exhibit JE-76): "The Central Government, with a view to offset the cost of cane

different period for payment.⁴⁶ If the FRP is not paid within 14 days of delivery, it becomes "arrears"⁴⁷ and the mill must pay interest on the amount owing "at the rate of 15 per cent per annum".⁴⁸ If farmers do not directly approach mills within three months of the end of the sugar year (sugar season) with their claims for payment, the mill must deposit the amount owing to farmers with a government collector for distribution.⁴⁹

40. Having described the FRP, Australia now proceeds to set out relevant facts relating to the minimum prices set by Indian states, including SAPs.

2. Some Indian state governments also set minimum prices for sugarcane

41. At the state level, some sugar-producing states apply minimum prices that must be paid for sugarcane. These are known as State Advised Prices, or SAPs, and exist in parallel with the FRP.⁵⁰ The relevant state regulatory instruments generally provide that the state governments have the authority to set a price.⁵¹ In those states where a SAP applies, the mill must pay the SAP instead of the FRP, and the SAPs are the same as or higher than the FRP.⁵² Some state regulatory instruments explicitly provide that the SAP must be higher than the FRP.⁵³

42. The SAPs may be comprised of a base price and a premium payment, as well as additional amounts to cover other costs, for example "transport charges".⁵⁴ In some states, the

and facilitate timely payment of cane price dues of farmers for sugar season 2015-16, hereby notifies the scheme for extending production subsidy to sugar mills..." (emphasis added).

⁴⁶ Sugarcane (Control) Order 1966 (**Exhibit JE-45**), Clause 3(3) and (8).

⁴⁷ Sugarcane (Control) Order 1966 (**Exhibit JE-45**), Clause 3(8), 9(aa) and Third Schedule.

⁴⁸ Sugarcane (Control) Order 1966 (**Exhibit JE-45**), Clause (3-A).

⁴⁹ Sugarcane (Control) Order 1966 (**Exhibit JE-45**), Clause 7.

⁵⁰ See USDA, India – Sugar Annual 2013, 16 April 2013 (**Exhibit JE-15**).

⁵¹ For example, Bihar Sugarcane (Regulation of Supply and Purchase) Act 1981 (**Exhibit JE-50**), Chapter V, 'Payment of Price of Cane and Other Matters', Section 42 (1).

⁵² The Indian Supreme Court has clarified that the Sugarcane (Control) Order 1966 permits State governments to fix sugarcane prices, provided that such prices are higher than the FRP: Judgement of the Supreme Court of India, *U.P. Co-operative Cane Unions Federations v. West U.P. Sugar Mills Association & Ors. Etc.*, 5 May 2004 (**Exhibit JE-49**), paras. 2, 37, 39, citing, for example, *Maharashtra Rajya Sahkari Sakkar Karkhana Sangh Ltd. v. State of Maharashtra & Ors.*; See also the Constitution of India, Part XI (**Exhibit JE-41**).

⁵³ For example, Bihar Sugarcane (Regulation of Supply and Purchase) Act 1981 (**Exhibit JE-50**), Chapter V, 'Payment of Price of Cane and Other Matters', Section 42 (2): "...this price of cane so determined shall not be less than that of the minimum statutory price determined by the Government of India under the Sugarcane (Control) Order, 1966. Provided further that the State Government shall not determine the payable cane price, less than that highest minimum statutory price of any of the factories within the State of Bihar under the Sugarcane (Control) Order 1966..."

⁵⁴ For example, Maharashtra has applied a SAP that is the FRP plus INR 500 per metric tonne towards transportation charges: See Maharashtra Regulation of Sugarcane Price (Supplied to Factories) Act 2013 (**Exhibit AUS-51**), Section 5(1); See also CACP, Price Policy for Sugarcane (2019–20 sugar season), August 2018 (**Exhibit JE-53**), p. 56–8; CACP, Price Policy for Sugarcane (2018–19 sugar season), August 2017 (**Exhibit JE-52**), pp. 57–8. Where such amounts are not included in the calculation of India's product-specific domestic support for sugarcane, this does not mean that Australia necessarily considers the application of such amounts to be consistent with India's WTO obligations.

SAPs are split into different price categories linked to a sugarcane variety, usually based on maturity time and/or productiveness of the variety.

43. The SAPs are mandatory. The relevant state regulatory instruments generally provide that contravention is an offence punishable by fines or imprisonment, or both.⁵⁵

44. Some states (to Australia's knowledge, Karnataka,⁵⁶ Gujarat,⁵⁷ Maharashtra,⁵⁸ and Tamil Nadu⁵⁹) operate, or are transitioning to, models based on revenue sharing or profit sharing to determine the return to the farmer.⁶⁰ Under these models, mills pay farmers a sugarcane price amount in two stages: the FRP and any additional amounts, such as transportation charges, are payable on receipt of sugarcane, and a further amount is payable later, based on the revenue/profits realized by mills.⁶¹

45. Australia provides below a brief description of minimum prices for sugarcane maintained by various state governments.

(a) Andhra Pradesh

46. Andhra Pradesh has power to set a SAP under the Andhra Pradesh Sugarcane (Regulation of Supply and Purchase) Act 1961.⁶² In 2014–15, 2015–16 and 2016–17

⁵⁵ For example, Maharashtra Regulation of Sugarcane Price (Supplied to Factories) Act 2013 (**Exhibit AUS-51**), Section 6(1)–(2).

⁵⁶ See Karnataka Sugarcane (Regulation of Purchase and Supply) Act 2013 (**Exhibit AUS-52**), Section 4(f): The Sugar Control Board shall "decide sugarcane price on revenue sharing basis taking into consideration actual revenue realised from sugar, bagasse, molasses and press-mud". See also CACP, Price Policy for Sugarcane (2018–19 sugar season), August 2017 (**Exhibit JE-52**), Annex Table 2.2, pp. 57–8.

⁵⁷ In Gujarat, mills must pay the FRP, or more, based on a "profit sharing formula", and mills that harvest and transport cane are permitted to charge an additional amount for transport in applying the FRP: CACP, Price Policy for Sugarcane (2018–19 sugar season), August 2017 (**Exhibit JE-52**), Annex Table 2.2, pp. 57–8.

⁵⁸ Maharashtra Regulation of Sugarcane Price (Supplied to Factories) Act 2013 (**Exhibit AUS-51**), Section 4(a) and (d), and Section 5(3): The Sugarcane Control Board shall: "decide Sugarcane price payable to the farmers, which shall be in addition to the Fair and Remunerative Price (hereinafter referred to as "FRP") decided by the Central Government under the provisions of the Sugarcane (control) Order, 1966, on a revenue sharing basis". That is, "The actual payment for Sugarcane fixed by the Board shall be paid in two steps. The first would be payment of FRP. Balance payment of Sugarcane dues will be paid subsequent to publication of half yearly ex-mill prices and values, determined by the Board in accordance with the provisions of Clause (a) of section 4."

⁵⁹ This has not yet been fully implemented. See: Order G.O.(Ms).No.171, Government of Tamil Nadu, Agriculture (S1) Department, 10 July 2017 (**Exhibit AUS-53**); Tamil Nadu Sugarcane (Regulation of Purchase Price) Act 2018 (**Exhibit JE-65**).

⁶⁰ While some states (e.g. Maharashtra) describe the model as "revenue sharing", this may refer to profit sharing.

⁶¹ Such a model was recommended by the Rangarajan Committee Report: "Report of the Committee on the Regulation of Sugar Sector in India: The Way Forward", 5 October 2012 (Rangarajan Committee Report) (**Exhibit AUS-8**). See, for example, Executive Summary para. 5, p. 7–8; Chapter 3, "Methodology for Determination of Cane Dues", pp. 25–8.

⁶² Andhra Pradesh Sugarcane (Regulation of Supply and Purchase) Amendment Act 1990 (**Exhibit AUS-59**), Andhra Pradesh Sugarcane (Regulation of Supply and Purchase) (Amendment Act) 1995 (**Exhibit AUS-60**) and Andhra Pradesh Sugarcane (Regulation of Supply and Purchase) (Amendment) Act 2000 (**Exhibit AUS-61**).

Andhra Pradesh applied a sugarcane purchase tax remittance of INR 60 per metric tonne that was passed on to sugarcane farmers (see Table 3).⁶³

TABLE 3 – State of Andhra Pradesh Purchase Tax Remittance (INR per metric tonne)

	2014–15	2015–16	2016–17
Base FRP	2200	2300	2300
Purchase tax remittance	60	60	60
Range of prices received by farmers	2260–2560	2300–2642	2360–2930

47. Andhra Pradesh also budgeted for "Assistance to Co-operative Sugar Factories towards reimbursement of Purchase Tax incentives".⁶⁴

(b) Bihar

48. Bihar sets different SAPs based on "unrecommended", "central" (or "general"), and "early" maturing or advanced varieties of sugarcane.⁶⁵ These minimum prices are set under the Bihar Sugarcane (Regulation of Supply and Purchase) Act 1981, and must not be less than the FRP.⁶⁶ The SAPs are mandatory and enforceable by imprisonment or a fine.⁶⁷

49. Bihar's SAPs for the sugar seasons from 2014–15 to 2018–19, in INR per metric tonne, are set out in Table 4.

⁶³ See Section III.C.2(a) below. CACP, Price Policy for Sugarcane (2018–19 sugar season), August 2017 (**Exhibit JE-52**), Annex Table 2.2, p. 57, column 2014–15, row Andhra Pradesh: "Purchase tax to be remitted by the sugar factories to the Govt is being passed on to the cane suppliers." See also CACP, Price Policy for Sugarcane (2019–20 sugar season), August 2018 (**Exhibit JE-53**), Annex Table 1.3, p. 56: In 2016–17, the range of sugarcane price paid was INR 2930/mt to INR 2360/mt, which included INR 60/mt "incentive to farmers by the state government".

⁶⁴ State of Andhra Pradesh's Budget Estimates 2018-19 for Industries and Commerce Department (**Exhibit JE-85**), p. 33, providing for "Assistance to cooperative sugar factories towards reimbursement of purchase tax"; State of Andhra Pradesh's Budget Estimates for Industries and Commerce Department 2017-18 (**Exhibit JE-135**), p. 30, providing for "Assistance to cooperative sugar factories towards reimbursement of purchase tax"; State of Andhra Pradesh's Budget Estimates 2016-17 for Industries and Commerce Department (**Exhibit AUS-87**), p. 17, providing for "Assistance to cooperative sugar factories towards reimbursement of purchase tax"; State of Andhra Pradesh's Budget Estimates 2015–16 for Industries and Commerce Department (**Exhibit JE-86**), p. 18, providing for "Assistance to cooperative sugar factories towards reimbursement of purchase tax".

⁶⁵ CACP, Price Policy for Sugarcane (2018–19 sugar season), August 2017 (**Exhibit JE-52**), Annex Table 2.2, p. 57.

⁶⁶ Bihar Sugarcane (Regulation of Supply and Purchase) Act 1981 (**Exhibit JE-50**), Chapter V, "Payment of Price of Cane and Other Matters", Section 42 (2); See also Bihar Sugarcane (Regulation of Supply and Purchase) (Amendment) Bill 2007 (**Exhibit JE-51**), Clause 21 (ii), p. 12.

⁶⁷ Bihar Sugarcane (Regulation of Supply and Purchase) Act 1981 (**Exhibit JE-50**), Chapter VI, Section 52, Penalty for offences.

TABLE 4 – SAPs Applied in the State of Bihar (INR per metric tonne)

	2014–15 ⁶⁸	2015–16 ⁶⁹	2016–17 ⁷⁰	2017–18 ⁷¹	2018–19 ⁷²
Unrecommended	2500	2500	2600	2600	2650
General/Central	2600	2600	2800	2800	2900
Early/Advanced	2700	2700	3000	3000	3100
Average	2600	2600	2800	2800	2883.30

(c) Haryana

50. Haryana sets different minimum prices for sugarcane, or SAPs, based on "early" (or advanced), "mid", and "normal" (or late) varieties of sugarcane.⁷³ These minimum prices are fixed under the Haryana Sugarcane (Regulation of Purchase and Supply) Rules 1992,⁷⁴ made under the Punjab Sugarcane (Regulation of Purchase and Supply) Act 1953,⁷⁵ and the Punjab Sugarcane (Regulation of Purchase and Supply) Haryana Amendment Act 2004.⁷⁶

51. The SAPs are mandatory and enforceable by imprisonment or a fine.⁷⁷ Under the Punjab Sugarcane (Regulation of Purchase and Supply) Act 1953, "as soon as the cane is supplied to a factory, the occupier of such factory shall be liable to pay the price of cane so supplied".⁷⁸

52. Haryana's SAPs for the sugar seasons 2014–15 to 2018–19, in INR per metric tonne, are set out in Table 5.

⁶⁸ This included an amount of INR 50 per metric tonne "as bonus to be paid by State Govt": CACP, Price Policy for Sugarcane (2018–19 sugar season), August 2017 (**Exhibit JE-52**), Annex Table 2.2, p. 57.

⁶⁹ CACP, Price Policy for Sugarcane (2018–19 sugar season), August 2017 (**Exhibit JE-52**), Annex Table 2.2, p. 57.

⁷⁰ CACP, Price Policy for Sugarcane (2018–19 sugar season), August 2017 (**Exhibit JE-52**), Annex Table 2.2, p. 57. See also Notification No. 2-02/2007-2316 of the State government of Bihar, 24 November 2016 (English translation) (**Exhibit JE-54-B**), original (**Exhibit JE-54-A**).

⁷¹ CACP, Price Policy for Sugarcane (2019–20 sugar season), August 2018 (**Exhibit JE-53**), Annex Table 1.3, p. 56.

⁷² Riga Sugar Company Limited, Annual Report 2018–2019, (**Exhibit JE-55**), p. 4.

⁷³ CACP, Price Policy for Sugarcane (2018–19 sugar season), August 2017 (**Exhibit JE-52**), Annex Table 2.2, p. 57.

⁷⁴ Haryana Sugarcane (Regulation of Purchase and Supply) Rules 1992 (**Exhibit JE-57**), Clause 12.

⁷⁵ The Haryana Rules are made under the Punjab Sugarcane (Regulation of Purchase and Supply) Act 1953 (**Exhibit JE-59**), Clause 15A and Clause 20(2) (i) and (1).

⁷⁶ The Punjab Sugarcane (Regulation of Purchase and Supply) Haryana Amendment Act, 2004 (**Exhibit JE-56**) provides that the Act "extends to the whole of the State of Haryana" (Section 1(1)) and that "the Government of Haryana may make rules to provide for the method by which the minimum price of cane is to be fixed under the Act", para. 2.

⁷⁷ Punjab Sugarcane (Regulation of Purchase and Supply) Act 1953 (**Exhibit JE-59**), Clause 9(1).

⁷⁸ Punjab Sugarcane (Regulation of Purchase and Supply) Act 1953 (**Exhibit JE-59**), Clause 15-A(2)–(3). Interest is also payable: Punjab Sugarcane (Regulation of Purchase and Supply) Act 1953 (**Exhibit JE-59**), Clause 15-A(3).

TABLE 5 – SAPs Applied in the State of Haryana (INR per metric tonne)

	2014–15 ⁷⁹	2015–16 ⁸⁰	2016–17 ⁸¹	2017–18 ⁸²	2018–19 ⁸³
Normal/late	3000	3000	3100	3200	3300
Mid/other	3050	3050	3150	3250	3350
Early/advanced	3100	3100	3200	3300	3400
Average	3050	3050	3150	3250	3350

(d) Punjab

53. Punjab sets different SAPs based on "early", "mid" and "normal" varieties of sugarcane.⁸⁴ The prices are set under the Punjab Sugarcane (Regulation of Purchase and Supply) Act 1953⁸⁵ and the Punjab Sugarcane (Regulation of Purchase and Supply) Rules 1958.⁸⁶ The prices are mandatory and enforceable by imprisonment or a fine.⁸⁷ In 2018–19 Punjab has also paid part of the SAP directly to farmers on behalf of the sugar mills.⁸⁸

54. Punjab's SAPs for the sugar seasons 2014–15 to 2018–19, in INR per metric tonne, are set out in Table 6.

TABLE 6 – SAPs Applied in the State of Punjab (INR per metric tonne)

	2014–15 ⁸⁹	2015–16 ⁹⁰	2016–17 ⁹¹	2017–18 ⁹²	2018–19 ⁹³
Normal	2800	2800	2850	2950	2950
Mid	2850	2850	2900	3000	3000
Early	2950	2950	3000	3100	3100
Average	2866.70	2866.70	2916.70	3016.70	3016.70

⁷⁹ CACP, Price Policy for Sugarcane (2018–19 sugar season), August 2017 (**Exhibit JE-52**), Annex Table 2.2, p. 57.

⁸⁰ CACP, Price Policy for Sugarcane (2018–19 sugar season), August 2017 (**Exhibit JE-52**), Annex Table 2.2, p. 57.

⁸¹ CACP, Price Policy for Sugarcane (2018–19 sugar season), August 2017 (**Exhibit JE-52**), Annex Table 2.2, p. 57.

⁸² CACP, Price Policy for Sugarcane (2019–20 sugar season), August 2018 (**Exhibit JE-53**), Annex Table 1.3, p. 56.

⁸³ Notification No. 649-Agri.II(3)-219/3493, Haryana Government, Agriculture and Farmers Welfare Department, 8 March 2019 (**Exhibit AUS-63**); "Haryana Government enhances Rs 10/- per quintal on all cane varieties", 28 December 2018 (English translation) (**Exhibit AUS-64-B**), (original) (**Exhibit AUS-64-A**).

⁸⁴ CACP, Price Policy for Sugarcane (2018–19 sugar season), August 2017 (**Exhibit JE-52**), Annex Table 2.2, p. 57.

⁸⁵ Punjab Sugarcane (Regulation of Purchase and Supply) Act 1953 (**Exhibit JE-59**), Section 20.

⁸⁶ Punjab Sugarcane (Regulation of Purchase and Supply) Rules 1958 (**Exhibit JE-60**), Section 12.

⁸⁷ Punjab Sugarcane (Regulation of Purchase and Supply) Act 1953 (**Exhibit JE-59**), Section 9.

⁸⁸ Press Information Bureau, Ministry of Consumer Affairs, Food and Public Distribution, 'Payment of Dues to Sugarcane-Growing Farmers' (Press Release), 19 July 2019 (**Exhibit JE-97**): "For the sugar season 2018-19, the State Government has provided Rs 25/- per qtl. (Rs.52.75 crores) out of the State Agreed Price (SAP) on behalf of private sugar mills till 07-07-2019 to clear cane price arrears".

⁸⁹ CACP, Price Policy for Sugarcane (2018–19 sugar season), August 2017 (**Exhibit JE-52**), Annex Table 2.2, p. 57.

⁹⁰ CACP, Price Policy for Sugarcane (2018–19 sugar season), August 2017 (**Exhibit JE-52**), Annex Table 2.2, p. 57.

⁹¹ CACP, Price Policy for Sugarcane (2018–19 sugar season), August 2017 (**Exhibit JE-52**), Annex Table 2.2, p. 57.

⁹² CACP, Price Policy for Sugarcane (2019–20 sugar season), August 2018 (**Exhibit JE-53**), Annex Table 1.3, p. 56.

⁹³ Notification of the State Government of Punjab, SAP for the 2018/19 season, 28 November 2019 (**Exhibit JE-61**); See

(e) Tamil Nadu

55. Tamil Nadu applied SAPs for the sugar seasons 2014–15, 2015–16 and 2016–17, under the Tamil Nadu Sugar Factories Control Act 1949.⁹⁴ Tamil Nadu included, as a component of its SAP, a premium for every 0.1% by which the mill's average recovery rate exceeded the base FRP nominal recovery rate.⁹⁵

56. Tamil Nadu is transitioning to a revenue sharing model under the Tamil Nadu Sugarcane (Regulation of Purchase Price) Act 2018,⁹⁶ but this has not yet been fully implemented.⁹⁷ The state government is currently providing a "transitional production incentive", by which it pays directly to farmers the difference between the FRP and the SAP for the 2016–17 sugar season.⁹⁸

57. Tamil Nadu's SAPs for the sugar seasons 2014–15 to 2017–18, in INR per metric tonne, are set out in Table 7.⁹⁹

also "Punjab Govt to pay Rs 25 per quintal directly to cane farmers", *The Tribune*, 6 December 2018, <https://www.tribuneindia.com/news/archive/pvt-sugar-mill-owners-to-clear-payments-of-cane-growers-capt-amarinder-693812> (**Exhibit AUS-66**).

⁹⁴ See Tamil Nadu Sugar Factories Control Act 1949 (**Exhibit JE-67**).

⁹⁵ As the average recovery rate in Tamil Nadu has not exceeded the base FRP nominal recovery rate in sugar seasons 2014–2015 to 2017–18, Australia has not applied the premium in its market price support calculations in this submission.

⁹⁶ Order G.O.(Ms).No.171, Government of Tamil Nadu, Agriculture (S1) Department, 10 July 2017 (**Exhibit AUS-53**); Tamil Nadu (Regulation of Purchase Price) Act 2018 (**Exhibit JE-65**), Section 9. Under this model, the FRP is payable to farmers by sugar mills as a first instalment, and the higher of either a 70% share of revenue generated from sugar and each other primary by-product, or a 75% share of revenue generated from sugar alone, is payable as a second instalment: Section 9; CACP, Price Policy for Sugarcane (2019–20 sugar season), July 2018 (**Exhibit JE-53**), p. 12, Annex Table 1.3, p. 56; "Ahead of new pricing policy, a measure of relief for cane farmers", *The Hindu*, 11 October 2018 (**Exhibit AUS-56**). See also Speech of Thiru O. Panneerselvam, Hon'ble Deputy Chief Minister, Government of Tamil Nadu, presenting the Budget for the year 2018–2019 to the Legislative Assembly on 15th March 2018 (**Exhibit JE-89**), pp. 19–20; and Speech of Thiru O. Panneerselvam, Hon'ble Deputy Chief Minister, Government of Tamil Nadu, Budget Speech 2019–20, 8 February 2019 (**Exhibit JE-138**), p. 18. See also Notification of the Agriculture Department of the State government of Tamil Nadu of 11 September 2018 (**Exhibit JE-66**); Notification of the Agriculture Department of the State government of Tamil Nadu of 17 September 2018 (**Exhibit JE-88**).

⁹⁷ Order G.O.(Ms).No.191, Government of Tamil Nadu, Agriculture (S1) Department, 24 July 2018 (**Exhibit AUS-54**). The Tamil Nadu (Regulation of Purchase Price) Act 2018 was set to enter into force on 1 October 2018, although there is evidence to suggest the Government of Tamil Nadu had not fully implemented the Tamil Nadu (Regulation of Purchase Price) Act, 2018 (Act No. 23 of 2018), as of August 2019. On 6 August 2019, the Madras High Court ordered the Government of Tamil Nadu to constitute a Sugarcane Control Board and issue rules under the Tamil Nadu Sugarcane (Regulation of Purchase Price) Act, 2018, within two months, in response to a petition by two sugarcane farmers who sought a direction that their sugarcane dues from 2013 to 2016 be cleared: See "HC directs State to constitute Sugarcane Control Board", *The Hindu*, 6 August 2019, <https://www.thehindu.com/news/cities/Madurai/hc-directs-state-to-constitute-sugarcane-control-board-madurai/article28838390.ece> (**Exhibit AUS-57**); and "HC: Form Sugarcane Control Board in 2 mths", *The Times of India*, 7 August 2019, <https://timesofindia.indiatimes.com/city/madurai/hc-form-sugarcane-control-board-in-2-mths/articleshow/70564184.cms> (**Exhibit AUS-58**).

⁹⁸ Order G.O.(Ms).No.191, Government of Tamil Nadu, Agriculture (S1) Department, 24 July 2018 (**Exhibit AUS-54**); Speech of Thiru O. Panneerselvam, Hon'ble Deputy Chief Minister, Government of Tamil Nadu, Budget Speech 2019–20, 8 February 2019 (**Exhibit JE-138**), p. 18; Government of Tamil Nadu, Agriculture (S1) Department, Order G.O.(Ms) No.61, 7 March 2019 (**Exhibit JE-136**); See also Notification of the Agriculture Department of the State government of Tamil Nadu of 17 September 2018 (**Exhibit JE-88**).

⁹⁹ Order G.O.(Ms).No.20, Agriculture (S1) Department, Government of Tamil Nadu, 11 January 2016 (**Exhibit JE-63**); Order G.O.(Ms).No.15, Agriculture (S1) Department, Government of Tamil Nadu, 14 January 2015 (**Exhibit JE-62**); CACP, Price Policy for Sugarcane (2018–19 sugar season), August 2017 (**Exhibit JE-52**), pp. 55–7.

TABLE 7 – SAPs Applied in the State of Tamil Nadu (INR per metric tonne)

	2014–15 ¹⁰⁰	2015–16 ¹⁰¹	2016–17 ¹⁰²	2017–18 ¹⁰³
All varieties	2550	2750	2750	2750
Transport	100	100	100	100
Premium per 0.1% above FRP base recovery rate	23.2	24.2	24.2	26.8
Final average SAP	2650	2850	2850	2850

(f) Uttar Pradesh

58. Uttar Pradesh sets different SAPs for "rejected", "normal" and "early" varieties of sugarcane under the Uttar Pradesh Sugarcane (Regulation of Supply and Purchase) Act 1953,¹⁰⁴ the Uttar Pradesh Sugarcane Supply and Purchase Order 1954, and the Uttar Pradesh Sugarcane (Regulation of Supply & Purchase) Rules 1954. The Act stipulates that the state government may "regulate" "the distribution, sale or purchase of any cane in any case in any reserved or assigned area".¹⁰⁵ The SAP is mandatory and enforceable by imprisonment or a fine.¹⁰⁶ Under the Act, "[u]pon the delivery of cane the occupier of a factory shall be liable to pay immediately the price of the cane so supplied, together with all other sums connected therewith".¹⁰⁷

59. Uttar Pradesh's SAPs for the sugar seasons 2014–15 to 2018–19, in INR per metric tonne, are set out in Table 8.

¹⁰⁰ Order G.O.(Ms) No. 15, Agriculture (S1) Department, Government of Tamil Nadu, 14 January 2015 (**Exhibit JE-62**).

¹⁰¹ Order G.O.(Ms).No.20, Agriculture (S1) Department, Government of Tamil Nadu, 11 January 2016 (**Exhibit JE-63**).

¹⁰² Order G.O.(Ms).No.5, Agriculture (S1) Department, Government of Tamil Nadu, 5 January 2017 (**Exhibit JE-64**).

¹⁰³ Order G.O.(Ms).No.230, Agriculture (S1) Department, Government of Tamil Nadu, 17 September 2018 (**Exhibit JE-88**); Government of Tamil Nadu, Agriculture (S1) Department, Order G.O.(Ms) No.61, 7 March 2019 (**Exhibit JE-136**); CACP, Price Policy for Sugarcane (2019–20 sugar season), August 2018 (**Exhibit JE-53**), p. 56.

¹⁰⁴ Punjab Sugarcane (Regulation of Purchase and Supply) Rules 1958 (**Exhibit JE-60**), Clause 12, Section 16.

¹⁰⁵ Uttar Pradesh Sugarcane (Regulation of Purchase and Supply) Act 1953 (**Exhibit JE-68**), Section 16.

¹⁰⁶ Uttar Pradesh Sugarcane (Regulation of Supply and Purchase) Act 1953 (**Exhibit JE-68**), Section 22. The Uttar Pradesh Rules also provide that a factory occupier must deposit as security cash, Government securities or post office cash certificate to the value of INR 50,000, on which the UP Government has first charge for recovery of any fine or penalty due under the Act or Rules: Uttar Pradesh Sugarcane (Regulation of Supply and Purchase) Act 1953 (**Exhibit JE-68**), Section 70.

¹⁰⁷ Uttar Pradesh Sugarcane (Regulation of Supply and Purchase) Act 1953 (**Exhibit JE-68**), Section 16. It is unclear whether the original figure of 7.5% has been amended to 12% interest.

TABLE 8 – SAPs Applied in the State of Uttar Pradesh (INR per metric tonne)

	2014–15¹⁰⁸	2015–16¹⁰⁹	2016–17¹¹⁰	2017–18¹¹¹	2018–19¹¹²
Rejected	2750	2750	3000	3100	3100
Normal	2800	2800	3050	3150	3150
Early	2900	2900	3150	3250	3250
Average	2816.70	2816.70	3066.70	3166.70	3166.70

(g) Uttarakhand

60. Uttarakhand fixes different SAPs for "early" or "advanced", and "general" varieties, and, as of 2016–17, "rejected" varieties.¹¹³ The Uttarakhand Sugarcane (Regulation of Purchase and Supply) (Amendment) Act 2013 provides that the Uttar Pradesh Sugarcane (Regulation of Purchase and Supply) Act 1953 also applies in Uttarakhand.¹¹⁴ The Uttar Pradesh Sugarcane (Regulation of Purchase and Supply) Act 1953 stipulates that the government may "regulate" "the distribution, sale or purchase of any cane in any case in any reserved or assigned area".¹¹⁵

61. Uttarakhand's SAPs for the sugar seasons 2014–15 to 2018–19, in INR per metric tonne, are set out in Table 9.

¹⁰⁸ CACP, Price Policy for Sugarcane (2018–19 sugar season), August 2017 (**Exhibit JE-52**), Annex Table 2.2, p. 57–8. In 2014–15 and 2015–16 the mill was to pay INR 2400 per metric tonne as a first instalment to the farmers, and a second instalment of 400 per metric tonne within three months after the closure of the crushing season.

¹⁰⁹ CACP, Price Policy for Sugarcane (2018–19 sugar season), August 2017 (**Exhibit JE-52**), Annex Table 2.2, p. 57–8. In 2014–15 and 2015–16 the mill was to pay INR 2400 per metric tonne as a first instalment to the farmers, and a second instalment of 400 per metric tonne within three months after the closure of the crushing season.

¹¹⁰ CACP, Price Policy for Sugarcane (2018–19 sugar season), August 2017 (**Exhibit JE-52**), Annex Table 2.2, p. 57–8.

¹¹¹ CACP, Price Policy for Sugarcane (2019–20 sugar season), August 2018 (**Exhibit JE-53**), Annex Table 1.3, p. 56–7. See also Notification No. 2489/46-3-17-3(48)/98-99 issued by the Sugar Industry Section-3, Government of Uttar Pradesh, 26 October 2017 (English translation) (**Exhibit JE-70-B**), (original) (**Exhibit JE-70-A**).

¹¹² Notification No. 24/2018/2077/46-3-18-3(48)/98-99 of the State government of Uttar Pradesh, 1 December 2018 (English translation) (**Exhibit JE-69-B**), original (**Exhibit JE-69-A**); See also "No Hike in Uttar Pradesh sugar cane price a blessing", LiveMint, 3 December 2018, <https://www.livemint.com/Money/mVwSQL8u2mZfpXZtRmQzK/No-hike-in-Uttar-Pradesh-sugar-cane-price-a-blessing.html> (**Exhibit AUS-67**); "UP Govt decides not to raise cane price, SAP stays at Rs 315 a quintal", *Business Standard*, 30 November 2018, https://www.business-standard.com/article/economy-policy/up-govt-decides-not-to-raise-cane-price-sap-stays-at-rs-315-a-quintal-118113000853_1.html (**Exhibit AUS-68**).

¹¹³ CACP, Price Policy for Sugarcane (2018–19 sugar season), August 2017 (**Exhibit JE-52**), Annex Table 2.2, pp. 57–8.

¹¹⁴ CACP, Price Policy for Sugarcane (2019–20 sugar season), August 2018 (**Exhibit JE-53**), Annex Table 1.3, pp. 56–7.

¹¹⁵ Uttarakhand Sugarcane (Regulation of Purchase and Supply) (Amendment) Act 2013 (**Exhibit JE-71**). Uttarakhand was formerly part of Uttar Pradesh but became an independent state in 2000.

¹¹⁶ Uttar Pradesh Sugarcane (Regulation of Purchase and Supply) Act 1953 (**Exhibit JE-68**), Section 16.

TABLE 9 – SAPs Applied in the State of Uttarakhand (INR per metric tonne)

	2014–15 ¹¹⁶	2015–16 ¹¹⁷	2016–17 ¹¹⁸	2017–18 ¹¹⁹	2018–19 ¹²⁰
Rejected	N/A	N/A	3020	3060	N/A
General	2800	2800	3070	3160	3170
Early/advanced	2900	2900	3170	3260	3270
Average	2850	2850	3086.70	3160	3166.67

3. India sets a minimum price for sugar through the Minimum Selling Price

62. Through the FRP and SAPs, India sets mandatory minimum prices for the purchase of sugarcane. Additionally, the Central Government has introduced a minimum price that must be paid for sugar: the Minimum Selling Price or Minimum Sales Price (MSP).¹²¹

63. Since 2009, "provisional" prices for sugar appear to have been set by the Central Government on a state-by-state basis for sugar produced from cane from a particular sugar season, under Section 3 of the Essential Commodities Act 1955.

64. On 7 June 2018, the Central Government issued the Sugar Price (Control) Order 2018 under Section 3 of the Essential Commodities Act 1955, conferring power on itself to issue any order regarding the price of sugar.¹²² The order regulates the sale, disposal, or delivery of white or refined sugar in the domestic market, and compliance with it is mandatory.¹²³ On the same date, the government directed producers to sell white sugar or refined sugar in the domestic market at a rate no lower than INR 29 per kilogram.¹²⁴

¹¹⁶ CACP, Price Policy for Sugarcane (2018–19 sugar season), August 2017 (**Exhibit JE-52**), Annex Table 2.2, pp. 57–8.

¹¹⁷ CACP, Price Policy for Sugarcane (2018–19 sugar season), August 2017 (**Exhibit JE-52**), Annex Table 2.2, pp. 57–8.

¹¹⁸ CACP, Price Policy for Sugarcane (2019–20 sugar season), August 2018 (**Exhibit JE-53**), Annex Table 1.3, pp. 56–7.

¹¹⁹ CACP, Price Policy for Sugarcane (2019–20 sugar season), August 2018 (**Exhibit JE-53**), Annex Table 1.3, pp. 56–7.

¹²⁰ Notification 788/XIV-2/2018/07(6)/2013, State government of Uttarakhand, 20 December 2018 (English translation) (**Exhibit JE-72-B**), (original) (**Exhibit JE-72-A**); "Good news for farmers: Cane may soar up to Rs 327/-per quintal in 2018-19", *Amar Ujalar*, 21 December 2018, <https://www.amarujala.com/dehradun/sugarcane-purchase-price-increased-in-uttarakhand-for-farmers#> (**Exhibit AUS-69-B**), (English translation) (**Exhibit AUS-69-A**) (original).

¹²¹ Australia's product-specific domestic support calculations for sugarcane, below, focus on support provided through the minimum prices for sugarcane, and non-exempt direct payments. This does not necessarily mean that Australia considers that a minimum price for sugar may not, in principle, be included in such calculations.

¹²² Order S.O.2346(E) of 7 June 2018 of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution (**Exhibit JE-17**). The Sugar Price (Control) Order 2018 provides:

4. Methodology for prescribing price and sugar - The Central Government shall, at the time of issuing any Order regarding the price of sugar... take into consideration the fair and remunerative price of sugarcane, conversion costs for production of sugar from sugarcane, realization of profit from by-products generated in the process of sugar production from sugarcane and such other costs as it may consider relevant.

¹²³ The Sugar Price (Control) Order 2018, Section 8, provides that every producer, importer, recognised dealer or other person to whom any order or direction is issued under any powers conferred by or under the order "shall comply with such order or direction". See Order S.O.2346(E) of 7 June 2018 of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution (**Exhibit JE-17**), Section 8.

¹²⁴ Order No. S.O. 2347(E) of 7 June 2018 (**Exhibit JE-20**). See also "No mill can sell sugar below Rs 29/kg: Government order", *The Economic Times*, 7 June 2018 (**Exhibit AUS-9**).

65. On 14 February 2019, the MSP for sugar was increased to INR 31 per kilogram.¹²⁵ The Central Government stated: "The Department of Food, Ministry of Consumer Affairs, Food and Public Distribution has made this key decision of increasing MSP by Rs. 2 in order to provide more liquidity to the Sugar Mills so that they are able to pay the arrears or dues to the Sugarcane farmers".¹²⁶

4. India provides support to sugarcane producers through other measures

66. In addition to its fixed minimum prices for sugarcane and sugar, India implements a range of other measures at both the central and state government levels that provide non-exempt product-specific support in favour of producers of sugarcane. Although these measures are directed to sugar mills, in reality the funds are paid to sugarcane farmers on behalf of mills to clear sugarcane price arrears, or are paid to mills to support their payment of the sugarcane price.

67. At the Central Government level, the measures are:

- production subsidies;
- soft loans;
- buffer stock subsidies; and
- transport, freight and marketing subsidies.

68. At the state government level, the measures are:

- sugarcane purchase tax rebates;
- production subsidies;
- soft loans and government guarantees; and
- production incentive payments.

69. Australia provides a brief factual overview of each of these measures in the paragraphs to follow. They are set out in more detail in **Annexes A to E**.

¹²⁵ Order S.O.874(E) of 14 February 2019 of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution (**Exhibit JE-18**); Press Information Bureau, Cabinet Committee on Economic Affairs, "Government hikes Minimum Selling Price (MSP) of Sugar to Rs 31 per Kilo for the year 2019–20" (Press Release), 14 February 2019 (**Exhibit JE-19**).

¹²⁶ Press Information Bureau, Cabinet Committee on Economic Affairs, "Government hikes Minimum Selling Price (MSP) of Sugar to Rs 31 per Kilo for the year 2019–20" (Press Release), 14 February 2019 (**Exhibit JE-19**).

(a) Production subsidies

70. India provides direct payments to sugar mills, or to sugarcane farmers on behalf of mills, based on the volume of sugarcane crushed for the production of sugar. The Central Government introduced these subsidies to assist sugar mills to pay sugarcane price arrears.¹²⁷

71. The details of the following schemes under which the Central Government provides production subsidies are set out in **Annex A**:

- "Scheme for extending production subsidy to sugar mills" for the 2015–16 season – see **Annex A-01**.
- "Scheme for Assistance to Sugar Mills" for the 2017–18 sugar season – see **Annex A-02**.
- "Scheme for Assistance to Sugar Mills" for the 2018–19 sugar season – see **Annex A-03**.

(b) Soft loans

72. India subsidizes loans for sugar mills to assist them to pay sugarcane price arrears arising from the FRP or applicable SAP.¹²⁸ Under these programs, the Central Government finances sugar mills' interest payments on commercial loans they have taken out with participating banks for the purpose of clearing sugarcane arrears, a process described as "interest subvention". This is achieved through an arrangement whereby DFPD releases funds

¹²⁷ See, for example, Notification No. 20(43)/2015-S.P.-I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 2 December 2015 (**Exhibit JE-76**), paras. 1 and 2. See also Press Information Bureau, Cabinet Committee on Economic Affairs, "Direct subsidy to sugarcane growers" (Press Release), 18 November 2015 (**Exhibit JE-126**).

¹²⁸ See, for example, Notification No. 20-90/2013-SP.-II, Ministry of Consumer Affairs, Food and Public Distribution, 3 January 2014 (**Exhibit AUS-23**), para. 1, stating the purpose of the SEFASU scheme is "to facilitate clearance of cane price arrears and support the cane price"; Notification No. 1(5)/2015-S.P.-I., Ministry of Consumer Affairs, Food and Public Distribution, 23 June 2015 (**Exhibit AUS-24**), para. 1, stating the purpose of the 2014–15 soft loan is "for payment of cane price arrears of farmers for the sugar season 2014-15 relating to the Fair and Remunerative Price (FRP) of sugarcane fixed by the Central Government for that sugar season"; Notification No. 1(4)/2019-S.P.-I, Minister of Consumer Affairs, Food and Public Distribution, 2 March 2019 (**Exhibit AUS-25**), para. 1, stating the purpose of the soft loan is "for payment of cane price arrears of farmers for the sugar season 2018-19 relating to the Fair and Remunerative Price (FRP) of sugarcane fixed by the Central Government for that sugar season". See also Press Information Bureau, Ministry of Consumer Affairs, Food and Public Distribution, "Sugar Industries" (Press Release), 23 July 2019 (**Exhibit JE-16**).

to a "nodal bank", i.e. the State Bank of India,¹²⁹ which in turn distributes the funds to participating lending institutions in partial satisfaction of mills' interest liabilities.

73. The details of the following Central Government schemes are set out in **Annex B**:

- "Scheme for Extending Financial Assistance to Sugar Undertakings" for the 2013–14 sugar season – see **Annex B-01**.
- "Scheme for Extending Soft Loan to Sugar Mills" for the 2014–15 sugar season – see **Annex B-02**.
- "Scheme for Extending Soft Loan to Sugar Mills" for the 2018–19 sugar season – see **Annex B-03**.

(c) Buffer stock subsidies

74. India provides buffer stock subsidies to sugar mills, ostensibly as reimbursement of carrying costs incurred by mills in holding allocated quantities of stock. However, in practice the funds provided under these schemes are paid directly to farmers on behalf of mills to clear sugarcane dues and arrears.¹³⁰ The Central Government implemented a buffer stock subsidy scheme in 2018 (for 1 July 2018 – 30 June 2019) and again in 2019 (for 1 July 2019 – 30 June 2020). The details of the schemes are set out in **Annex C** as follows:

- "Scheme for Creation and Maintenance of Buffer Stock of 30 Lakh MT" (2018–19) – see **Annex C-01**.
- "Scheme for Creation and Maintenance of Buffer Stock of 40 Lakh MT" (2019–20) – see **Annex C-02**.

(d) Transport, freight and marketing subsidies

75. Since 2002, India has operated several export incentive schemes characterized as subsidies to offset transport and freight costs for exports of sugar.¹³¹ These have also been

¹²⁹ For example, Communication F. No. 3/77/2013-AC, Ministry of Finance, Department of Financial Services, Operational Guidelines for "Scheme for Extending Financial Assistance to Sugar Undertakings", 9 January 2014 (**Exhibit AUS-26**), para. 5; Communication CPP/AKS/613, State Bank of India, 5 February 2014 (**Exhibit AUS-27**).

¹³⁰ Notification No. 1(6)/2018-SP-I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 15 June 2018 (**Exhibit JE-78**), para. 9(a).

¹³¹ Order G.S.R. 442(E), Ministry of Consumer Affairs and Public Distribution, 21 June 2002 (**Exhibit AUS-30**). This order inserted SDF Rule 20, 2002, which provided for a scheme to "Defray Expenditure Internal Transport and Freight Charges to the sugar factories on export shipments of for freight and logistical costs". The funding reimbursed the actual costs incurred in transporting sugar from mills to export terminals, and required certificates proving relevant distances. This scheme does not appear to have been linked to the payment of cane price arrears. SDF Rule 20(7A) provided for INR 350/metric tonne of

supplemented by state freight assistance.¹³² Since 2014, the Central Government has introduced several schemes directly linked to the payment by mills of sugarcane price arrears.¹³³ The details of the following schemes are set out in **Annex D**:

- "Raw Sugar Export Incentive Scheme" for the 2014–15 sugar season – see **Annex D-01**.
- "Scheme for defraying expenditure towards internal transport, freight, handling and other charges to facilitate export" for the 2018–19 sugar season – see **Annex D-02**.
- "Scheme for providing assistance to sugar mills for expenses on marketing costs including handling, upgrading and other processing costs and costs of international and internal transport and freight charges on export of sugar" for the 2019–20 sugar season – see **Annex D-03**.

(e) Other state-level measures providing support

76. India's state governments also implement measures that provide domestic support in favour of sugarcane producers. Australia describes these measures in detail in **Annex E**.

**B. LEGAL STANDARD: INDIA'S DOMESTIC SUPPORT COMMITMENTS
UNDER THE AGREEMENT ON AGRICULTURE**

77. In this Part, Australia sets out India's legal obligations in relation to domestic support. First, Australia establishes the product coverage and scope of the Agreement on Agriculture. Second, Australia provides an overview of the Agreement on Agriculture disciplines concerning domestic support; outlines the concept of the Aggregate Measurement of Support (AMS); and explains that, where no Total AMS commitment exists in a Member's Schedule, or a Member has a Total AMS commitment of zero or nil support, its domestic support, including its product-specific domestic support, may not exceed a permitted level (*de minimis*). Third, Australia identifies India's permitted level of domestic support. Fourth,

sugar exported by sea from an Indian port on or after 14 February 2003, and INR 500/metric tonne (for handling and market charges) on sugar exported on or after 3 October 2003.

¹³² See "Maharashtra sugar mills still await subsidy claim for 2007-09", *Financial Express*, 15 April 2017 (**Exhibit AUS-87**).

¹³³ By comparison, India's earlier transport, freight and marketing schemes were not linked to payment of sugarcane price arrears; see, for example, Order File No. 1-2/2007/SPF, Ministry of Consumer Affairs, Food and Public Distribution, 19 April 2007 (**Exhibit AUS-28**) and Order File No. 1-2/2007/SPF, Ministry of Consumer Affairs, Food and Public Distribution, 27 July 2007 (**Exhibit AUS-29**).

Australia explains how product-specific domestic support is calculated under the Agreement on Agriculture.

1. Product coverage and scope of the Agreement on Agriculture

78. The Agreement on Agriculture applies to sugar and sugarcane. Article 2 provides that the Agreement "applies to the products listed in Annex 1 to this Agreement...". Annex 1 relevantly provides that the Agreement covers products identified in the Harmonized System (HS) Chapters 1 to 24. HS Chapter 12, titled "Oil seeds and oleaginous fruits; miscellaneous grains, seeds and fruit, industrial or medicinal plants; straw and fodder" includes sugarcane.¹³⁴ HS Chapter 17, titled "Sugars and sugar confectionary", covers sugar.¹³⁵

2. Domestic support commitments under the Agreement on Agriculture

79. The Agreement on Agriculture was negotiated in recognition that domestic support for agriculture could lead to market distortions which impact on international trade,¹³⁶ and that reducing such distortions would provide global benefits.¹³⁷

80. The objectives of the negotiation of the Agreement on Agriculture included, as stated in the preamble, "to provide for substantial progressive reductions in agricultural support and protection".¹³⁸ In negotiating the Agreement, Members agreed "to ensure that current domestic and export support and protection levels in the agriculture sector are not exceeded".¹³⁹

81. The Members conceptualized domestic support in terms of support that was least trade-distortive, and trade distorting support. Least trade-distortive support, as well as some other

¹³⁴ The description for HS1212 is "Locust beans, seaweeds and other algae, sugar beet and sugar cane, fresh, chilled, frozen or dried, whether or not ground; fruit stones and kernels and other vegetable products (including unroasted chicory roots of the variety *Cichorium intybus sativum*) of a kind used primarily for human consumption, not elsewhere specified or included." See World Customs Organization, HS Nomenclature, 2017 edition, <http://www.wcoomd.org/en/topics/nomenclature/instrument-and-tools/hs-nomenclature-2017-edition/hs-nomenclature-2017-edition.aspx> (**Exhibit JE-118**), Chapter 12.

¹³⁵ Sugar is covered under HS heading 1701. See World Customs Organization, HS Nomenclature, 2017 edition, <http://www.wcoomd.org/en/topics/nomenclature/instrument-and-tools/hs-nomenclature-2017-edition/hs-nomenclature-2017-edition.aspx> (**Exhibit JE-118**), Chapter 17.

¹³⁶ See, for example, World Trade Organization, *The WTO Agreements Series: 3. Agriculture* (World Trade Organization, 2003) (**Exhibit AUS-13**), pp. 1–5; Mid-Term Review of the Uruguay Round (**Exhibit JE-99**), pp. 4–5.

¹³⁷ See, for example, World Trade Organization, *The WTO Agreements Series: 3. Agriculture* (World Trade Organization, 2003) (**Exhibit AUS-13**), pp. 1–5 and p. 55; Mid-Term Review of the Uruguay Round (**Exhibit JE-99**), pp. 4–5. See also David Orden, David Blandford and Tim Josling, "Introduction" in Orden, Blandford and Josling (eds.), *WTO Disciplines on Agricultural Support: Seeking a Fair Basis for Trade* (Cambridge University Press, 2011) (**Exhibit AUS-12**), p. 3.

¹³⁸ Agreement on Agriculture, preamble.

¹³⁹ See Mid-Term Review of the Uruguay Round (**Exhibit JE-99**), para. 15, p. 5. The preamble to the Agreement on Agriculture also recalls that a long-term objective of the Members, as agreed at the Mid-Term Review of the Uruguay Round, was "to establish a fair and market-oriented agricultural trading system" (recital 2). The Agreement should be interpreted in light of its object and purpose: Vienna Convention on the Law of Treaties, done at Vienna, 23 May 1969, 1155 U.N.T.S. 331; 8 International Legal Materials 679, Article 31.

categories, could be exempted from the quantification of a Member's domestic support.¹⁴⁰ Trade distorting support would be kept to a minimum.

82. During negotiation of the Agreement on Agriculture, original Members that had non-exempt domestic support during the base period (1986–88) agreed to progressively reduce this support, and specified reduction commitments in their schedules of concessions on goods.¹⁴¹ Members that had non-exempt domestic support below *de minimis* levels did not schedule a progressive reduction commitment. In the case of Members with no scheduled reduction commitments, any non-exempt domestic support was to be maintained within *de minimis* levels.¹⁴² This is reflected in the Agreement's structure and provisions setting out domestic support disciplines.

83. Articles 3, 6 and 7 of the Agreement on Agriculture provide disciplines on domestic support measures provided in favour of agricultural producers, and limit such support to levels based on commitments set out in Members' schedules of concessions on goods. Australia sets out in the following paragraphs the manner in which domestic support is quantified and assessed under the Agreement, before outlining the relevant provisions disciplining Members' permitted level of support.

¹⁴⁰ Least trade distortive support falling within Annex 2 of the Agreement on Agriculture may be exempted from the calculation of a Member's product-specific AMSs and Current Total AMS. Notably, measures that have the effect of providing price support to producers are ineligible for this exemption. See Agreement on Agriculture, Annex 2, paragraph 1(b). In addition, domestic support falling within Articles 6.2 or 6.5 may be exempted from the calculation of a Member's Current Total AMS.

¹⁴¹ The Uruguay Round Modalities for the Establishment of Specific Commitments Under the Reform Program (MTN.GNG/MA/W/24) required GATT Contracting Parties to notify all domestic support they provided during a period of 1986 through 1988 (subsequently referred to as the "base period" in the Agreement on Agriculture): para. 8 and Annex 2. Twenty-eight Members (counting the European Communities as one Member) notified non-exempt domestic support during the base period and hence had reduction commitments specified in their schedules. The reduction commitments were expressed in terms of a "Total Aggregate Measurement of Support" (Total AMS) amount, which would be progressively reduced over an agreed period of time. Developed Country Members with a Total AMS reduction commitment agreed to reduce base period support by 20% over 6 years. Developing Country Members agreed to reduce base period support by 13% over 10 years. See, for example, World Trade Organization, *The WTO Agreements Series: 3. Agriculture* (World Trade Organization, 2003) (**Exhibit AUS-13**), p. 13.

¹⁴² See Panel Report, *Korea – Various Measures on Beef*, para. 808. See also World Trade Organization, *The WTO Agreements Series: 3. Agriculture* (World Trade Organization, 2003) (**Exhibit AUS-13**), p. 13; and David Orden, David Blandford and Tim Josling, "Introduction" in Orden, Blandford and Josling (eds.), *WTO Disciplines on Agricultural Support: Seeking a Fair Basis for Trade* (Cambridge University Press, 2011) (**Exhibit AUS-12**), p. 6: "Countries that did not include a ceiling commitment on [Current Total AMS] in their schedules have an implied zero ceiling and are required under the rules of the Agreement to maintain AMS support within the *de minimis* allowances."

(a) Measurement of domestic support

84. In the context of the Agreement on Agriculture, domestic support is expressed in numerical – monetary – terms¹⁴³ as an annual level of support, referred to as the "Aggregate Measurement of Support" (AMS).

85. The Agreement on Agriculture provides, at Article 1(a), that:

"Aggregate Measurement of Support" and "AMS" mean the annual level of support, expressed in monetary terms, provided for an agricultural product in favour of the producers of the basic agricultural product or non-product specific support provided in favour of agricultural producers in general...

86. The AMS may refer to a product-specific AMS (that is, a measurement of non-exempt domestic support provided by a Member for a specific basic agricultural product)¹⁴⁴ or to the Member's non-exempt non-product specific AMS (a measurement of support provided each year in favour of agricultural producers in general).

87. The measurement of the total sum of domestic support provided by a Member to its agricultural producers, excluding that which is exempt from reduction commitments, is termed the Total Aggregate Measurement of Support (Total AMS).

88. The Agreement on Agriculture provides, at Article 1(h), that:

"Total Aggregate Measurement of Support" and "Total AMS" mean the sum of all domestic support provided in favour of agricultural producers, calculated as the sum of all aggregate measurements of support for basic agricultural products, all non-product-specific aggregate measurements of support and all equivalent measurements of support for agricultural products...

89. The amount of domestic support a Member provides to its agricultural producers each year is termed its Current Total Aggregate Measurement of Support (Current Total AMS).

90. The Current Total AMS is calculated by first determining the AMS provided in the relevant year¹⁴⁵ for each product receiving support.¹⁴⁶ These amounts are added, and

¹⁴³ See Agreement on Agriculture Article 1(a), and Annex 3, para. 6.

¹⁴⁴ Article 1(b) of the Agreement on Agriculture provides that: "basic agricultural product" in relation to domestic support commitments is defined as the product as close as practicable to the point of first sale as specified in a Member's Schedule and in the related supporting material.

¹⁴⁵ 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."

¹⁴⁶ See, for example, Panel Report, *China – Agricultural Producers*, para. 7.129: "the calculation of Current Total AMS follows a sequential process where the AMS for each specific product needs to be calculated before a corresponding Current Total AMS can be arrived at".

aggregated with non-exempt non-product-specific support and equivalent measurements of support provided in the relevant year, to arrive at a Member's Current Total AMS.¹⁴⁷

91. A Member may exclude a *de minimis* amount of domestic support from the calculation of its Current Total AMS. This is stipulated in Article 6.4 of the Agreement on Agriculture, which provides:

- (a) A Member shall not be required to include in the calculation of its Current Total AMS and shall not be required to reduce:
 - (i) product-specific domestic support which would otherwise be required to be included in a Member's calculation of its Current AMS where such support does not exceed 5 per cent of that Member's total value of production of a basic agricultural product during the relevant year; and
 - (ii) non-product-specific domestic support which would otherwise be required to be included in a Member's calculation of its Current AMS where such support does not exceed 5 per cent of the value of that Member's total agricultural production.
- (b) For developing country Members, the *de minimis* percentage under this paragraph shall be 10 per cent.

92. Article 6.4(b) provides that for developing country Members the relevant *de minimis* percentage is 10 per cent.

93. Article 7.2(a) of the Agreement on Agriculture provides that:

Any domestic support measure in favour of agricultural producers, including any modification to such measure, and any measure that is subsequently introduced that cannot be shown to satisfy the criteria in Annex 2 to this Agreement or to be exempt from reduction by reason of any other provision of this Agreement shall be included in the Member's calculation of its Current Total AMS.

¹⁴⁷ Article 1(h) of the Agreement on Agriculture provides in full:

(h) "Total Aggregate Measurement of Support" and "Total AMS" mean the sum of all domestic support provided in favour of agricultural producers, calculated as the sum of all aggregate measurements of support for basic agricultural products, all non-product-specific aggregate measurements of support and all equivalent measurements of support for agricultural products, and which is:

- (i) with respect to support provided during the base period (i.e. the "Base Total AMS") and the maximum support permitted to be provided during any year of the implementation period or thereafter (i.e. the "Annual and Final Bound Commitment Levels"), as specified in Part IV of a Member's Schedule; and
- (ii) with respect to the level of support actually provided during any year of the implementation period and thereafter (i.e. the "Current Total AMS"), calculated in accordance with the provisions of this Agreement, including Article 6, and with the constituent data and methodology used in the tables of supporting material incorporated by reference in Part IV of the Member's Schedule;

94. A Member must therefore include in the calculation of its Current Total AMS:
- non-exempt product-specific support in excess of the *de minimis* percentage of the value of production of a basic agricultural product during the relevant year; and
 - non-exempt non-product-specific domestic support in excess of the *de minimis* percentage of the value of total agricultural production.¹⁴⁸

(b) Domestic support must not exceed certain levels

95. Article 3 of the Agreement on Agriculture provides, in relation to domestic support, that:

1. The domestic support and export subsidy commitments in Part IV of each Member's Schedule constitute commitments limiting subsidization and are hereby made an integral part of GATT 1994.

2. Subject to the provisions of Article 6, a Member shall not provide support in favour of domestic producers in excess of the reduction commitment levels specified in Section I of Part IV of in its Schedule.

96. Article 6.3 of the Agreement provides:

A Member shall be considered to be in compliance with its domestic support reduction commitments in any year in which its domestic support in favour of agricultural producers expressed in terms of Current Total AMS does not exceed the corresponding annual or final bound commitment level specified in Part IV of the Member's Schedule.

97. Under Articles 3.2 and 6.3, a Member's Current Total AMS must not exceed the commitment level specified in its Schedule. If a Member has specified a Total AMS commitment to provide no (or zero, or nil) domestic support, providing non-exempt domestic support above the *de minimis* limit will result in a Total AMS that exceeds "zero", and the Member will not be in compliance with its domestic support reduction commitments.¹⁴⁹

98. Where a Member has no Total AMS commitment level in its Schedule, it must not provide non-exempt domestic support above the relevant *de minimis* level. That is, Article 7.2(b) of the Agreement on Agriculture provides that:

Where no Total AMS commitment exists in Part IV of a Member's Schedule, the Member shall not provide support to agricultural producers in excess of the relevant *de minimis* level set out in paragraph 4 of Article 6.

¹⁴⁸ Unless otherwise exempt, i.e. under Article 6.2, 6.5, or Annex 2 of the Agreement on Agriculture.

¹⁴⁹ Panel Report, *China – Agricultural Producers*, para. 7.413.

99. The Agreement on Agriculture therefore envisages that:

- Where a Total AMS commitment exists in a Member's Schedule, the Member "shall not provide support in favour of domestic producers in excess of the commitment levels specified", under Articles 3.2 and 6.3 of the Agreement on Agriculture.
- Where a Total AMS commitment does not exist in a Member's Schedule, the Member "shall not provide support in favour of domestic producers in excess of the relevant *de minimis* level set out in paragraph 4 of Article 6", as provided by Article 7.2 of the Agreement on Agriculture.

100. Whether no Total AMS commitment exists in Part IV of a Member's Schedule, or the Member's commitment is to not provide support in excess of zero, the result is the same: providing non-exempt domestic support above *de minimis* will be inconsistent with the Member's commitments and obligations under Agreement on Agriculture.

101. In either case, non-exempt product-specific support beyond the *de minimis* limit will alone raise the support to above permissible levels, inconsistent with the Member's obligations and commitments under the Agreement on Agriculture.¹⁵⁰

102. Having outlined the relevant basic legal standard, Australia now proceeds to identify India's commitment level, as set out in Part IV, Section I, of India's Schedule.

3. India's domestic support commitment

103. India has not scheduled a Total AMS commitment in Part IV of its Schedule.¹⁵¹ India's Schedule includes a page (in spreadsheet format, in tab IND4-101) titled "Part IV – Agricultural Products: Commitments Limiting Subsidization (Article 3 of the Agreement on Agriculture) Section I: Domestic Support: Total AMS Commitments". This consists of a table, as set out at Figure 2.

¹⁵⁰ See, for example, Panel Report, *China – Agricultural Producers*, para. 7.413.

¹⁵¹ Available at: https://www.wto.org/english/tratop_e/schedules_e/goods_schedules_table_e.htm#fnt-a.

FIGURE 2 – Part IV, Section I of India's Schedule of Concessions on Goods

PART IV - AGRICULTURAL PRODUCTS: COMMITMENTS LIMITING SUBSIDIZATION
(Article 3 of the Agreement on Agriculture)
SECTION I - Domestic Support: Total AMS Commitments

BASE TOTAL AMS	Years of implementation 1995 - 2004	Annual and final bound commitment levels	Relevant Supporting Tables and document reference
1	2	3	

AGST/IND:
Supporting Tables refer.

104. In India's Schedule, the table in Section I of Part IV has no figures, quantities or monetary values entered in the columns. The column 1 titled "Base Total AMS" is blank. The column 2 titled "Annual and final bound commitment levels" is also blank. There is no numerical value correlating to a Total AMS in India's Schedule. Therefore, no Total AMS commitment exists in Part IV of India's Schedule.

105. In column 3 titled "Relevant Supporting Tables and document reference", the schedule entry is "AGST/IND: Supporting Tables refer".

106. India's AGST supporting documents¹⁵² set out the market price support for sugarcane that existed in the reference period and India's total product-specific AMS during 1986–88.¹⁵³

107. The entries in this supporting document explain that India calculated its average total AMS during the base period (Base Total AMS) as "(-) Rs. 198608 million (-18 per cent of the value of output)".¹⁵⁴ On the basis that India had a negative value of support during the base period, India concluded that "India is not required to undertake any reduction commitment".¹⁵⁵ This indicates that India considered it was not required to schedule a reduction commitment. The AGST supporting document therefore shows that India has no scheduled domestic support reduction commitment level, and thus no Total AMS commitment level, in Section I of Part IV of its Schedule.

108. As set out above, Articles 6.4 and 7.2 of the Agreement on Agriculture provide that, where no Total AMS commitment exists in Part IV of a Member's Schedule, the Member must not provide domestic support above its *de minimis* level. As no Total AMS commitment exists

¹⁵² G/AG/AGST/IND.

¹⁵³ India has used marketing years 1986–87, 1987–88 and 1988–89 for the purposes of the 1986–88 base period.

¹⁵⁴ G/AG/AGST/IND, p. 3, para. 3.

¹⁵⁵ G/AG/AGST/IND, p. 3, para. 3.

in Part IV of India's Schedule, India must not provide non-exempt domestic support in excess of *de minimis*.

109. Should the Panel interpret India's Schedule to mean that India specified a commitment to not provide domestic support in excess of zero, Australia submits, in the alternative, that India's Current Total AMS must then not exceed zero under Articles 3.2 and 6.3 of the Agreement on Agriculture. Accordingly, India must not provide non-exempt domestic support in excess of *de minimis*.

110. India is therefore bound under the Agreement on Agriculture to not provide non-exempt product-specific domestic support exceeding the relevant *de minimis* limit. As India is a developing country, its limit is 10 per cent of the value of production of the basic agricultural product concerned.

4. Calculation of product-specific Aggregate Measurement of Support

111. The Agreement on Agriculture sets out further detail regarding the calculation of domestic support in Annex 3, titled "Domestic Support: Calculation of Aggregate Measurement of Support". It provides that the product-specific AMS calculation includes "market price support, non-exempt direct payments, or any other subsidy not exempted from the reduction commitment".¹⁵⁶

112. Australia now proceeds to explain how the value of market price support is calculated; to consider non-exempt payments and subsidies; and lastly to outline how to determine whether product-specific support exceeds *de minimis*.

(a) Calculation of Market Price Support

113. Market price support is not defined in the Agreement on Agriculture. However, paragraph 8 of Annex 3 provides the calculation to determine the value of market price support, as follows:

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.

¹⁵⁶ Agreement on Agriculture, Annex 3, para. 1.

114. The calculation for market price support provided in paragraph 8 of Annex 3 may be represented by the following equation:¹⁵⁷

$$(\text{Applied Administered Price} - \text{Fixed External Reference Price}) * \text{Quantity of Production Eligible} = \text{Value of Market Price Support}$$

115. Thus, the market price support for a product is calculated by finding the difference between the applied administered price and the fixed external reference price (also referred to as the price "gap"), multiplied by the quantity of production eligible to receive the applied administered price.

i. The Applied Administered Price

116. The first element of the market price support calculation is the applied administered price or AAP. The term "applied administered price" is not defined in the Agreement on Agriculture. The ordinary meaning of "applied" is made effective, put to use, employed, put in operation, or brought to bear, as at a particular point or place.¹⁵⁸ An "administered price" is "a price determined not by market forces but by administrative action".¹⁵⁹

117. Australia recalls that the panel in *China – Agricultural Producers* considered the ordinary meaning of the term "applied administered price". It found that:

"Applied" is defined as "put to practical use" while "apply" means "put to use; employ", which, as the United States suggests, points to an actual, demonstrable action. The Panel concurs with China's characterization of "administered" when referring to a price as being defined as "determined not by market forces but by administrative action (as of a large company or a government)". The AAP, therefore, is the price set by the government at which specified entities will purchase certain basic agricultural products.¹⁶⁰

118. In the context of the Agreement on Agriculture, an AAP is a price that is set, determined, made effective or brought to bear by administrative action, rather than being determined only by market forces. It may be a minimum, or floor price – that is, it may be a price below which the product may not be purchased or sold.

¹⁵⁷ Panel Report, *China – Agricultural Producers*, para. 7.136.

¹⁵⁸ Oxford English Dictionary, OED Online, "applied. adj." (**Exhibit JE-101**): "brought to bear, made effective, acting at a point or place"; "apply. v" is defined as "put to use, or employed".

¹⁵⁹ Oxford English Dictionary, OED Online, "administered. adj." (**Exhibit JE-102**): "determined not by market forces but by administrative action (as of a large company or a government)".

¹⁶⁰ Panel Report, *China – Agricultural Producers*, para. 7.177, referring to Oxford English Dictionary, OED Online, "administered. adj." (**Exhibit JE-102**).

119. As administrative action may be regulatory action, the AAP need not be a price achieved by expenditures by government, and need not involve budgetary payments or procurement.¹⁶¹ An AAP may simply be mandated, or otherwise achieved by administrative action.

ii. The Fixed External Reference Price

120. The next element of the calculation of market price support is the Fixed External Reference Price or FERP.

121. Paragraph 9 of Annex 3 of the Agreement on Agriculture provides:

The fixed external reference price shall be based on the years 1986 to 1988 and shall generally be the average f.o.b. unit value for the basic agricultural product concerned in a net exporting country and the average c.i.f. unit value for the basic agricultural product concerned in a net importing country in the base period. The fixed reference price may be adjusted for quality differences as necessary.

122. Thus, in calculating market price support, the AAP is compared to a reference price from a base period (the years 1986 to 1988 for original Members). For Members that provided price support during that period, such an external reference price may be set out in a Member's AGST supporting documents. This is a product-specific, Member-specific reference price that "may be adjusted for quality differences as necessary".

iii. Quantity or volume of eligible production

123. The third and final element of the market price support calculation is the "quantity of production eligible to receive the applied administered price",¹⁶² also referred to as the quantity of eligible production, or QEP.

124. The ordinary meaning of "eligible" is "fit",¹⁶³ "entitled",¹⁶⁴ or regarded as fulfilling the necessary criteria to be considered for a particular benefit.¹⁶⁵ Production eligible to receive a minimum price, therefore, is production that is able, fit, or entitled to receive that price because it fulfils necessary criteria to be able to receive the price. This is distinguishable from

¹⁶¹ See, for example, Panel Report, *Korea – Various Measures on Beef*, para. 827.

¹⁶² Agreement on Agriculture, Annex 3, para. 8.

¹⁶³ Oxford English Dictionary, OED Online, "eligible, adj." (**Exhibit AUS-82**). See also New Shorter Oxford English Dictionary (Vol. 1, 1993), p.799, as referred to in Panel Report, *China – Agricultural Producers*, paras. 7.282–6.

¹⁶⁴ Concise Oxford English Dictionary, (Clarendon Press, 1995), p. 438, as referred to in Appellate Body Report, *Korea – Various Measures on Beef*, para. 120; See also Panel Report, *Korea – Various Measures on Beef*, para. 364 and footnote 187 thereto.

¹⁶⁵ Oxford English Dictionary, OED Online, "eligible, adj." (**Exhibit AUS-82**).

production that does, in fact, receive the price. That is, an entity that is able to receive something does not necessarily always receive it. The amount of production that actually receives a price may be smaller than production that may potentially receive a price.¹⁶⁶

125. Eligibility may also be defined with reference to particular criteria or limitations. A government may set such limits or criteria on the amount or type of production that may be eligible to receive a price. In such instances, the amount of production that is fit, or entitled, to receive a price may be smaller than the entire amount of production.¹⁶⁷

126. The Agreement on Agriculture aims at "correcting and preventing restrictions and distortions in world agricultural markets".¹⁶⁸ Such distortions result from support measures, including market price support, which affect decisions on whether to produce a particular agricultural product. The Agreement seeks to reduce trade distorting effects on production caused by production incentives and other interventions in the market,¹⁶⁹ as is evidenced by commitments to limit, and provisions to discipline, production-distorting domestic support, particularly market price support. Price support is recognized as inherently trade-distorting and as having production effects.¹⁷⁰ The inclusion in the market price support calculation of the quantity of eligible production that may potentially receive the applied administered price, rather than that which actually does receive the price, is a means to capture the distortions that can result from the market signalling of a guaranteed price for a particular product.¹⁷¹

¹⁶⁶ This interpretation is supported by the reasoning of the Appellate Body set out in Appellate Body Report, *Korea – Various Measures on Beef*, para. 120.

¹⁶⁷ The panel in *China – Agricultural Producers* noted its understanding that "(i) the amount that is eligible can be greater than the amount finally purchased, (ii) the eligible amount may be lower than the amount of total production, and (iii) it is the eligible amount which is to be included in the AMS calculation, and not any other amount. See Panel Report, *China – Agricultural Producers*, paras. 7.295, and footnote 484 thereto.

¹⁶⁸ Agreement on Agriculture, preamble, recital 2.

¹⁶⁹ See, for example, David Orden, David Blandford and Tim Josling, "Introduction" in Orden, Blandford and Josling (eds.), *WTO Disciplines on Agricultural Support: Seeking a Fair Basis for Trade* (Cambridge University Press, 2011) (**Exhibit AUS-12**), p. 3.

¹⁷⁰ Agreement on Agriculture, Annex 2, para. 1(b). The exemptions in Annex 2 apply only to measures that meet the fundamental requirement that they have no, or at most minimal, trade-distorting effects or effects on production. Accordingly, all measures eligible for the exemption must not have the effect of providing price support to producers. Price support is thus recognized as inherently trade-distorting and as having production effects.

¹⁷¹ See Panel Report, *Korea – Various Measures on Beef*, para. 831. See also Panel Report, *China – Agricultural Producers*, paras. 7.282–96. In India's case, there is also evidence that the sugarcane price does provide a market signal to producers: See Tarun Sawhney, President, India Sugar Mills Association (ISMA), "The Current Sugarcane Pricing Policy and its Critical Analysis" (**Exhibit AUS-5**), p.14: "Sugarcane gives highest return as compared to wheat and paddy." See also Abinash Verma, "Sugar Reform: Threat or Challenge?", Indian Sugar Mills Association (ISMA), November 2018 (**Exhibit AUS-6**), p. 10 (comparing sugarcane price with paddy and wheat), p. 21: "With high cane prices, sugarcane is the most attractive crop in India; So surplus cane and sugar is certain". See also Indian Sugar Mills Association, "Presentation to 'Task Force on Sugarcane & Sugar Industry'", National Institution for Transforming India (NITI Aayog)", 21 January 2019, (**Exhibit AUS-7**), p. 18: "Better remuneration: Farmers get 50-60% higher returns from sugarcane as compared to any competing crop... Assured price: Farmer gets full cane price fixed by Central or State Govt. even if late, which is not the

127. The quantity of eligible production is the quantity or volume of production entitled, fit or able to receive the AAP, rather than the amount of production that actually receives the AAP.¹⁷²

128. Such an interpretation was applied by the panel in *Korea – Various Measures on Beef*.¹⁷³ The Appellate Body agreed with the panel in that dispute:

We share the Panel's view that the words "production *eligible* to receive the applied administered price" in paragraph 8 of Annex 3 have a different meaning in ordinary usage from "production *actually purchased*". The ordinary meaning of "eligible" is "fit or *entitled* to be chosen".⁵⁷ Thus, "production eligible" refers to production that is "fit or entitled" to be purchased rather than production that was actually purchased. In establishing its program for future market price support, a government is able to define and to limit "eligible" production. Production actually purchased may often be less than eligible production.

⁵⁷ *The Concise Oxford English Dictionary*, (Clarendon Press, 1995), p. 438. ¹⁷⁴

129. The panel in *China – Agricultural Producers* also applied this meaning of the term "eligible production".¹⁷⁵ As the panel in that dispute observed, "the pertinent question is whether the [product] that was produced would be able to benefit from the [applied administered price] if the seller so desired".¹⁷⁶

130. In other words, the "quantity of production eligible" to receive the AAP means the quantity of production of the basic agricultural product that could potentially receive the AAP, according to the terms of the measure, rather than the amount of production that in fact received the price.

iv. Payments made to maintain the price "gap"

131. Paragraph 8 of Annex 3 of the Agreement on Agriculture provides that "Budgetary payments made to maintain this gap, such as buying-in or storage costs, shall not be included in the AMS". This provision means that government payments made to maintain the price "gap"

case for other crops", p. 21: "With high cane prices, sugarcane is the most attractive crop in India; So surplus cane and sugar is certain". See Panel Report, *Korea – Various Measures on Beef*, para. 831. See also Panel Report, *China – Agricultural Producers*, paras. 7.282–6.

¹⁷² See Appellate Body Report, *Korea – Various Measures on Beef*, para. 120, Panel Report, *Korea – Various Measures on Beef*, paras. 827–31. See also Panel Report, *China – Agricultural Producers*, paras. 7.282–966.

¹⁷³ Panel Report, *Korea – Various Measures on Beef*, paras. 827–31.

¹⁷⁴ Appellate Body Report, *Korea – Various Measures on Beef*, para. 120.

¹⁷⁵ Panel Report, *China – Agricultural Producers*, paras. 7.282–6 and 7.295–6.

¹⁷⁶ Panel Report, *China – Agricultural Producers*, para. 7.314.

are not to be included when calculating the AMS. Rather, where there are such budgetary payments, the price support calculation should only take into account the difference between the AAP and the FERP. That is, only the price "gap" itself (multiplied by the quantity of production eligible to receive the applied administered price) is taken to represent the value of market price support.

132. The Agreement on Agriculture does not define budgetary payments considered to "maintain" the price gap, but gives two examples: buying-in, and budgetary payments for storage costs. The ordinary meaning of "maintain" is "cause or enable (a condition or situation) to continue", i.e. to support a status quo, or "to keep something at the same level or rate".¹⁷⁷ The examples of budgetary payments provided in the Agreement may maintain or support a price at a particular level in several ways. For example, government "buying-in" of a product may remove excess supply from the market, and thus raise the price through the forces of supply and demand. Such buying-in may be at a guaranteed price that supports or maintains the price by establishing a reference price for the product. Budgetary payments for storage costs may also allow excess supply to be removed from the market.

133. In some instances, where the price gap is achieved or caused by budgetary payments alone, the budgetary payment and the price gap may be the same amount. In other instances, the budgetary payment may be a supplementary means to maintain a price gap that is achieved or brought to bear through several regulatory tools or types of administrative action. In any event, Annex 3, paragraph 8 directs Members to use the price "gap" itself as the relevant figure for the price support calculation and to not further add the budgetary payments that have the effect of maintaining the "gap".

134. In contrast, direct payments that are not made to maintain the price gap are *a priori* to be included in the AMS calculation.

(b) Other non-exempt direct payments or other non-exempt subsidies

135. In addition to market price support, paragraph 1 of Annex 3 provides that non-exempt direct payments or any other non-exempt subsidies are to be included in the product-specific AMS calculation, in accordance with Article 7.2(a) of the Agreement on Agriculture.

¹⁷⁷ Oxford English Dictionary, OED Online, "maintain, v." (Exhibit JE-103).

136. With respect to direct payments, paragraph 12 of Annex 3 states that "Non-exempt direct payments which are based on factors other than price shall be measured using budgetary outlays." This provision refers to direct payments that shall be measured using budgetary outlays, in contrast to the budgetary payments made to maintain a price gap, referred to in paragraph 8 of Annex 3, where the price gap itself is used in measuring the value of the payments.

137. The ordinary meaning of a "payment" is "a transfer of economic resources",¹⁷⁸ or a sum of money (or equivalent) paid".¹⁷⁹

138. Under the Agreement on Agriculture, a payer may be a government or its agent. Paragraph 2 of Annex 3 states: "Subsidies under paragraph 1 shall include both budgetary outlays and revenue foregone by governments or their agents" (emphasis added). Thus, a payment would be "direct"¹⁸⁰ if it is made from government funds to the recipient by the government or its agent. This interpretation is further supported by reference to the object and purpose of the Agreement on Agriculture. The Agreement seeks to discipline governmental support and subsidies in favour of agricultural producers that alter competitive relationships and distort trade.

139. Accordingly, the ordinary meaning of the term "direct payments" in its context, and in the light of the object and purpose of the Agreement on Agriculture, is the transfer of economic resources from the government to the beneficiary, including in the form of money.

140. With respect to subsidies to be included in the product-specific AMS calculation, the Agreement on Agriculture does not define "subsidy". Nevertheless, paragraph 2 of Annex 3 explains that "[s]ubsidies under paragraph 1 [of Annex 3] shall include both budgetary outlays and revenue foregone by governments or their agents." Article 1(c) of the Agreement provides that "budgetary outlays" or "outlays" includes revenue foregone by governments or their agents.¹⁸¹

¹⁷⁸ See Appellate Body Report, *EC – Export Subsidies on Sugar*, para. 259; Appellate Body Report, *Canada – Dairy*, para. 107.

¹⁷⁹ See Oxford English Dictionary, OED Online, "payment, n." (**Exhibit AUS-83**). This interpretation has also been shared by the Appellate Body: See Appellate Body Report, *EC – Export Subsidies on Sugar*, para. 259; Appellate Body Report, *Canada – Dairy*, para. 107.

¹⁸⁰ The Oxford English Dictionary defines "direct" as "without intervening factors or intermediaries": Oxford English Dictionary, OED Online, "direct. adj. and adv." (**Exhibit JE-120**).

¹⁸¹ Agreement on Agriculture, Article 1(c).

141. Paragraph 13 of Annex 3 further provides:

Other non-exempt measures, including input subsidies and other measures such as marketing-cost reduction measures: the value of such measures shall be measured using government budgetary outlays or, where the use of budgetary outlays does not reflect the full extent of the subsidy concerned, the basis for calculating the subsidy shall be the gap between the price of the subsidized good or service and a representative market price for a similar good or service.

142. With respect to exemptions, Article 6.2, Article 6.5 and Annex 2 of the Agreement on Agriculture set out requirements, conditions and criteria for those measures that are or can be exempt from the domestic support reduction commitments.¹⁸² Measures that have the effect of providing price support are ineligible for exemption from a Member's AMS calculation via Annex 2.¹⁸³ Australia notes that Members seeking to claim an exemption for any new domestic support measure, or modification of an existing measure, must promptly notify the Membership, and the notification must contain details of the conformity with criteria as set out in Article 6 or Annex 2 of the Agreement on Agriculture.¹⁸⁴

143. Annex 3 therefore envisages that the calculation of the AMS should include the value of payments that are not made to maintain a price gap, direct payments or transfers of resources from governments or their agents to a beneficiary, and other subsidies,¹⁸⁵ which may arise where governments or their agents incur "budgetary outlays", including revenue foregone, or provide subsidized goods or services, where these are not otherwise exempt measures.

5. Whether non-exempt product-specific support exceeds the *de minimis* level

144. Australia recalls that non-exempt product-specific domestic support that does not exceed the relevant *de minimis* level is not required to be included in the calculation of the Current Total AMS, and is not required to be reduced.¹⁸⁶

¹⁸² Article 6.2 of the Agreement on Agriculture provides that "investment subsidies which are generally available to agriculture in developing country Members and agricultural input subsidies generally available to low-income or resource-poor producers in developing country Members shall be exempt from domestic support reduction commitments that would otherwise be applicable to such measures". Article 6.5 of the Agreement on Agriculture also provides that: "Direct payments under production-limiting programmes shall not be subject to the commitment to reduce domestic support if: (i) such, payments are based on fixed area and yields; or (ii) such payments are made on 85 per cent or less of the base level of production; or (iii) livestock payments are made on a fixed number of head".

¹⁸³ Agreement on Agriculture, Annex 2, para. 1(b).

¹⁸⁴ Agreement on Agriculture, Article 18.2.

¹⁸⁵ The subsidy should include support "provided for an agricultural product in favour of the producers of the basic agricultural producer" (Agreement on Agriculture, Article 1(a)) and measures "directed at agricultural processors... to the extent that such measures benefit the producers of the basic agricultural products" (Agreement on Agriculture, para. 7 of Annex 3).

¹⁸⁶ Agreement on Agriculture, Article 6.4.

145. To determine whether non-exempt product-specific domestic support is in excess of the relevant *de minimis* level, the amount of support in favour of producers of a basic agricultural product may be expressed as a percentage of the value of production of the agricultural product. To arrive at such a percentage figure, the amount of non-exempt product-specific domestic support, calculated as an AMS, may be divided by the value of production of the basic agricultural product. This may be represented as follows:

$$\text{Product specific AMS} \div \text{Value of Production} = \text{percentage}$$

146. The resulting percentage may be compared with the Member's *de minimis* level, to determine whether the product-specific AMS exceeds the *de minimis* level.¹⁸⁷

147. If the non-exempt product-specific support, calculated as an AMS is, as a percentage of the value of production, above the *de minimis* level, then it must be included in the calculation of the Member's Total AMS. If non-exempt domestic support for a product (which may comprise market price support alone, or also include other non-exempt support) is above the *de minimis* level, then such support will exceed *de minimis*, and must be included in the calculation of the Member's Total AMS.

148. Where a Member has no Total AMS commitment in its Schedule, or a Member's Total AMS commitment is to not exceed zero, then providing non-exempt product-specific domestic support that is, as a percentage of the value of production, in excess of the *de minimis* level will be inconsistent with the Member's obligations under Article 7.2, or Articles 3.2 and 6.3, of the Agreement on Agriculture.

C. INDIA'S NON-EXEMPT PRODUCT-SPECIFIC DOMESTIC SUPPORT EXCEEDS THE PERMISSIBLE LEVEL

149. In this Part, Australia establishes that the market price support component of India's product-specific AMS for sugarcane alone exceeds India's *de minimis* limit and is therefore inconsistent with India's obligations under the Agreement on Agriculture. Australia demonstrates that India's product-specific AMS including product-specific support provided to

¹⁸⁷ See, for example, the panel's approach in *China – Agricultural Producers*, tables 9–16, and para 7.412. A comparison can also be made between the *de minimis* limit in monetary terms, and the AMS, which is expressed in monetary figures. The *de minimis* limit in monetary terms could be derived by multiplying the relevant *de minimis* percentage by the value of production. This may be compared to the AMS, expressed in monetary figures. For example, in India's case, the *de minimis* level is 10 per cent. If the AMS for sugarcane, expressed in monetary terms, is greater than 10 per cent of the value of production, also expressed in monetary terms, then it will exceed the *de minimis* level.

sugarcane producers through non-exempt payments constitutes domestic support even further in excess of its *de minimis* limit.

1. Calculation of India's product-specific Aggregate Measurement of Support for sugarcane: market price support

150. Australia recalls that market price support is to be included in India's product-specific AMS.¹⁸⁸ Market price support may be calculated by using the gap between a FRP and the AAP multiplied by the quantity of production eligible to receive the AAP.¹⁸⁹

151. Australia now proceeds to calculate the level of market price support India provides to sugarcane through:

- the base FRP;
- the FRP with average premiums; and
- the FRP with average premiums and applicable SAPs.

152. These measures apply simultaneously and cumulatively. Australia demonstrates that using any of these variants as the applicable AAP results in market price support that is large enough to alone make India's product-specific AMS for sugarcane significantly exceed India's 10 per cent *de minimis* limit.

(a) Components of the market price support calculation

i. The Fair and Remunerative Price and State Advised Prices are Applied Administered Prices

153. The FRP and SAPs are "applied administered prices" for the purposes of the Agreement on Agriculture.

154. The FRP is an applied administered price within the ordinary meaning of the term. The FRP is a fixed and guaranteed minimum price for sugarcane. It is a price set by the Central Government below which specified entities (sugar mills) may not purchase a certain basic agricultural product (sugarcane). Its value is determined by the Central Government and announced at the beginning of each sugar season.

¹⁸⁸ Agreement on Agriculture, Annex 3, para. 1.

¹⁸⁹ Agreement on Agriculture, Annex 3, para. 8. See also Section III.B.4(a) above.

155. As described in Section III.A.1, the base FRP component is payable upfront and, at the end of each sugar season, the government notifies each mill of the specific premium payments the mill must pay as a result of its reported recovery rate. The FRP is mandatory and enforceable,¹⁹⁰ and mills may not purchase sugarcane for below the relevant FRP. The FRP is made effective or brought to bear by administrative action. The setting of the price for sugarcane via the FRP is a government intervention that means the price for sugarcane is not subject to the market forces of demand and supply. The FRP is thus a price "determined not by market forces but by administrative action (as of a large company or a government)".¹⁹¹

156. The SAPs are likewise applied administered prices within the ordinary meaning of the term. As described in Section III.A.2, in the state in which SAPs operate, they are fixed minimum prices for sugarcane. They are prices set by the relevant state governments below which specified entities (sugar mills) may not purchase a certain basic agricultural product (sugarcane). Their value is determined by the relevant state government, not only by market forces, and they are made effective or brought to bear by administrative action.

ii. India's Fixed External Reference Price for sugarcane

157. In order to calculate the market price support provided by an AAP, it is necessary to determine the relevant FERP for sugarcane.

158. Australia recalls that the FERP for original Members is based on the base period – the years 1986 to 1988.¹⁹² In India's case, during the base period it provided market price support to sugarcane. An external or world price for sugarcane was not available, as sugarcane is not significantly internationally traded, but crushed immediately after harvest. In calculating its market price support for sugarcane in the base period, India based its external reference price for sugarcane on the world sugar price, from which the sugarcane price component was derived by removing the other costs of producing sugar. The resulting estimated external reference price is set out in India's AGST supporting document, G/AG/AGST/IND.

159. India's "Calculation Details for Estimating AMS for Sugarcane" table is reproduced from G/AG/AGST/IND in Figure 3 below.

¹⁹⁰ See Essential Commodities Act 1955 (**Exhibit JE-43**), Sections 3 and 7, and Sugarcane (Control) Order 1966 (**Exhibit JE-44**), Clauses 3-A, 7–14.

¹⁹¹ See Panel Report, *China – Agricultural Producers*, para. 7.177.

¹⁹² India has used marketing years 1986–87, 1987–88 and 1988–89 in its AGST tables.

FIGURE 3 – Calculation Details for Estimating AMS for Sugarcane (G/AG/AGST/IND)

Year	International Price of Sugar (Rs../Tonne) (1)	Most efficient conversion cost of Sugar from Sugarcane (Rs../Tonne) (2)	Computed International price of Sugar in terms of Sugarcane (Rs../Tonne) (3) = (1) - (2)	Estimated External reference price of Sugarcane at 8.5% recovery (Rs../Tonne) (4) = (3) divided by 11.76
1986-87	2717.12	1405.40	1311.72	111.54
1987-88	3057.41	1405.40	1652.01	140.58
1988-89	3950.81	1405.40	2545.41	216.45
Average	3241.78	1405.40	1836.38	156.16

Notes

1. International price of Sugar is CIF per Tonne for refined sugar for H.S. Heading 1701.9902 (for 1987-88 and 1988-89) and RqqC No. 0612003 (for 1986-87)

2. The Conversion Cost of most efficient unit pertains to Maharashtra as computed in Report on Sugar Industry by Bureau of Industrial Costs and Prices, November 1990. Higher costs of conversion in other states have not been taken into account as the implicit subsidy is effectively a subsidy to the Sugar industry rather than to the sugarcane producer.

3. The computed international prices for sugar, less conversion costs, is converted to sugarcane using a recovery rate of 8.5% for comparison with domestic support price of sugarcane.

160. As may be seen from Figure 3 note 1, India's external reference price was calculated based on CIF ("cost, insurance and freight") prices of sugar during the period of 1986–87 to 1988–89 (column 1). India estimated a "conversion cost" (column 2) to convert the price of sugar into a "computed international price of sugar in terms of sugarcane" (column 3).¹⁹³ Finally, India converted the sugar price into its sugarcane-equivalent price by multiplying by a recovery rate of 8.5 percent (or by dividing the sugar price by 11.76).¹⁹⁴ The resulting estimated external reference price for sugarcane is INR 156.16 per metric tonne.¹⁹⁵ This may be used as the relevant FERP for the purposes of the market price support calculation under Annex 3, paragraph 9 of the Agreement on Agriculture.

¹⁹³ G/AG/AGST/IND, p. 29, note 2.

¹⁹⁴ G/AG/AGST/IND, p. 29, note 3. Multiplying 1836.38 (the average computed cost of sugar in terms of sugarcane) by 8.5% (8.5/100) is equivalent to dividing 1836.38 by approximately 11.76 (100/8.5). The result is 156.16.

¹⁹⁵ G/AG/AGST/IND, p. 28, column 4.

161. Australia recalls that Annex 3, paragraph 9 provides that the FERP may be adjusted for quality differences as necessary. The estimated external reference price for sugarcane set out in India's AGST tables was derived from the global price of sugar, using a recovery rate of 8.5%. The average recovery rates in India today are higher than this historical recovery rate. This reflects the higher quality of sugarcane today compared to sugarcane from the period 1986–87 to 1988–89.

162. In light of this quality difference, Australia considers it necessary to adjust India's estimated external reference price for sugarcane, as set out in its AGST table, to allow the AAP and the FERP to be compared to the same quality level, and to provide a more accurate calculation. Australia has therefore adjusted the external reference price to reflect average quality differences in sugar producing states for the relevant sugar seasons, using the methodology provided in India's AGST tables. Adjusting for a recovery rate of 9.5% results in an adjusted FERP for sugarcane of INR 174.46 per metric tonne; for a recovery rate of 10%, the adjusted FERP for sugarcane is INR 183.64 per metric tonne.¹⁹⁶

iii. Quantity of eligible sugarcane production

163. Australia recalls that the ordinary meaning of the "quantity of production eligible" relevant for the calculation of market price support is the amount that is able to receive the price, not the amount that actually receives the price. If the product "would be able to benefit from the [AAP] if the seller so desired", it is to be counted towards the QEP.¹⁹⁷

164. All sugarcane produced is able to receive the FRP and, in states where SAPs apply, all sugarcane produced is able to receive the relevant SAP. There is no condition or limitation on the quantity of production that is eligible to be purchased at the FRP, or SAP in states where a SAP applies. Neither the central-level Sugarcane (Control) Order 1966 nor the annual announcements of the FRPs indicate that there are any limitations as to the production of sugarcane that is eligible to receive the FRP. The annual FRP announcements simply state "that the Government of India has determined the 'Fair and Remunerative Price' of sugarcane payable by Sugar Mills".¹⁹⁸ The Central Government has explicitly stated that "[t]he FRP so

¹⁹⁶ See **Annex H, Table 19** below, and Australia's domestic support calculations, Microsoft Excel workbooks (**Exhibit AUS-1**).

¹⁹⁷ See Section III.B.4(a)iii, referring to Panel Report, *China – Agricultural Producers*, para. 7.314.

¹⁹⁸ See Cabinet Committee on Economic Affairs (CCEA), Determination of Fair and Remunerative Price payable by sugar mills for 2015–16 sugar season, 16 January 2015 (**Exhibit JE-3**); CCEA, A farmer friendly step: Cabinet approves Fair and

approved shall be applicable for purchase of sugarcane from the farmers in the sugar season 2018-19".¹⁹⁹

165. The market price support is therefore available to all producers of sugarcane, despite the fact that not all may actually take it up. The market price support calculation for the FRP uses India's sugarcane production as the quantity of production eligible to receive the AAP, i.e. the total volume of sugarcane production (statistics available as at 30 December 2019).²⁰⁰

(b) India provides market price support in excess of *de minimis* through the base Fair and Remunerative Price alone

166. If the base FRP is used as an AAP, this component of market price support alone would exceed India's *de minimis* limit. This is illustrated using average all India figures in Table 10.

Remunerative Price payable by sugar mills for 2017–18 sugar season, 24 May 2017 (**Exhibit JE-6**); CCEA, Determination of Fair and Remunerative Price payable by sugar mills for 2018–19 sugar season, 18 July 2018 (**Exhibit JE-8**); CCEA, Cabinet approves Determination of "Fair and Remunerative Price" of sugarcane payable by sugar mills for 2019–20 sugar season, 24 July 2019 (**Exhibit JE-10**).

¹⁹⁹ CCEA, Determination of Fair and Remunerative Price payable by sugar mills for 2018-19 sugar season, 18 July 2018 (**Exhibit JE-8**).

²⁰⁰ Department of Agriculture & Farmers Welfare, Directorate of Sugarcane Development, Sugarcane in India: State wise Production (**Exhibit JE-140**), and Department of Agriculture & Farmers Welfare, 1st advance estimates for 2019–20, 23 September 2019 (**Exhibit JE-141**); See also First Advance Estimates of Production of Foodgrains for 2019-20, Ministry of Agriculture and Farmers Welfare, 23 September 2019 (**Exhibit AUS-49**).

TABLE 10 – Market Price Support calculation with base FRP as AAP²⁰¹

	AAP (Base FRP)	FERP (adjusted for average quality)	Price "gap"	Quantity of eligible production	MPS	Total value of sugarcane production	% of value of sugarcane production
	(INR per mT)	(INR per mT)	(INR per mT)	(mT)	(INR millions)	(INR millions)	
Sugar season / MY	C1	C2	C3 (C1–C2)	C4	C5 (C3 * C4)	C6	C7 (C5 / C6 * 100%)
2014–15	2200.00	174.46	2025.54	362.330	733,915.32	784,330.00	94%
2015–16	2300.00	174.46	2125.54	348.448	740,641.52	746,600.00	99%
2016–17	2300.00	174.46	2125.54	306.070	650,565.22	724,950.00	90%
2017–18	2550.00	174.46	2375.54	379.905	902,480.77	1,015,740.00	89%
2018–19	2750.00	183.64	2566.36	400.157	1,026,947.21	1,222,234.07	84%

²⁰¹ This illustrative table provides the national averages. Data at the state level are provided in **Annex H, Tables 20–24** below, and in Australia's domestic support calculations, Microsoft Excel workbooks (**Exhibit AUS-1**). Percentages have been rounded to the nearest percentage. Quantity of eligible production figures are based on all sugarcane production. These figures are drawn from Indian Government sources. Eligible production figures are sourced from Department of Agriculture & Farmers Welfare, Directorate of Sugarcane Development, Sugarcane in India: State wise Production (**Exhibit JE-140**) and Department of Agriculture & Farmers Welfare, 1st advance estimates for 2019–20 (**Exhibit JE-141**). See also First Advance Estimates of Production of Foodgrains for 2019–20, Ministry of Agriculture and Farmers Welfare, 23 September 2019 (**Exhibit AUS-49**). Value of production figures are sourced from Ministry of Statistics and Programme Implementation (MOSPI), National Accounts Statistics 2019, Statement 8.1.2 Crop-wise value of output (**Exhibit JE-106**).

167. When compared to India's FRP, adjusted for quality differences,²⁰² the amount of market price support since at least the sugar season 2014–15, calculated using, as an AAP, the base FRP applicable for all sugarcane production, has consistently been vastly in excess of India's *de minimis* limit of 10 per cent.

168. Accordingly, through the application of the base FRP alone, India is acting inconsistently with its obligations under Article 7.2 of the Agreement on Agriculture, or, in the alternative, under Articles 3.2 and 6.3.

(c) India provides market price support in excess of *de minimis* through the Fair and Remunerative Price with average premiums

169. As outlined in Section III.A.1, in addition to the base FRP, the Central Government sets a premium component of the FRP that may be payable, based on mills' average seasonal recovery rates. This amount is also a component of the AAP, because it is part of the price set and determined by the government through administrative action and not by the operation of market forces. If the FRP with an average premium is used as the AAP in calculating India's market price support, the *de minimis* limit is further exceeded.

170. Each mill-specific FRP is different, reflecting the fact that the final amount is a function of the average quality of the sugarcane delivered to each mill as well as the mill's efficiency.²⁰³ All production is, however, eligible to receive the FRP plus the relevant premium amount, with applicable rebates for non-productive cane captured in the mill's eventual FRP.

171. Indian official figures of the weighted average FRP including premiums, based on India's weighted average national recovery rate, are publicly available only for some years, as set out in Table 11.²⁰⁴

²⁰² See **Annex H, Table 19** below, setting out adjustment for quality differences, and in Australia's domestic support calculations, Microsoft Excel workbooks (**Exhibit AUS-1**). Note that India's AGST Supporting Tables (G/AG/AGST/IND) are published in Indian rupees (INR). India's domestic support notifications have been denominated in US dollars (USD). For consistency with India's AGST Supporting Tables submitted in support of its commitments under the Agreement on Agriculture, and given the FRP is set in INR, Australia has calculated India's MPS based on INR.

²⁰³ See, for example, Notification G.S.R. 142(E), Ministry of Consumer Affairs, Food and Public Distribution, 17 February 2017 (**Exhibit AUS-21**), notifying mill-wise FRPs for the 2015–16 season; Notification G.S.R. 932(E), Ministry of Consumer Affairs, Food and Public Distribution, 30 September 2016 (**Exhibit AUS-20**), notifying mill-wise FRPs for the 2015–16 season; Notification G.S.R. 1204(E), Ministry of Consumer Affairs, Food and Public Distribution, 27 September 2017 (**Exhibit AUS-31**), fixing the FRP for the 2015–16 season; Notification G.S.R. 1205(E), Ministry of Consumer Affairs, Food and Public Distribution, 27 September 2017 (**Exhibit AUS-22**), notifying mill-wise FRPs for the 2016–17 season.

²⁰⁴ CACP, Price Policy for Sugarcane (2019–20 sugar season), August 2018 (**Exhibit JE-53**), p. 14, Table 2.3, column 5 'Weighted Average FRP per ton of sugarcane as per average recovery [INR]'; See also CACP, Price Policy for Sugarcane

**TABLE 11 – Weighted Average FRP (including premiums) from 2014–15 to 2017–18
(INR per metric tonne)**

	2014–15	2015–16	2016–17	2017–18	2018–19	2019–20
Weighted average FRP²⁰⁵	2,374	2,536	2,487	2,844	Not available	Not available

172. Australia provides at **Annex H**, Tables 20 – 24, calculations of the market price support provided by the FRP including average premiums at a state level using Indian official figures of state-level average recovery rates and production.²⁰⁶ The market price support provided through the FRP when these premiums are taken into account is set out in Table 12.

TABLE 12 – Market price support in terms of FRPs plus average premiums, as a percentage of value of sugarcane production

	MPS (INR millions)	Value of Production (INR millions)	MPS as a percentage of value of production
2014–15	791,939.81	784,330.00	100.97%
2015–16	815,274.15	746,600.00	109.20%
2016–17	703,846.60	724,950.00	97.09%
2017–18	1,013,490.81	1,015,740.00	99.78%
2017–18	1,073,486.98	1,222,234.07	87.83%

173. Using the FRP plus average premiums as the AAP for the price support calculation demonstrates that, when compared to India's adjusted FERP,²⁰⁷ the amount of product-specific price support provided by India through the FRP since the sugar season 2014–15 has greatly exceeded India's *de minimis* limit of 10 per cent. Accordingly, through the application of the base FRP with premiums, India is acting inconsistently with its obligations under Article 7.2 of the Agreement, or, in the alternative, under Articles 3.2 and 6.3.

(2018–19 sugar season), August 2017 (**Exhibit JE-52**), p. 15, and p. 54, 'Annex Table 1.3: State-wise Sugar Recovery', citing "Source: Indian Directorate of Sugar, Department of Food and Public Distribution".

²⁰⁵ The weighted average FRP is the average final FRP amount paid by each mill, based on India's weighted average national recovery rate, as set out in CACP, Price Policy for Sugarcane (2019–20 sugar season), August 2018 (**Exhibit JE-53**), Table 2.3, p. 14. See also CACP, Price Policy for Sugarcane (2018–19 sugar season), August 2017 (**Exhibit JE-52**), p. 15.

²⁰⁶ Indian official figures for recovery rates are used to determine the premium (at either a state or central level) to determine the AAP for the market price support calculations.

²⁰⁷ Adjustment for quality differences is set out in **Annex H**, Table 19 below.

(d) India provides market price support in excess of *de minimis* through applicable State Advised Prices

174. Australia has demonstrated that SAPs are minimum prices for sugarcane provided to a mill, administered and applied under state-level legislative instruments and administrative orders.²⁰⁸ In 2016–17 the SAPs were on average 22.7% higher than the FRP.²⁰⁹

175. The SAPs are government interventions that operate so the price for sugarcane is unchanged by demand, supply, or productivity of the cane. They are applied administered prices within the ordinary meaning of the term.

176. As paragraph 3 of Annex 3 of the Agreement on Agriculture provides that support at both the national and sub-national level shall be included in calculating domestic support, the state minimum price should be included where this is applicable.

177. Australia provides at **Annex H**, Tables 20 – 24, calculations of the market price support provided by the FRP and SAPs using Indian official figures of state-level average recovery rates and production.²¹⁰ The market price support provided through the FRP and SAPs is set out in Table 13.

TABLE 13 – Market price support in terms of FRPs (base FRP plus average premiums) and SAPs where applicable, as a percentage of value of sugarcane production

	MPS (INR millions)	Value of Production (INR millions)	MPS as a percentage of value of production
2014–15	903,751.21	784,330.00	115.23%
2015–16	880,418.37	746,600.00	117.92%
2016–17	815,049.84	724,950.00	112.43%
2017–18	1,075,387.11	1,015,740.00	105.87%
2018–19	1,145,868.60	1,222,234.07	93.75%

178. Where a state sets different SAPs for different varieties or time of delivery to the mill, Australia has used the middle variety as a 'midpoint' of that year's SAPs.²¹¹

²⁰⁸ See Section III.A.2 and Section III.C.1(a)(i) above.

²⁰⁹ CACP, Price Policy for Sugarcane (2018–19 sugar season), August 2017 (**Exhibit JE-52**), p. 12.

²¹⁰ Indian official figures for recovery rates are used to determine the premium (at either a state or central level) to determine the AAP for the market price support calculations.

²¹¹ See Australia's domestic support calculations, Microsoft Excel workbooks (**Exhibit AUS-1**).

179. When the SAPs are included in the AAP in calculating market price support to sugarcane, the amount of market price support provided by India since the sugar season 2014–15 has greatly exceeded India's *de minimis* limit of 10 per cent. Accordingly, through the application of the FRP and SAPs, India is acting inconsistently with its obligations under Article 7.2 of the Agreement on Agriculture, or, in the alternative, under Articles 3.2 and 6.3.

180. India's market price support for sugarcane has consistently been above its product-specific AMS *de minimis* limit, since at least 2014–15.

(e) India applies measures involving payments to maintain the sugarcane price "gap"

181. In addition to the market price support discussed above, India implements other measures, at both the central and state level, that are principally directed to supporting or maintaining the mandated minimum sugarcane price, and therefore the "gap" between the AAP and the FERP.

182. At the Central Government level, this includes India's production subsidies to pay sugarcane price arrears (detailed in **Annex A**), soft loans to pay sugarcane price arrears (detailed in **Annex B**), buffer stock subsidies to pay sugarcane price arrears (detailed in **Annex C**), the 2018–19 transport, freight and marketing subsidies insofar as they pay sugarcane price arrears (detailed at **Annex D-02**), and the 2019–20 transport, freight and marketing subsidies, insofar as they pay sugarcane price arrears (detailed at **Annex D-03**).

183. At the state government level, Australia submits that the measures that are principally directed to supporting or maintaining the sugarcane price "gap" are:

- the Andhra Pradesh "Loans to cooperative sugar factories for payment of the Fair and Remunerative Price";
- the Bihar soft loan program for the crushing season 2014–15 with a six year term until 2020–21;
- the Bihar "bonus" of INR 50 per metric tonne for the 2014–15 sugar season (in the event that the Panel considers this is not part of the SAP under Australia's principal arguments detailed in Section III.C.1(d) above);

- the Bihar rebate of purchase tax for sugarcane purchased in the 2017–18 sugar season;
- the Bihar production subsidy or grant of INR 125 per metric tonne for sugarcane purchased in the 2018–19 sugar season "for cane price";
- the Gujarat soft loan "Scheme (1): Interest relief against Purchase tax / Soft loan to Sugar Co-operative societies";
- the Gujarat soft loan "Scheme (4): Liquidity support loan to Sugar Co-operative Societies";
- the Haryana "financial assistance to private sugar mills for making payments to the cane growers" to clear cane dues of sugar year 2018;
- the Haryana soft loans or loan relief to clear cane dues of sugar year 2018;
- the Karnataka "Payment of Incentive Price for Sugar Cane through Sugar Factories" for the 2018–19 financial year (in the event that the Panel rejects Australia's principal arguments in relation to this measure detailed in Section III.C.2(b) below);
- the Maharashtra rebate and/or exemption of purchase tax for sugarcane "for the purpose of assisting the sugar factories in the State, to give the fair and remunerative price to the farmers", applied in 2014–15, 2015–16 and 2016–17;
- the Punjab assistance to sugar mills to clear the cane arrears of farmers for sugar season 2017–18;
- the Punjab payment of INR 250 per metric tonne of the SAP to farmers on behalf of mills to clear cane price arrears for sugar season 2018–19 (in the event that the Panel considers this is not part of the SAP under Australia's principal arguments detailed in Section III.C.1(d) above);
- the Tamil Nadu "Loans to Co-operative Sugar Mills", insofar as this facilitates payment of the sugarcane price;
- the Tamil Nadu "Production incentive to sugarcane farmers" (in the event that the Panel rejects Australia's principal arguments in relation to this measure detailed in Section III.C.2(c) below);

- the Telangana "Assistance to Cane Suppliers as Purchase Tax Incentive" 2018–19 insofar as this facilitates payment of the sugarcane price;
- the Uttar Pradesh rebate of purchase tax for sugarcane purchased in the 2014–15 and 2015–16 sugar season "to facilitate...payment of cane price to cane farmers";
- the Uttar Pradesh government guarantee and waiver of guarantee fees on loans taken out under the Central Government's 2014–15 "Scheme for extending soft loan to sugar mills", provided "to streamline the payment of sugarcane arrear to farmers";
- the Uttar Pradesh loans to sugar mills for the purpose of paying sugarcane price arrears for the 2016–17 sugar season;
- the Uttar Pradesh soft loan to mills of September 2018 "to clear the dues of the farmers";
- the Uttar Pradesh financial assistance of INR 450 per metric tonne against the purchase of sugarcane by mills for the sugar season 2017–18; and
- the Uttar Pradesh loans to specific sugar mills "for the payment of outstanding sugarcane value for the crushing season 2018–19".

184. These state measures are set out in detail in **Annex E**.

185. As noted in Section III.B.4(a), paragraph 8 of Annex 3 of the Agreement on Agriculture provides that payments made to maintain a price gap are not to be included in the AMS, i.e. that the price support calculation should only count the difference between the AAP and the FERP. Paragraph 8 provides that "Budgetary payments made to maintain this gap ... shall not be included in the AMS".²¹²

186. Many of India's domestic support measures are in the form of subsidies that are linked to the payment of sugarcane price arrears. Australia has therefore not included in the product-specific AMS calculation the budgetary outlays provided by measures that are primarily directed to maintaining the gap between the AAP and the FERP. Only the price gap itself has been taken as representing the value of India's market price support. While Australia does not include these amounts in the calculation, Australia nonetheless considers that these are

²¹² Article 1(c) of the Agreement on Agriculture defines "budgetary outlays" to include revenue foregone.

measures that achieve or maintain the price gap, and requests that the Panel find that they are measures through which India is providing market price support above *de minimis*.

187. Australia observes that some of the measures listed above involve direct payments to sugar mills that, for certain mills, may not be maintaining the sugarcane price. The production subsidies, buffer stock subsidies, and the transport, freight and marketing subsidies may likewise be paid to mills that owe no sugarcane price arrears. For example, the "Scheme for Assistance to Sugar Mills" for the 2017–18 and 2018–19 seasons provides for payments to be made directly to mills that owed no sugarcane price arrears.²¹³ Australia has been unable to obtain evidence of which mills receive direct payments that are not made to maintain the gap between the AAP and FERP. Due to these evidentiary limitations, these payments have not been included in the calculation of India's domestic support. Australia notes that this may result in an underestimation of the level of the domestic support.

188. However, India provides some direct payments that are non-exempt direct payments that do not maintain the price gap, and may be included in the calculation of India's product-specific AMS. Australia's principal arguments concerning these measures are set out in the following Section III.C.2.

2. Calculation of India's product-specific Aggregate Measurement of Support: Non-exempt direct payments

189. India provides certain budgetary payments that that Australia submits are non-exempt direct payments that may be included in the calculation of India's product-specific AMS. At least three state governments provide such non-exempt direct payments: the Andhra Pradesh purchase tax remittance, the Karnataka incentive price payment, and the Tamil Nadu production incentive payment.

(a) Andhra Pradesh: Purchase tax remittance

190. Andhra Pradesh has offered a purchase tax remittance of INR 60 per metric tonne in 2014–15, 2015–16, and 2016–17, which is passed on in the sugarcane price – that is, a cane purchase tax that would be otherwise payable by mills to the government is foregone (rebated) by the government (refer to **Annex E-01**). This is passed on by mills paying sugarcane farmers

²¹³ Notification, No. No. 1(5)/2018-S.P.-I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 9 May 2018 (**Exhibit JE-75**), para. 3.

a price that is higher than the FRP,²¹⁴ and has been characterized by the Indian government as an "incentive to farmers by the state government".²¹⁵

191. Andhra Pradesh's budget documents demonstrate that the state government has budgeted to provide "Assistance to Co-operative Sugar Factories towards reimbursement of Purchase Tax incentives", to the value of INR 73.3 million in financial year 2014–15; INR 66 million in financial year 2016–17; and INR 2.05 billion for financial year 2017–18.²¹⁶

192. This assistance does not go towards paying the sugarcane price or arrears. Rather, it provides an amount in favour of sugarcane producers that is in addition to the minimum sugarcane price. The budgetary outlay is ultimately passed on by mills. The payment is also revenue that would otherwise be due to the government, but that is rebated or foregone.

193. Australia submits that the payment does not maintain a gap between an AAP and the FERP such that it "shall not be included" in the calculation of the AMS under Annex 3, paragraph 8. It is not an exempt direct payment under Annex 2, Article 6.2 or Article 6.5. It is therefore a non-exempt payment or subsidy in the form of revenue foregone, that be added to the calculation of the quantum of product-specific support.

194. If the Panel does not agree these payment amounts are in addition to the minimum sugarcane price, then Australia submits, in the alternative, that the purchase tax remittance amounts be included in the state applied price amounts set out in Section III.C.1(d) above, on the basis that they provide price support and achieve an AAP. The state purchase tax remittance

²¹⁴ CACP, Price Policy for Sugarcane (2018–19 sugar season), August 2017 (**Exhibit JE-52**), Annex Table 1.3, p. 57, column 2014–15, row Andhra Pradesh: "Purchase tax to be remitted by the sugar factories to the Govt is being passed on to the cane suppliers."

²¹⁵ CACP, Price Policy for Sugarcane (2018–19 sugar season), August 2017 (**Exhibit JE-52**): in 2016–17, the range of sugarcane price paid was INR 2930 per mT to INR 2360 per mT, which included INR 60 per mT "incentive to farmers by the state government". See p. 57–9.

²¹⁶ State of Andhra Pradesh's Budget Estimates 2018–19 for Industries and Commerce Department (**Exhibit JE-85**), p.33, providing for "Assistance to cooperative sugar factories for Co-operative Sugar Factories towards reimbursement of purchase tax"; State of Andhra Pradesh's Budget Estimates 2017–18 for Industries and Commerce Department (**Exhibit JE-135**), p. 30, providing for "Assistance to cooperative sugar factories towards reimbursement of purchase tax"; State of Andhra Pradesh's Budget Estimates 2016–17 for Industries and Commerce Department (**Exhibit JE-134**), providing for "Assistance to cooperative sugar factories towards reimbursement of purchase tax", p. 17; and State of Andhra Pradesh's Budget Estimates 2015–16 for Industries and Commerce Department (**Exhibit JE-86**), providing for "Assistance to cooperative sugar factories towards reimbursement of purchase tax", p. 18.

payment achieves a sugarcane price that is higher than the FRP²¹⁷ and is achieved by administrative action, rather than the operation of market forces.

(b) Karnataka: Incentive price payment

195. Karnataka provides a "Payment of Incentive Price for Sugar Cane through Sugar Factories" program for sugar season 2019–20 (refer to **Annex E-05**).²¹⁸ Australia understands that Karnataka operates a revenue sharing scheme under the Karnataka Sugar Cane (Regulation of Purchase and Supply) Act 2013.²¹⁹ Karnataka has budgeted a total amount of INR 100,000 for the provision of funds to sugarcane to be distributed via sugar factories, or mills, for the 2018–19 financial year.²²⁰ The "incentive" does not pay the sugarcane price under the revenue sharing model, or arrears, but provides funds in addition to the current sugarcane price. It allows sugarcane farmers to receive funds in addition to the FRP or under the revenue sharing price model. It is in effect a financial payment provided by the government, through sugar mills, that provides support to sugarcane producers over and above the sugarcane price.

196. Australia recalls that paragraph 7 of Annex 3 of the Agreement on Agriculture provides that measures "directed at agricultural processors shall be included to the extent that such measures benefit the producers of the basic agricultural products". The "incentive" is government funds paid to sugarcane producers through sugar factories. It is a measure that, insofar as it is directed at agricultural processors, in effect benefits producers of sugarcane.

197. This provision of funds does not pay the declared sugarcane price or the sugarcane price arrears. The funds are not paid to maintain a "gap" between an AAP and the FERP such that it "shall not be included" in the calculation of the AMS under Annex 3, paragraph 8. It is not an exempt direct payment under Annex 2, Article 6.2 or Article 6.5. It may therefore be added to the calculation of the quantum of support.

²¹⁷ CACP, Price Policy for Sugarcane (2018–19 sugar season), August 2017 (**Exhibit JE-52**), Annex Table 1.3, column 2014-15, row Andhra Pradesh: "Purchase tax to be remitted by the sugar factories to the Govt is being passed on to the cane suppliers." In 2016–17, the range of sugarcane price paid was INR 2930/mt to INR 2360/mt, which included INR 60/mt "incentive to farmers by the state government", see pp. 56.

²¹⁸ The State Government of Karnataka's Detailed Budget Estimates of Expenditure for the Year 2019–20 (**Exhibit JE-90**), p. 44.

²¹⁹ Annual Report of the Commissioner for Cane Development and Director of Sugar, Annual Report for the Year 2017–18, (**Exhibit JE-139**), para. 8; Karnataka Sugarcane (Regulation of Purchase and Supply) Act 2013 (**Exhibit AUS-52**).

²²⁰ The State Government of Karnataka's Detailed Budget Estimates of Expenditure for the Year 2019–20 (**Exhibit JE-90**), p. 44.

(c) Tamil Nadu: Production incentive payment

198. Tamil Nadu provides a "Production incentive to sugarcane farmers". To recall, Tamil Nadu is in the process of transitioning to a "revenue sharing based sugarcane price" (also described at Section III.A.2(e) and **Annex E-08**).²²¹ "[T]o facilitate this transition" and "protect the interest of farmers", the state government pays, directly to the farmers, the difference between Tamil Nadu's SAP for the 2016–17 sugar season (INR 2750 per metric tonne) and the relevant season's base FRP.²²² For 2017–18 this was INR 200 per metric tonne paid "as transitional production incentive to the farmers through Direct Benefit Transfer",²²³ and for 2018–19 this was INR 137.5 per metric tonne²²⁴ (on the basis that INR 2612.50 per metric tonne would be payable by mills with a recovery rate of 9.5% or less²²⁵ and the average recovery rate for all sugar mills in Tamil Nadu was below 9.5%).²²⁶

199. Farmers who grow sugarcane in areas that are demarcated to specific sugar mills under the Sugarcane (Control) Order 1966 are eligible to receive the transitional payment for sugarcane supplied to the relevant sugar mill.²²⁷ Under the program, mills were required to report certain information to the state Director of Sugar, including the quantity of cane supplied by each farmer, the farmers' land holding credentials and bank account details.²²⁸ Following the creation of a database of farmers and the completion of various verification processes, the production incentive funds were then transferred into the farmers' bank accounts.²²⁹

200. The initial timeline anticipated that all payments under the transitional scheme would be completed by 31 December 2018.²³⁰ However, in September 2018 the Agriculture

²²¹ Tamil Nadu Sugarcane (Regulation of Purchase Price) Act 2018 (**Exhibit JE-65**), Section 2(1)(o).

²²² Notification of the Agriculture Department of the State government of Tamil Nadu of 17 September 2018 (**Exhibit JE-88**); Speech of Thiru O. Panneerselvam, Hon'ble Deputy Chief Minister, Government of Tamil Nadu, presenting the Budget for the year 2018–2019 to the Legislative Assembly on 15th March 2018 (**Exhibit JE-138**), para. 29.

²²³ Government of Tamil Nadu, Agriculture (S1) Department, Order G.O.(Ms) No.61, 7 March 2019 (**Exhibit JE-136**).

²²⁴ Government of Tamil Nadu, Agriculture (S1) Department, Order G.O.(Ms) No.61, 7 March 2019 (**Exhibit JE-136**), para. 6.

²²⁵ Communication No. 3(1)/2017-SP-I, Ministry of Consumer Affairs, Food and Public Distribution, 20 July 2018 (**Exhibit JE-9**).

²²⁶ Notification of the Agriculture Department of the State government of Tamil Nadu of 17 September 2018 (**Exhibit JE-88**); Speech of Thiru O. Panneerselvam, Hon'ble Deputy Chief Minister, Government of Tamil Nadu, presenting the Budget for the year 2018–2019 to the Legislative Assembly on 15th March 2018 (**Exhibit JE-138**), para. 29.

²²⁷ Order G.O.(Ms).No.191, Government of Tamil Nadu, Agriculture (S1) Department, 24 July 2018 (**Exhibit AUS-54**), Annex. para. I(a).

²²⁸ Order G.O.(Ms).No.191, Government of Tamil Nadu, Agriculture (S1) Department, 24 July 2018 (**Exhibit AUS-54**), Annex. para. III(i).

²²⁹ Order G.O.(Ms).No.191, Government of Tamil Nadu, Agriculture (S1) Department, 24 July 2018 (**Exhibit AUS-54**), paras. 3–5, 9, Annex. para. III.

²³⁰ Order G.O.(Ms).No.191, Agriculture (S1) Department, Government of Tamil Nadu, 24 July 2018 (**Exhibit AUS-54**), Annex para IV.

Department announced the transitional payment program would continue as the revenue-sharing model was yet to be fully implemented.²³¹

201. Tamil Nadu initially allocated an amount of INR 13,450 lakh (INR 134.50 crore, or INR 1.345 billion) for the 2017–18 season.²³² An additional amount of INR 11.82 crore (INR 118.2 million) was allocated for a special 2017–18 crushing season, for a total allocation of INR 146.32 crore (INR 1.4632 billion) for 2017–18.²³³ As of 31 December 2018, INR 103.76 crore (INR 1.0376 billion) had been transferred to farmers by "Direct Benefit Transfer" for the 2017–18 sugar season.²³⁴ INR 20,000 lakh (INR 200 crore, or INR 2 billion) has been budgeted for the 2018–19 season.²³⁵ As of 7 March 2019, INR 11.82 crore (INR 118.2 million) had been released.²³⁶

202. The direct payment to farmers under this scheme does not pay the sugarcane price or price arrears. Rather, it provides funds in addition to the current sugarcane price, "to safeguard the farmers' interests until the revenue sharing model was fully implemented".²³⁷ The production incentive is therefore not paid so as to maintain a "gap" between an AAP and the FERP such that it "shall not be included" in the calculation of the AMS under Annex 3, paragraph 8. It is not an exempt direct payment under Annex 2, Article 6.2 or Article 6.5. Accordingly, it may be added to the calculation of the quantum of support.

203. If the Panel does not agree, then Australia submits, in the alternative, that the production incentive payment amounts be included in the state applied price amounts set out above, on the basis that they achieve an AAP. The production incentive payments in effect mean that the farmers receive a sum for their sugarcane that is equivalent to the SAP for the 2016–17 sugar

²³¹ Notification of the Agriculture Department of the State government of Tamil Nadu of 17 September 2018 (**Exhibit JE-88**); Speech of Thiru O. Panneerselvam, Hon'ble Deputy Chief Minister, Government of Tamil Nadu, presenting the Budget for the year 2018–2019 to the Legislative Assembly on 15th March 2018 (**Exhibit JE-138**), which confirms that the transitional payment scheme would be continued.

²³² State of Tamil Nadu's 2019-2020 Budget publication - Industries Department (**Exhibit JE-137**); Government of Tamil Nadu, Agriculture (S1) Department, Order G.O.(Ms) No.61, 7 March 2019 (**Exhibit JE-136**).

²³³ Government of Tamil Nadu, Agriculture (S1) Department, Order G.O.(Ms) No.61, 7 March 2019 (**Exhibit JE-136**).

²³⁴ Government of Tamil Nadu, Agriculture (S1) Department, Order G.O.(Ms) No.61, 7 March 2019 (**Exhibit JE-136**).

²³⁵ State of Tamil Nadu's 2019-2020 Budget publication - Industries Department (**Exhibit JE-137**); Government of Tamil Nadu, Agriculture (S1) Department, Order G.O.(Ms) No.61, 7 March 2019 (**Exhibit JE-136**).

²³⁶ Government of Tamil Nadu, Agriculture (S1) Department, Order G.O.(Ms) No.61, 7 March 2019 (**Exhibit JE-136**), para. 4.

²³⁷ See Order G.O.(Ms).No.191, Agriculture (S1) Department, Government of Tamil Nadu, 24 July 2018 (**Exhibit AUS-54**); Tamil Nadu Sugar Factories Control Act 1949 (**Exhibit JE-67**). The transition to a revenue sharing model has not been completed: See "HC directs State to constitute Sugarcane Control Board", *The Hindu*, 6 August 2019, <https://www.thehindu.com/news/cities/Madurai/hc-directs-state-to-constitute-sugarcane-control-board-madurai/article28838390.ece> (**Exhibit AUS-57**); and "HC: Form Sugarcane Control Board in 2 mths", *The Times of India*, 7 August 2019, <https://timesofindia.indiatimes.com/city/madurai/hc-form-sugarcane-control-board-in-2-mths/articleshow/70564184.cms> (**Exhibit AUS-58**).

season, i.e., INR 2750 per metric tonne. This is achieved by administrative action, rather than the operation of market forces.

(d) India's total product-specific domestic support provided through non-exempt direct payments

204. The non-exempt direct payments to be included in the product-specific AMS calculation, in INR millions, are set out in Table 14.

TABLE 14 – Non-exempt direct payments (INR millions)

	2014–15	2015–16	2016–17	2017–18	2018–19
Andhra Pradesh (Purchase tax remittance)	73.3	66	2,050		
Karnataka (Incentive price payment)				0.1	
Tamil Nadu (Transitional Production incentive payment)²³⁸				1,463.2	2,000
Total	73.3	66	2,050	1,463.3	2,000

205. If the Panel disagrees that these measures are non-exempt direct payments, and finds that they constitute budgetary payments made to maintain the price "gap", and rejects Australia's arguments in the alternative that they be added to the SAP amounts set out above, Australia submits that these are nonetheless measures through which India provides market price support to agricultural producers that is above the *de minimis* level, and are therefore measures through which India is acting in a manner inconsistent with its domestic support obligations under the Agreement on Agriculture.

3. Conclusion: India's domestic support for sugarcane significantly exceeds its permissible level under the Agreement on Agriculture

206. Australia sets out in Table 15 the product-specific AMS resulting from India's market price support for sugarcane and non-exempt direct payments for the years 2014–15 to 2017–18.²³⁹

²³⁸ Government of Tamil Nadu, Agriculture (S1) Department, Order G.O.(Ms) No.61, 7 March 2019 (**Exhibit JE-136**).

²³⁹ Detailed calculations are set out **Annex H, Tables 20 – 24** and in Australia's domestic support calculations, Microsoft Excel workbooks (**Exhibit AUS-1**).

TABLE 15 – Product-specific AMS for sugarcane as a percentage of total value of production of sugarcane (INR millions)

	MPS for sugarcane	Non-exempt direct payments for sugarcane	AMS for sugarcane	Total value of production of sugarcane	AMS for sugarcane as percentage of total value of sugarcane production
	A	B	C=(A+B)	D	E=(C/D)
2014–15	903,751.21	73.3	903,824.51	784,330.00	115.24%
2015–16	880,418.37	66	880,484.37	746,600.00	117.93%
2016–17	815,049.84	2,050	817,099.84	724,950.00	112.71%
2017–18	1,075,387.11	1,463.3	1,076,850.41	1,015,740.00	106.02%
2018–19	1,145,868.60	2,000	1,147,868.60	1,222,234.07	93.92%

207. Australia recalls that India's *de minimis* limit on the AMS for a basic agricultural product is 10 per cent of the total value of production of the basic agricultural product.

208. Australia has established that India's domestic support in favour of producers of sugarcane significantly exceeded its permissible level under the Agreement on Agriculture during the sugar seasons of 2014–15, 2015–16, 2016–17, 2017–18 and 2018–19.

209. India has therefore acted inconsistently with its obligations under Article 7.2 or, in the alternative, Articles 3.2 and 6.3, of the Agreement on Agriculture to not provide non-exempt domestic support exceeding its *de minimis* limit. Australia requests that the Panel find accordingly.

IV. EXPORT SUBSIDIES: ORDER OF ANALYSIS

210. In Sections V and VI, Australia will demonstrate that India provides export subsidies to sugar producers in a manner that is inconsistent with its obligations under both the Agreement on Agriculture and the SCM Agreement.

211. As a preliminary matter, Australia addresses the interaction between these agreements to explain Australia's order of analysis.

212. Article 21.1 of the Agreement on Agriculture provides that:

The provisions of GATT 1994 and of other Multilateral Trade Agreements in Annex 1A to the WTO Agreement shall apply subject to the provisions of this Agreement.

213. The SCM Agreement is contained in Annex 1A to the WTO Agreement. The effect of Article 21.1 is that the SCM Agreement applies subject to the provisions of the Agreement on Agriculture.

214. The Agreement on Agriculture contains specific disciplines on export subsidies for agricultural products, whereas the SCM Agreement contains general disciplines on export subsidies. Article 1(e) of the Agreement on Agriculture defines "export subsidies" as "subsidies contingent upon export performance..." Australia demonstrates in the legal analysis to follow that the Agreement on Agriculture does not prohibit Members from providing export subsidies for agricultural products entirely, but rather limits their right to use them in prescribed circumstances. Article 3.1(a) of the SCM Agreement, however, prohibits all subsidies contingent upon export performance "[e]xcept as provided in the Agreement on Agriculture".

215. In principle, an export subsidy for agricultural products could be subject to both the Agreement on Agriculture and the SCM Agreement, and found inconsistent with both agreements. However, in the case of conflict between the two agreements, such as where an export subsidy that would otherwise be prohibited under the SCM Agreement is expressly authorized by the Agreement on Agriculture, the Agreement on Agriculture will prevail.²⁴⁰

216. It follows that the WTO-consistency of an export subsidy for agricultural products has to be examined, in the first place, under the Agreement on Agriculture, and that an examination under the SCM Agreement will come after if necessary.²⁴¹ Therefore, Australia proceeds by setting out its claims under the Agreement on Agriculture in Section V. Australia sets out in Section VI its claims under the SCM Agreement.

V. INDIA'S EXPORT SUBSIDIES ARE INCONSISTENT WITH ITS OBLIGATIONS UNDER THE AGREEMENT ON AGRICULTURE

217. Subsidization of agricultural exports was a key issue addressed in the agricultural negotiations during the Uruguay Round. Disciplines on export subsidies were considered

²⁴⁰ Appellate Body Report, *US – Upland Cotton*, para. 532.

²⁴¹ Appellate Body Report, *Canada – Dairy (Article 21.5 – New Zealand and US)*, para. 123; Appellate Body Report, *US – Upland Cotton*, para. 570.

essential to address the disarray in world agriculture experienced in the years before the negotiations, caused in part by the proliferation of export subsidies for agricultural products.²⁴² In the preamble to Agreement on Agriculture, Members recalled their long-term objective "to establish a fair and market-oriented agricultural trading system"²⁴³ and committed to achieving binding commitments in the area of export competition.²⁴⁴ The export subsidies disciplines in the Agreement on Agriculture are to be read in light of this object and purpose.²⁴⁵

218. India provides subsidies to sugar producers that are contingent upon export performance and not authorized by the Agreement on Agriculture.

219. 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) schemes under which India allocates sugar export quotas to sugar mills on a per-mill basis. India does not provide monetary payments through the MIEQ or MAEQ schemes in and of themselves. Rather, at issue is India's recurring policy of tying MIEQ and MAEQ export quotas to various direct payment schemes, in a manner that causes those payments to be export subsidies.

220. The MIEQ and MAEQ schemes operate as tools of export contingency, in that India's policy is to:

- make compliance with government orders or directives, including those imposing MIEQ or MAEQ, a condition that sugar mills must satisfy in order to receive subsidies under direct payment schemes that India provides to its sugar industry; or
- take mills' performance against their export obligations into account in determining the value of the subsidies they are able to receive under those schemes.

221. The direct payment schemes that are linked to MIEQ and MAEQ in this manner are India's production subsidies, buffer stock subsidies, and transport, freight and marketing subsidies that Australia has already referred to in the context of India's domestic support obligations under the Agreement on Agriculture (see Sections III.A.4 and III.C.1(e)). Australia

²⁴² World Trade Organization, *The WTO Agreements Series: 3. Agriculture* (World Trade Organization, 2003) (**Exhibit AUS-13**) pp. 3 and 17.

²⁴³ Agreement on Agriculture, preamble, recital 2.

²⁴⁴ Agreement on Agriculture, preamble, recital 4.

²⁴⁵ Vienna Convention on the Law of Treaties, done at Vienna, 23 May 1969, 1155 U.N.T.S. 331; 8 International Legal Materials 679, Article 31.

details the manner in which each of these schemes interact with MIEQ and MAEQ in the analysis to follow.

222. Further, through its Duty Free Import Authorisation (DFIA) scheme, unrelated to the MIEQ and MAEQ schemes, India exempts eligible exporters from customs import duties on sugar, based on past export performance.

A. MEASURES AT ISSUE: EXPORT SUBSIDIES

223. India provides export subsidies for sugar through production subsidy schemes, operating in conjunction with MIEQs; buffer stock subsidy schemes, operating in conjunction with MIEQs; transport, freight and marketing subsidies operating in conjunction with MAEQs; and DFIA. These subsidies are contingent on export in different ways, as outlined below.

1. Minimum Indicative Export Quotas and Maximum Admissible Export Quantities

224. The legal basis for India's MIEQs is provided by the Essential Commodities Act 1955 and the Sugar (Control) Order 1966.²⁴⁶ To recall, Section 3 of the Essential Commodities Act 1955 empowers the Central Government to issue orders regulating, the production, supply and distribution of essential commodities.²⁴⁷ The Sugar (Control) Order 1966 is issued under this power.²⁴⁸ Clause 5 of the Sugar (Control) Order 1966 enables the Central Government to issue general or special orders to sugar producers or dealers, directing their actions in relation to the production, maintenance of stocks, storage, sale, disposal, delivery and distribution of any kind of sugar.²⁴⁹ Compliance with orders issued under the Sugar (Control) Order 1966 is mandatory,²⁵⁰ with contravention carrying criminal penalties under the Essential Commodities Act 1955.²⁵¹

²⁴⁶ Sugar (Control) Order 1966 (**Exhibit JE-44**).

²⁴⁷ Essential Commodities Act 1955 (**Exhibit JE-43**), Section 3. Sub-section 3(3E) of the Essential Commodities Act 1955 concerns sugar specifically: "The Central Government may, from time to time, by general or special order, direct any producer or importer or exporter or recognised dealer or any class of producers or recognised dealers, to take action regarding production, maintenance of stocks, storage, sale, grading, packing, marking, weighment, disposal, delivery and distribution of any kind of sugar in the manner specified in the direction."

²⁴⁸ Sugar (Control) Order 1966 (**Exhibit JE-44**). The preamble to the Sugar (Control) Order 1966 provides that the order is made "[i]n exercise of the powers conferred by Section 3 of the Essential Commodities Act, 1955." Section 3 of the Essential Commodities Act 1955 is the same provision that the Sugarcane (Control) Order 1966 is also issued under; see explanation in Section III.A.1 of this submission.

²⁴⁹ Sugar (Control) Order 1966 (**Exhibit JE-44**).

²⁵⁰ Sugar (Control) Order 1966 (**Exhibit JE-44**), Clause 14: "Every producer *(or importer) or recognised dealer or other person to whom any order or direction is issued under any powers conferred by or under this Order, shall comply with such order or direction."

²⁵¹ Essential Commodities Act 1955 (**Exhibit JE-43**), Section 7 provides that a contravention of any order made under Section 3 is punishable by penalties including forfeiture of property, a fine, or a term of imprisonment of up to a maximum of seven years.

225. India issues MIEQ orders under Clause 5 of the Sugar (Control) Order 1966.²⁵² MIEQ orders direct sugar mills to export allocated quotas of sugar.

226. During the 2015–16 season, India issued an MIEQ order designating a total 40 lakh (4 million) metric tonnes for export, distributed in quotas allocated to 570 sugar mills nationally as set out in an annex to the order.²⁵³ Mills that failed to export their quota were "deemed to be violating the directives of the Government."²⁵⁴

227. India followed this in 2017–18 by designating 20 lakh (2 million) metric tonnes for export, distributed in quotas allocated to 553 sugar mills nationally, as set out in an annex to that season's MIEQ order.²⁵⁵ Mills were required to export their quotas by 31 December 2018.²⁵⁶

228. In the 2018–19 season India increased the MIEQ to 50 lakh (5 million) metric tonnes, distributed in quotas allocated to 521 sugar mills nationally.²⁵⁷ The MIEQ order "required" mills to undertake export of either the quantity of sugar allocated to them in the order's annex,

²⁵² See DFPD Order of 28 March 2018, "Allocation of sugar factory-wise Minimum Indicative Export Quotas (MIEQ) under tradable export scrip schemes" (**Exhibit JE-107**); and DFPD Order of 28 September 2018, "Allocation of sugar factory-wise Minimum Indicative Export Quotas (MIEQ) of sugar for export in sugar season 2018-19 under tradable export scrip schemes" (**Exhibit JE-108**), para. 7. When referring to MIEQs in official documentation, India appears to use the terms "order" and "directive" interchangeably. For consistency, Australia has chosen the term "order" when referring to the documents constituting each seasonal iteration of MIEQs. Australia understands MIEQ instruments to be "orders" that contain "directions" to sugar producers. Clause 5 of the Sugar (Control) Order 1966 (**Exhibit JE-44**) is titled "Powers to issue directions to producers or importers and dealers", however its text reads "The Central Government... may from time to time by *general or special order* issue... such *directions* regarding..." (emphasis added). DFPD Order of 18 September 2015, "Allocation of sugar factory-wise Minimum Indicative Export Quotas (MIEQ) under tradable export scrip schemes", refers to violating "directives of the Government" (**Exhibit JE-109**), para. 7. DFPD Order of 28 March 2018, "Allocation of sugar factory-wise Minimum Indicative Export Quotas (MIEQ) under tradable export scrip schemes" refers to "violating the directives of the Government issued under Clause 5 of Sugar (Control) Order, 1966" (**Exhibit JE-107**), para. 7, whereas the superseding instrument, Notification No. 1(4)/2018-S.P.-I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 9 May 2018, explicitly invokes the powers of Clause 5 of the Sugar (Control) Order 1966 and identifies the "earlier MIEQ order dated 28.03.2018" (**Exhibit JE-111**), *chapeau* and para. 9, and an amending instrument, DFPD Order of 23 August 2018, "Revised allocation of sugar factory-wise Minimum Indicative Export Quotas (MIEQ) under tradable export scrip schemes", identifies "DFPD's order dated 9.5.2018" (**Exhibit JE-124**). DFPD Order of 28 September 2018, "Allocation of sugar factory-wise Minimum Indicative Export Quotas (MIEQ) of sugar for export in sugar season 2018-19 under tradable export scrip schemes" explicitly invokes Clause 5 of the Sugar (Control) Order 1966 (**Exhibit JE-108**).

²⁵³ DFPD Order of 18 September 2015, "Allocation of sugar factory-wise Minimum Indicative Export Quotas (MIEQ) under tradable export scrip schemes" (**Exhibit JE-109**).

²⁵⁴ DFPD Order of 18 September 2015, "Allocation of sugar factory-wise Minimum Indicative Export Quotas (MIEQ) under tradable export scrip schemes" (**Exhibit JE-109**), para. 7.

²⁵⁵ Notification No. 1(4)/2018-S.P.-I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 9 May 2018 (**Exhibit JE-111**).

²⁵⁶ Order No. 1(4)/2018-SP-1, Department of Food and Public Distribution, 20 November 2018 (**Exhibit AUS-43**).

²⁵⁷ DFPD Order of 28 September 2018, "Allocation of sugar factory-wise Minimum Indicative Export Quotas (MIEQ) of sugar for export in sugar season 2018-19 under tradable export scrip schemes" (**Exhibit JE-108**).

or 16.7 kg of sugar per tonne of sugarcane actually crushed, whichever was lower.²⁵⁸ Mills were required to complete their export quotas by 31 December 2019.²⁵⁹

229. India has designated a target of a further 60 lakh (6 million) metric tonnes for export in 2019–20 under the Maximum Admissible Export Quota (MAEQ) program. As with previous MIEQ orders, the 6 million tonnes has been distributed in quotas allocated to 528 sugar mills nationally, as set out in an annex to the MAEQ notification.²⁶⁰

2. Production subsidies

230. To recall, India provides production subsidies to sugar mills to assist them to clear sugarcane arrears arising from the obligation to pay the FRP (see Section III.A.4(a)). These schemes are the "Scheme for extending production subsidy to sugar mills"²⁶¹ implemented in the 2015–16 sugar season, and the "Scheme for Assistance to Sugar Mills" implemented in the 2017–18²⁶² and 2018–19 sugar seasons,²⁶³ the factual details of which are outlined in **Annex A**. Under each iteration of this scheme, eligibility to receive the subsidy is conditioned upon mills complying with MIEQ orders. That is, mills must either comply with MIEQ orders entirely, or meet a specified export target to receive payments.

3. Buffer stock subsidies

231. India also provides buffer stock subsidies to sugar mills to assist them to clear sugarcane arrears arising from the obligation to pay the FRP (see Section III.A.4(c)). These schemes are the "Scheme for Creation and Maintenance of Buffer Stock of 30 Lakh MT"²⁶⁴ introduced in

²⁵⁸ DFPD Order of 28 September 2018, "Allocation of sugar factory-wise Minimum Indicative Export Quotas (MIEQ) of sugar for export in sugar season 2018-19 under tradable export scrip schemes" (**Exhibit JE-108**), para. 2. See also Press Information Bureau, Government of India, "Government advises Sugar Mills to undertake export of sugar as per their allocated quantity of 'Minimum Indicative Export Quotas'", 14 December 2018 (**Exhibit JE-122**).

²⁵⁹ Ministry of Consumer Affairs, Department of Food and Public Distribution, F. No. 1(4)/2018-SP-I, 11 November 2019 (**Exhibit JE-110**).

²⁶⁰ Order F. No. 1 (14)/2019-SP-I, Department of Food and Public Distribution, 16 September 2019 (**Exhibit JE-115**).

²⁶¹ Notification No. 20(43)/2015-S.P.-I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 2 December 2015 (**Exhibit JE-76**); see **Annex A-01**.

²⁶² Notification No. 1(5)/2018-S.P.-I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 9 May 2018 (**Exhibit JE-75**); see **Annex A-02**.

²⁶³ Notification No. 1(14)/2018-S.P.-I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 5 October 2018 ("Scheme for assistance to sugar mills") (**Exhibit JE-74**); see **Annex A-03**.

²⁶⁴ Notification No. 1(6)/2018-SP-I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 15 June 2018 (**Exhibit JE-78**); see **Annex C-01**.

2018 and the "Scheme for Creation and Maintenance of Buffer Stock of 40 Lakh MT"²⁶⁵ introduced in 2019, the factual details of which are described in **Annex C**.

232. Under the 2018 iteration of the scheme, compliance with MIEQs was an eligibility criterion for receiving the subsidy payments.²⁶⁶ Under the 2019 iteration, favourable MIEQ performance was a determining factor in allocating the volumes of buffer stock mills are permitted to hold under the scheme,²⁶⁷ which in turn determines the value of the payments they are eligible to receive.²⁶⁸

233. Under both iterations of the scheme, compliance with monthly stockholding orders, issued separately to the scheme under Section 3 of the Essential Commodities Act 1955 and Clauses 3 and 4²⁶⁹ of the Sugar (Control) Order 1966, has and continues to be an eligibility criterion for receiving the subsidy. These orders regulate the volume of sugar that mills must hold in stock at the end of each month, and the volume of sugar that mills are permitted to sell on the domestic Indian sugar market each month, on a per mill basis. The volume of mills' domestic sales quotas is determined by reference to their export performance, as carried out in accordance with MIEQ orders. That is, mills that perform favourably against their MIEQ obligations are permitted to sell more sugar on the domestic market than those that fail to meet their MIEQ obligations.²⁷⁰

²⁶⁵ Notification No. 1(8)/2019-SP-I. of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 31 July 2019 (**Exhibit JE-77**). See also Ministry of Consumer Affairs, Food and Public Distribution, Order, 26 July 2019 (**Exhibit JE-127**); see **Annex C-02**.

²⁶⁶ Notification No. 1(6)/2018-SP-I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 31 December 2018 (**Exhibit JE-112**).

²⁶⁷ Notification No. 1(8)/2019-SP-I. of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 31 July 2019 (**Exhibit JE-77**), para. 2.

²⁶⁸ Notification No. 1(8)/2019-SP-I. of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 31 July 2019 (**Exhibit JE-77**), para. 3.

²⁶⁹ Sugar (Control) Order 1966, Clause (**Exhibit JE-44**), Clause 4, provides: "4. Power to restrict sale etc. of sugar by producers or importers. – The Central Government may direct that no producer shall sell or agree to sell or otherwise dispose of or deliver or agree to deliver any kind of sugar or remove any kind of sugar from the bonded godowns of the factory in which it is produced or from the warehouses of the importers except under and in accordance with a direction issued in writing by the Central Government...".

²⁷⁰ Order F. No. 5-1/2018-Sugar Control of the Ministry of Consumer Affairs, Food & Public Distribution of 30 July 2018 (**Exhibit JE-22**), para. 4(i); Order F. No. 5-1/2018-Sugar Control of the Ministry of Consumer Affairs, Food & Public Distribution of 31 August 2018 (**Exhibit JE-23**), para. 4; Order F. No. 5-1/2018-Sugar Control of the Ministry of Consumer Affairs, Food & Public Distribution of 31 October 2018 (**Exhibit JE-25**), para. 6; Order F. No. 5-1/2018-Sugar Control of the Ministry of Consumer Affairs, Food & Public Distribution of 30 November 2018 (**Exhibit JE-26**), para. 6; Order F. No. 5-1/2018-Sugar Control of the Ministry of Consumer Affairs, Food & Public Distribution of 28 December 2018; Order No. (**Exhibit JE-27**), para. 6 and 7(iii); Order F. No. 5-1/2019-Sugar Control of the Ministry of Consumer Affairs, Food & Public Distribution of 31 January 2019 (**Exhibit JE-28**), para. 4 and 5(v); Order F. No. 5-1/2019-Sugar Control of the Ministry of Consumer Affairs, Food & Public Distribution of 28 February 2019 (**Exhibit JE-29**), para. 4 and 7(iii); Order F. No. 5-1/2019-Sugar Control of the Ministry of Consumer Affairs, Food & Public Distribution of 25 March 2019 (**Exhibit JE-30**), para. 4(iv); Order F. No. 5-5 (Clarification of Stock Holding Order April 2019)/2019-SC/453, Ministry of Consumer Affairs, Food & Public Distribution, 29 March 2019 (**Exhibit AUS-44**), para. 2; Order F. No. 5-1/2019-Sugar Control of the

4. Transport, freight and marketing subsidies

234. India also provides transport, freight and marketing subsidies to sugar mills to assist them to clear sugarcane arrears arising from the obligation to pay the FRP (see Section III.A.4(d)). These subsidies are provided through the "Scheme for providing assistance to sugar mills for expenses on marketing costs including handling, upgrading and other processing costs and costs of international and internal transport and freight charges on export of sugar",²⁷¹ the factual details of which are described in **Annex D-03**. Eligibility to receive the subsidy is conditioned upon mills exporting 50% of their MAEQ allocation.²⁷²

5. Duty Free Import Authorisation

235. India incentivizes mills to export sugar during seasons of overproduction by offering to forego duties on imports in subsequent seasons. India most recently implemented this measure in May 2018 in the form of the DFIA scheme. Under the scheme, sugar mills that exported during the 2017–18 sugar season are entitled to claim DFIA on imports of raw sugar during the 2019–20 and 2020–21 sugar seasons.²⁷³ This measure is described in detail in **Annex F**.

Ministry of Consumer Affairs, Food & Public Distribution of 30 April 2019 (**Exhibit JE-31**), para. 3(iv); Order F. No. 5-1/2019-Sugar Control of the Ministry of Consumer Affairs, Food & Public Distribution of 31 May 2019 (**Exhibit JE-32**), para. 3(iv); Order F. No. 5-1/2019-Sugar Control of the Ministry of Consumer Affairs, Food & Public Distribution of June 2019 (**Exhibit JE-33**), para. 3(iv); Order F. No. 5-1/2019-Sugar Control of the Ministry of Consumer Affairs, Food & Public Distribution of 31 July 2019 (**Exhibit JE-34**), para. 3(iv); Order F. No. 5-1/2019-Sugar Control of the Ministry of Consumer Affairs, Food & Public Distribution of 30 August 2019 (**Exhibit JE-35**), para. 3(iv); Order F. No. 5-1/2019-Sugar Control of the Ministry of Consumer Affairs, Food & Public Distribution of 30 September 2019 (**Exhibit JE-36**), para. 3(iv); Order F. No. 5-1/2019-Sugar Control of the Ministry of Consumer Affairs, Food & Public Distribution of 31 October 2019 (**Exhibit JE-37**), para. 3(iv); and Order F. No. 5-1/2019-Sugar Control of the Ministry of Consumer Affairs, Food & Public Distribution of 29 November 2019 (**Exhibit JE-38**), para. 3(iv).

²⁷¹ Notification No. 1(14)/2019-S.P.-I. of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 12 September 2019 (**Exhibit JE-114**); Notification F.No.1(14)/2019-SP-I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 16 September 2019 (**Exhibit JE-115**); Notification F.No.1(14)/2019-SP.I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 16 December 2019, "Review of the export performance against Maximum Admissible Export Quantity (MAEQ) for export during Sugar Season 2019-20" (**Exhibit JE-116**); Notification F.No.1(14)/2019-SP.I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 3 January 2020, "Guidelines to review of the export performance against Maximum Admissible Export Quantity (MAEQ) for export during Sugar Season 2019-20" (**Exhibit JE-117**).

²⁷² Notification No. 1(14)/2019-S.P.-I. of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 12 September 2019 (**Exhibit JE-114**), para. 2(a).

²⁷³ Notification 01/2015-2020, Foreign Trade Policy, 2015-2020 (**Exhibit AUS-40**), pp. 71-86; Notification No. 57/2015-2020, Department of Commerce, 28 March 2018 (**Exhibit AUS-41**).

**B. LEGAL STANDARD: INDIA MUST NOT OFFER NON-EXEMPT EXPORT
SUBSIDIES**

236. The Agreement on Agriculture establishes a framework under which Members have committed to limit the provision of export subsidies to producers of agricultural products. The export subsidies obligations are contained primarily in Articles 3, 8, 9 and 10.

237. The starting point for the export subsidies commitments under the Agreement is Article 8, which introduces the concept that the right to use export subsidies is limited to certain circumstances. It provides:

Each Member undertakes not to provide export subsidies otherwise than in conformity with this Agreement and with the commitments as specified in that Member's Schedule.

238. Context for Article 8, particularly its reference to Members' Schedules, is provided by Article 3.1 which relevantly states that:

The... export subsidy commitments in Part IV of each Member's Schedule constitute commitments limiting subsidization, and are an integral part of GATT 1994.

239. Thus, the Panel must consider the legal obligations imposed on India by relevant provisions of the Agreement on Agriculture, and the commitments that India has made in Part IV of its Schedule.

1. Relevant provisions of the Agreement on Agriculture

240. Beyond the general commitment made under Article 8, Members have made two distinct commitments in relation to export subsidies under Article 3.3. The Article states:

Subject to the provisions of paragraphs 2(b) and 4 of Article 9, a Member shall not provide export subsidies listed in paragraph 1 of Article 9 in respect of the agricultural products or groups of products specified in Section II of Part IV of its Schedule in excess of the budgetary outlays and quantity commitment levels specified therein and shall not provide such subsidies in respect of any agricultural product not specified in that Section of its Schedule.

241. Under the first clause of Article 3.3, Members have committed to not provide export subsidies of the kinds listed in Article 9.1 in respect of scheduled agricultural products in excess of budgetary outlays and quantity commitment levels Members have specified in relation to those products in their Schedules. Scheduled agricultural products are products specified in

Section II of Part IV of Members' Schedules. The Agreement refers to scheduled product commitments as "reduction commitments".²⁷⁴

242. Separately, Members have committed under the second clause of Article 3.3 to not provide any export subsidies of the kinds listed in Article 9.1 with respect to unscheduled agricultural products, being products not specified in Members' Schedules. The second clause of Article 3.3 imposes a "general prohibition" against providing Article 9.1 export subsidies in relation to unscheduled agricultural products.²⁷⁵

243. Article 3.3 applies subject to the provisions of Articles 9.2(b) and 9.4, which create two further avenues for Members to provide export subsidies in conformity with the Agreement on Agriculture.

244. Article 9.2(b) permitted Members to provide Article 9.1 subsidies, subject to certain requirements, in any of the second through fifth years of the implementation period. That period has expired so Article 9.2(b) is no longer applicable.

245. A right to use export subsidies in certain circumstances is enabled by the special and differential treatment (SDT) provision of Article 9.4. This SDT benefit applies only to export subsidies within the meaning of Articles 9.1(d) and (e). Australia's claims in this dispute do not concern export subsidies of these kinds.

246. Finally, Article 10.1 provides a further prohibition on export subsidies: Members may not use export subsidies of kinds not specifically listed in Article 9.1 in a manner that results in, or which threatens to lead to, circumvention of their export subsidies commitments.

2. India's export subsidy commitments

247. Returning now to reduction commitments, Article 3.3 requires two threshold questions to be asked: first, is an agricultural product in question included in a Member's Schedule? And if so, what has been specified in relation to that agricultural product? To apply this in the current context, it is necessary to interpret India's Schedule in order to determine the manner in which Article 3.3 applies to India in relation to sugar.

²⁷⁴ See Agreement on Agriculture, Article 9.1.

²⁷⁵ Appellate Body Report, *US – FSC*, paras. 145–146.

248. Part IV, Section II of India's Schedule contains India's commitments in relation to export subsidies for agricultural products. As can be seen in Figure 4, the table presented in Part IV, Section II, is all but blank; there are no figures, quantities or values entered in the columns, except for one entry under column 8, titled "Relevant Supporting Tables and document reference", which states "AGST/IND: Supporting tables refer".

FIGURE 4 – Part IV, Section II of India's Schedule

PART IV - AGRICULTURAL PRODUCTS: COMMITMENTS LIMITING SUBSIDIZATION
(Article 3 of the Agreement on Agriculture)
SECTION II: Export Subsidies: Budgetary Outlay and Quantity Reduction Commitments

Description of products and tariff item no. (HS 6 digits)	Base outlay level	Calendar/other year applied	Years of implementation 1995 - 2004	Annual and final outlay commitment levels	Base quantity	Calendar/other year applied	Years of implementation 1995 - 2004	Annual and final quantity commitment levels	Relevant Supporting Tables and document reference
1	2	3	4	5	6	7	8	9	10
									AGST/IND : Supporting tables refer.

249. India's AGST supporting document, identified in column 8, contains supporting tables relating to commitments on agricultural products as relevant to Part IV, Section II of India's Schedule.²⁷⁶ The document relevantly states in its explanatory notes:

7. Export Competition

India does not maintain any export subsidy listed in Article 9 of the Uruguay Round Agreement on Agriculture in the Final Act. The only subsidy available to exporters of agricultural products is exemption of profits from export sales from income tax under section 80 HHC of the Income Tax Act. This benefit is available in respect of exports of industrial goods as well.²⁷⁷

250. India's Schedule and supporting tables indicate that India did not make export subsidies reduction commitments in relation to sugar, whether in terms of budgetary outlays or quantities.

251. Therefore, for India, sugar is an unscheduled agricultural product, and the Article 3.3 prohibition on providing Article 9.1 export subsidies for unscheduled products applies. Any Article 9.1 export subsidies that India provides for sugar are inconsistent with India's obligations under Articles 3.3 and 8.

252. Further, by virtue of Article 10.1, India may not provide 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 subsidy commitments under Articles 3.3 and 8.

²⁷⁶ G/AG/AGST/IND, p. 85.

²⁷⁷ G/AG/AGST/IND, p. 4, para. 7.

3. Export subsidies within the meaning of Articles 9.1(a)

253. Article 1(e) defines the term "export subsidies" as used in the Agreement on Agriculture as "subsidies contingent upon export performance, including the export subsidies listed in Article 9 of this Agreement".²⁷⁸

254. Article 9.1 sets out a list of practices that are deemed to be export subsidies within the meaning of Article 1(e).²⁷⁹ As detailed in the claims set out below, Australia considers that India provides export subsidies within the meaning of Articles 9.1(a).

255. Article 9.1(a) identifies export subsidies that are constituted by:

the provision by governments or their agencies of direct subsidies, including payments-in-kind, to a firm, to an industry, to producers of an agricultural product, to a cooperative or other association of such producers, or to a marketing board, contingent on export performance;"²⁸⁰
...

256. To fall within Article 9.1(a), a measure must be:

- "provi[ded] by governments or their agencies";
- "direct subsidies, including payments-in-kind";
- provided "to a firm, to an industry, to producers of an agricultural product, to a cooperative or other association of such producers, or to a marketing board"; and
- "contingent on export performance".

257. Australia now considers each of these elements in turn.

(a) "provi[ded] by governments or their agencies"

258. Article 9.1(a) requires the grantor of this class of export subsidy to be "governments or their agencies". The Oxford English Dictionary defines "government" as "[t]he governing power in a country or state; the body of people charged with the duty of governing", or "[t]he continuous exercise of authority over a person, group, etc.; guardianship, protection; control".²⁸¹

²⁷⁸ Agreement on Agriculture, Article 1(e).

²⁷⁹ Appellate Body Report, *EC – Export Subsidies on Sugar*, para. 269.

²⁸⁰ Agreement on Agriculture, Article 9.1(a).

²⁸¹ Oxford English Dictionary, OED Online, "government", n. (**Exhibit AUS-80**).

259. The Appellate Body has observed that a "government agency" within the meaning of Article 9.1(a) is:

an entity which exercises powers vested in it by a "government" for the purpose of performing functions of a "governmental" character, that is, to "regulate", "restrain", "supervise" or "control" the conduct of private citizens.²⁸²

260. The grantor must be vested with such power and perform such functions in order for the subsidy to fall within Article 9.1(a).

(b) "direct subsidies, including payments-in-kind"

261. The terms "direct", "subsidies" or "direct subsidies" are not defined in the Agreement on Agriculture. The Oxford English Dictionary defines "direct" as "without intervening factors or intermediaries",²⁸³ and "subsidy" as "[a] donation of money or other property, usually made to provide assistance".²⁸⁴

262. The immediate context of Article 9.1(a) gives guidance on the meaning of the term "direct subsidies" by providing an example of one of the forms in which "direct subsidies" may be granted, namely in the form of "payments-in-kind". The ordinary meaning of "payment" is "a transfer of economic resources", and noting that a "payment-in-kind" may be made "in exchange for full or partial consideration or... made gratuitously", the Appellate Body has observed that a subsidy within the meaning of Article 9.1(a) involves "a transfer of economic resources from the grantor to the recipient for less than full consideration".²⁸⁵

263. Reading Article 9.1(a) in context with Article 9.2(a)(i) indicates that revenue foregone can also form the "direct subsidies" basis of an Article 9.1(a) export subsidy claim. Article 9.2(a)(i) provides that Article 9.1 export subsidy commitment levels for scheduled products represent:

...in the case of budgetary outlay reduction commitments, the maximum level of expenditure for such subsidies that may be allocated or incurred in that year in respect of the agricultural product, or group of products, concerned;... (emphasis added)

264. This provision may then be read with the definition of "budgetary outlays" in Article 1(c), which includes "revenue foregone".

²⁸² Appellate Body Report, *Canada – Dairy*, para. 97.

²⁸³ Oxford English Dictionary, OED Online, "direct. adj. and adv." (**Exhibit JE-120**).

²⁸⁴ Oxford English Dictionary, OED Online, "subsidy. n." (**Exhibit JE-119**).

²⁸⁵ Appellate Body Report, *Canada – Dairy*, para. 87.

265. Annex 3 of the Agreement on Agriculture provides further support for this interpretation. Paragraph 1 of that Annex employs the term "subsidy", followed by paragraph 2, which states that "subsidies under paragraph 1 shall include... revenue foregone by governments or their agents".

266. The definition of a "subsidy" in Article 1.1 of the SCM Agreement is also relevant to the interpretation of that term as it appears in the Agreement on Agriculture.²⁸⁶ Generally, a "subsidy" arises within the meaning of Article 1.1 of the SCM Agreement where a grantor makes a "financial contribution" which confers a "benefit" on the recipient, as compared with what would have been otherwise available to the recipient in the marketplace."²⁸⁷

267. Article 1.1(a)(1) of the SCM Agreement lists a set of government practices that constitute a "financial contribution" for the purposes of that Agreement, including a "direct transfer of funds"²⁸⁸ and "government revenue that is otherwise due is foregone or not collected".²⁸⁹

268. A "direct transfer of funds" has clear similarities to a "direct" transfer of economic resources within the context of Article 9.1(a) of the Agreement on Agriculture, and can therefore form the basis for an export subsidy within the meaning of Article 9.1(a).

269. In the case of, for example, a grant in the form of a direct cash payment, the recipient receives a "benefit" as it is "automatically placed in a better position than it would otherwise have been without the grant".²⁹⁰ Such a payment is also made "for less than full consideration" because it is a non-reciprocal financial contribution that would not be made by any "private entity acting pursuant to commercial considerations".²⁹¹

270. With regards to subsidies based on "revenue foregone", the Appellate Body has explained that, in circumstances where a measure at issue is an "exception" to a "general" rule of taxation, it is possible to apply a "but for" test in determining whether revenue that had been "otherwise due" is foregone.²⁹² The "but for" test involves examining the situation that would

²⁸⁶ Panel Report, *US – FSC*, para. 7.150; see also Appellate Body Report, *US – Upland Cotton*, para. 571.

²⁸⁷ Appellate Body Report, *Canada – Dairy*, para. 87.

²⁸⁸ SCM Agreement, Article 1.1(a)(1)(i).

²⁸⁹ SCM Agreement, Article 1.1(a)(1)(ii).

²⁹⁰ Panel Report, *EC and certain member States – Large Civil Aircraft*, para. 7.1501.

²⁹¹ Panel Report, *US – Large Civil Aircraft (2nd complaint)*, para. 7.1229.

²⁹² Appellate Body Report, *US – FSC (Article 21.5 – EC)*, para. 91.

have existed but for the measure in question, and determining whether there would have been a higher tax liability in the absence of the measure.²⁹³

271. The panel in *Brazil – Taxation* considered that "whenever there is revenue forgone by the government, a benefit is conferred."²⁹⁴ The Appellate Body has also observed that in a revenue foregone scenario the recipient "is better off than it would have been absent the contribution".²⁹⁵

272. Tying these analyses together, "direct subsidies" within the meaning of Article 9.1(a) will exhibit a quality of directness between the grantor and recipient, and will involve a transfer of economic resources, or revenue foregone, that is provided for less than full consideration.

(c) "to a firm, to an industry, to producers of an agricultural product, to a cooperative or other association of such producers, or to a marketing board"

273. In addition to qualifying the grantor of this class of export subsidy, Article 9.1(a) also defines a broad, but exhaustive list of possible recipients.

274. In this dispute, Australia primarily focuses on "producers of an agricultural product". The Agreement on Agriculture does not define "agricultural product". However, Australia considers all products that fall within the product coverage established by paragraph 1 of Annex 1 to be agricultural products.²⁹⁶ HS Chapter 17, titled "Sugars and sugar confectionery" covers sugar.²⁹⁷

275. Australia further considers the terms "firm", "industry", "producers", "cooperative or other association of such producers" and "marketing board" are capable of being interpreted according to their plain and ordinary meanings. There is significant overlap in the scope of these terms and the types of entities that could fall within their meanings.

²⁹³ Panel Report, *US – FSC*, para. 7.45.

²⁹⁴ Panel Report, *Brazil – Taxation*, para. 7.491.

²⁹⁵ Appellate Body Report, *US – Large Civil Aircraft (2nd complaint)*, para. 635; Appellate Body Report, *Canada – Aircraft*, para. 157.

²⁹⁶ Appellate Body Report, *EC – Chicken Cuts*, para. 198.

²⁹⁷ World Customs Organization, HS Nomenclature, 2017 edition, <http://www.wcoomd.org/en/topics/nomenclature/instrument-and-tools/hs-nomenclature-2017-edition/hs-nomenclature-2017-edition.aspx> (**Exhibit JE-118**), Chapter 17.

(d) "contingent on export performance"

276. The ordinary meaning of "contingent" is "dependent for its occurrence or character *on* or *upon* some prior occurrence or condition".²⁹⁸ The phrase "contingent on export performance" that appears in Articles 1(e) and 9.1(a) of the Agreement on Agriculture also appears in Article 3.1(a) of the SCM Agreement,²⁹⁹ and both Agreements employ the phrase "export subsidies". In view of the common usage of terms, it is appropriate to interpret the substantive requirement relating to export contingency as having the same meaning in the context of both Agreements.³⁰⁰

277. In interpreting the SCM Agreement, the Appellate Body has observed that Article 3.1(a) "prohibits subsidies that are conditional upon export performance, or are dependent for their existence on export performance".³⁰¹ The Appellate Body has also characterized the requisite "relationship of conditionality or dependence" by saying the granting of a subsidy should be "tied to" export performance.³⁰²

278. The export contingency standard in Article 3.1(a) of the SCM Agreement further contemplates that a subsidy may be "contingent, in law or in fact... upon export performance". Australia will advance arguments in Section V.C.2 that India's buffer stock subsidies are, in the first instance, *de jure* ("in law") contingent upon export performance or, in the alternative, *de facto* ("in fact") contingent on export performance. Accordingly, it is convenient to address both standards of export contingency here.

279. The SCM Agreement does not define or provide explicit guidance on the meaning of contingency "in law" on export performance. A plain reading of the term "in law" in its immediate context suggests it refers to subsidies that are, as a matter of law, conditional upon or owe their existence to export performance. Footnote 4 of the SCM Agreement confirms this reading by referring to subsidies "legally contingent upon export performance".³⁰³ The

²⁹⁸ Oxford English Dictionary, OED Online, "contingent, adj. and n." (**Exhibit AUS-81**).

²⁹⁹ Australia notes the slightly different formulation "contingent... upon export performance" that is used in Article 3.1(a) of the SCM Agreement.

³⁰⁰ Appellate Body Report, *US – FSC*, para. 141.

³⁰¹ Appellate Body Report, *US – Upland Cotton*, para. 572. See also Appellate Body Report, *Canada – Aircraft (Article 21.5 – Brazil)*, para. 47 and Appellate Body Report, *Canada – Aircraft*, para. 166.

³⁰² Appellate Body Report, *Canada – Aircraft (Article 21.5 – Brazil)*, para. 47 (quoting Appellate Body Report, *Canada – Aircraft*, para. 171).

³⁰³ SCM Agreement, footnote 4.

Appellate Body has followed this approach to determining the standard for *de jure* export contingency, stating that:

The simplest, and hence, perhaps, the uncommon, case is one in which the condition of exportation is set out expressly, in so many words, on the face of the law, regulation or other legal instrument.³⁰⁴

280. The *de jure* standard can also be satisfied when the words used in an instrument constituting a measure create a necessary implication that export contingency exists, even if the condition to export is not so expressly stated.³⁰⁵ For example, a provision in an instrument constituting a measure that requires exporters to provide proof of exportation as a condition for receiving a subsidy payment may be sufficient to render the subsidy *de jure* contingent upon export performance.³⁰⁶

281. Footnote 4 of the SCM Agreement provides immediate guidance for determining the standard for *de facto* export contingency. It states:

This standard is met when the facts demonstrate that the granting of a subsidy, without having been made legally contingent upon export performance, is in fact tied to actual or anticipated exportation or export earnings. The mere fact that a subsidy is granted to enterprises which export shall not for that reason alone be considered to be an export subsidy within the meaning of this provision.³⁰⁷

282. On *de facto* export contingency, the Appellate Body has observed that it is an objectively determined standard:

...to be established on the basis of the total configuration of facts constituting and surrounding the granting of the subsidy, including the design, structure, and modalities of operation of the measure granting the subsidy.³⁰⁸

283. As it is an objective standard, *de facto* export contingency cannot be satisfied solely on the basis of the subjective intention of a government that implements a measure. Nevertheless, objectively reviewable expressions of a government's policy objectives in granting a subsidy

³⁰⁴ Appellate Body Report, *Canada – Autos*, para. 100. See also Panel Report, *Canada – Aircraft Credits and Guarantees*, para. 7.365 and Panel Report, *US – FSC (Article 21.5 – EC)*, para. 8.54-8.56.

³⁰⁵ Appellate Body Report, *Canada – Autos*, para. 100. See also Panel Report, *Canada – Aircraft Credits and Guarantees*, para. 7.365 and Panel Report, *US – FSC (Article 21.5 – EC)*, para. 8.54-8.56.

³⁰⁶ Appellate Body Report, *US – Upland Cotton*, para. 574.

³⁰⁷ SCM Agreement, footnote 4.

³⁰⁸ Appellate Body Report, *EC – Aircraft*, para. 1050.

may constitute relevant evidence when undertaking an inquiry into whether the test for export contingency is satisfied in relation to the measure.³⁰⁹

284. In considering the distinction between *de jure* and *de facto* export contingency, the Appellate Body has observed that the legal standard expressed by the word "contingent" is the same for both classes of export contingency, and that it is ultimately a matter of evidence as to whether a subsidy may be characterized as falling into one or other category. Whereas in cases of *de jure* contingency there may be a single document providing clear evidence of the requisite conditionality, *de facto* contingency may need to be determined on the basis of inferences to be drawn from multiple documents or other evidentiary sources, none of which will be decisive on its own.³¹⁰

C. INDIA'S EXPORT SUBSIDIES ARE INCONSISTENT WITH ITS OBLIGATIONS UNDER THE AGREEMENT ON AGRICULTURE

285. In accordance with Article 8 of the Agreement on Agriculture, India has undertaken not to provide export subsidies otherwise than in conformity with the Agreement and with the commitments specified in its Schedule. India's Schedule and its supporting tables indicate that India has not made any export subsidy reduction commitments in relation to sugar, whether in terms of budgetary outlays or quantities. Thus, for India, sugar is an unscheduled agricultural product, and the Article 3.3 prohibition on providing export subsidies for unscheduled products applies.

286. Australia claims that the following measures implemented by India provide export subsidies within the meaning of Article 9.1(a) of the Agreement on Agriculture:

- production subsidies, operating in conjunction with MIEQs;
- buffer stock subsidies, operating in conjunction with MIEQs;
- transport, freight and marketing subsidies, operating in conjunction with MAEQs; and
- DFIA.

287. In the event the Panel finds that the measures do not fall within Article 9.1(a), Australia requests the Panel find they are nevertheless export subsidies that India applies in a manner

³⁰⁹ Appellate Body Report, *EC – Large Civil Aircraft*, para. 1050.

³¹⁰ Appellate Body Report, *Canada – Aircraft*, para. 166-167.

inconsistent with its obligation under Article 10.1 of the Agreement on Agriculture, and that in providing them India acts inconsistently with Article 8.

1. India's production subsidies are export subsidies within the meaning of Article 9.1(a)

288. India's production subsidies for sugar producers are linked to MIEQs and are thereby contingent on export performance. They are export subsidies within the meaning of Article 9.1(a) of the Agreement on Agriculture.

(a) India's production subsidies are "provi[ded] by governments or their agencies"

289. India's production subsidies are provided by "government"³¹¹ within the meaning of Article 9.1(a).

290. The production subsidies are administered by DFPD. DFPD is a government agency that sits within the portfolio of the Ministry of Consumer Affairs, Food and Public Distribution of the Government of India.³¹² The notification constituting the 2015–16 scheme states that funds were "released by Department of Food and Public Distribution".³¹³ The notifications constituting the 2017–18 and 2018–19 iterations of the scheme indicate that sugar mills needed to submit claims for payments to the "Chief Director (Sugar), Directorate of Sugar & Vegetable Oils, Department of Food & Public Distribution, Krishi Bhawan, New Delhi."³¹⁴ DFPD budget documents demonstrate that government funds were allocated to finance the programs.³¹⁵

(b) India's production subsidies are "direct subsidies"

291. India's production subsidies are "direct subsidies" within the meaning of Article 9.1(a).

292. The administrative arrangements India employs to distribute its production subsidies cause the payments to be made in a "direct" manner. Each iteration of the scheme requires sugar mills to open a separate, no-lien bank account, and provide their banks with a list of farmers, the farmers' bank account information, and details of the sugarcane price arrears owed

³¹¹ Appellate Body Report, *Canada – Dairy*, para. 97.

³¹² Government of India, Department of Food and Public Distribution, Ministry of Consumer Affairs, Food and Public Distribution, "Functions (As per Allocation of Business Rules)", <https://dfpd.gov.in/fun.htm> (**Exhibit AUS-45**).

³¹³ Notification No. 20(43)/2015-S.P.-I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 2 December 2015 (**Exhibit JE-76**), para. 1 and 2(vi).

³¹⁴ Notification No. 1(5)/2018-S.P.-I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 9 May 2018 (**Exhibit JE-75**), para. 3(vii); Notification No. 1(14)/2018-S.P.-I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 5 October 2018 ("Scheme for assistance to sugar mills") (**Exhibit JE-74**), para. 3(vi).

³¹⁵ Central Government of India's 2019-20 Expenditure Budget (**Exhibit JE-121**), Notes on Demands and Grants, 2019–20, Department of Food and Public Distribution, pp. 57-58.

to each farmer. DFPD then releases funds to sugar mills' banks, which in turn remit them directly to farmers on behalf of the mills, thereby clearing the mills' sugarcane arrears payable to the farmers. Any remaining funds are paid directly into mills' accounts, and mills that do not owe any money to farmers are entitled to receive the entire subsidy amount directly.³¹⁶

293. Under this payment arrangement, sugarcane farmers do not accrue a "benefit" as they merely receive funds they are legally owed. However, a benefit accrues to sugar mills. Although mills do not themselves receive the funds that are paid directly to farmers on their behalf, they nevertheless receive a direct financial contribution that confers a benefit on them – that is, they are relieved of debts, leaving them better off than they would be if the payments were not made.³¹⁷

294. The "financial contributions" the government provides to sugar mills are of equal value to the funds transferred directly to farmers; as far as the mills are concerned, the economic value of the transfer is precisely the same.³¹⁸ Moreover, sugar mills that do not owe any sugarcane dues simply receive a grant. The payments are made gratuitously for less than full consideration.³¹⁹ Although sugar mills need to satisfy eligibility criteria in order to receive them, the burden of meeting those requirements is less than the benefit they receive.

(c) India's production subsidies are provided "to a firm, to an industry, to producers of an agricultural product, to a cooperative or other association of such producers, or to a marketing board"

295. India's production subsidies are provided to entities that qualify as recipients recognized by Article 9.1(a).

296. The subsidies are paid directly either to sugarcane farmers, or to sugar mills, with the benefit accruing to the sugar mills in each scenario. Sugar mills are "producers of an agricultural product": they produce sugar, which is covered by HS Chapter 17, titled "Sugars

³¹⁶ Notification No. 20(43)/2015-S.P.-I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 2 December 2015 (**Exhibit JE-76**), para. 2(vi); Notification No. 1(5)/2018-S.P.-I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 9 May 2018 (**Exhibit JE-75**), para. 3(v); Notification No. 1(14)/2018-S.P.-I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 5 October 2018 ("Scheme for assistance to sugar mills") (**Exhibit JE-74**), para. 3(iv).

³¹⁷ Appellate Body Report, *US – Large Civil Aircraft (2nd complaint)*, paras. 635-636, 662, and 690 (referring to Appellate Body Report, *Canada – Aircraft*, para. 157).

³¹⁸ Appellate Body Report, *Canada – Dairy*, paras. 113-114.

³¹⁹ Appellate Body Report, *Canada – Dairy*, para. 87.

and sugar confectionery"³²⁰ and is therefore an agricultural product that falls within the product coverage of Annex 1 the Agreement on Agriculture. The payments may also be characterized broadly as a direct subsidy to the sugar "industry". Moreover, Indian sugar mills are commonly owned and operated by cooperatives,³²¹ and therefore may be described as "a cooperative or other association of such producers". Alternatively, mills may be corporate entities or companies or "firms".³²²

(d) India's production subsidies are "contingent on export performance"

297. India's production subsidies are *de jure* export contingent because they are, in law, directly linked to mills having discharged export obligations arising from MIEQ orders.

298. Australia has established that the 2015–16 MIEQ order set mandatory export targets that sugar mills were legally obliged to comply with in accordance with the Essential Commodities Act 1955 and the Sugar (Control) Order 1966. The 2015–16 production subsidy was "tied to"³²³ export performance via paragraph 2(iii) of the production subsidy notification, which provides:

Those mills which have achieved at least 80% of the targets as per terms and conditions under the Minimum Indicative Export Quota (MIEQ) scheme notified on 18.09.2015... shall be eligible for the above production subsidy.³²⁴

299. Paragraph 2(iii) states expressly that the payments were conditioned upon sugar mills having exported at least 80% of their MIEQ allocations. The condition of exportation is set out clearly on the face of the relevant legal instrument, rendering the measure an example of the "simplest" case of *de jure* export contingency.³²⁵

300. Australia has demonstrated that the 2017–18 and 2018–19 MIEQ orders were issued by DFPD under clause 5 of the Sugar (Control) Order 1966, and established mandatory, legally

³²⁰ World Customs Organization, HS Nomenclature, 2017 edition, <http://www.wcoomd.org/en/topics/nomenclature/instrument-and-tools/hs-nomenclature-2017-edition/hs-nomenclature-2017-edition.aspx> (**Exhibit JE-118**), Chapter 17.

³²¹ DFPD indicates that as of 31 July 2017, 327 of 732 sugar factories were "co-operative sector units": Government of India, Department of Food and Public Distribution, Ministry of Consumer Affairs, Food and Public Distribution, "Sugar and Sugarcane Policy", <https://dfpd.gov.in/sugar-sugarcane-policy.htm> (**Exhibit AUS-46**).

³²² DFPD indicates that as of 31 July 2017, 362 of 732 sugar factories were "private sector units": Government of India, Department of Food and Public Distribution, Ministry of Consumer Affairs, Food and Public Distribution, "Sugar and Sugarcane Policy", <https://dfpd.gov.in/sugar-sugarcane-policy.htm> (**Exhibit AUS-46**).

³²³ Appellate Body Report, *Canada – Aircraft (Article 21.5 – Brazil)*, para. 47 (quoting Appellate Body Report, *Canada – Aircraft*, para. 171).

³²⁴ Notification No. 20(43)/2015-S.P.-I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 2 December 2015 (**Exhibit JE-76**), para. 2(iii).

³²⁵ Appellate Body Report, *Canada – Autos*, para. 100. See also Panel Report, *Canada – Aircraft Credits and Guarantees*, para. 7.365 and Panel Report, *US – FSC (Article 21.5 – EC)*, para. 8.54-8.56.

enforceable export targets for their respective sugar seasons. The 2017–18 and 2018–19 production subsidies are each "tied to" MIEQ orders via a requirement for sugar mills to "have fully complied with all the orders/directives of Department of Food and Public Distribution (DFPD) to the sugar mills"³²⁶ in order to receive the payments. This eligibility criterion creates a necessary implication that MIEQ orders fall within an all-encompassing class of orders issued by DFPD that sugar mills needed to have complied with to qualify for the schemes.³²⁷

301. Finally, India's production subsidies require sugar mills to submit documentary evidence of their export performance in support of their claims for subsidy payments. In the 2015–16 scheme this entailed providing "Details of performance achieved by mills in respect of... sugar export", expressed in terms of "quantity of MIEQ for export (in MT)" and "quantity of sugar exported (in MT)", and submitting relevant documentation.³²⁸

302. In relation to the 2017–18 and 2018–19 schemes this entailed providing "Details of performance achieved by mills", which requires mills to answer "Whether all Orders/Directives of DFPD have been fully complied with: Yes/No" and provide certified supporting documentation confirming compliance with each of those orders.³²⁹ These provisions demonstrate that the production subsidy schemes require mills to submit documentary evidence of their export performance as a matter of compliance and therefore eligibility to receive subsidy payments under the schemes.

303. Moreover, MIEQ orders themselves require mills to submit documentation constituting proof of export to DFPD within 180 days from the date of shipment of their last consignment.³³⁰ It follows that in order to receive subsidy payments, mills need to prove they have complied with MIEQ orders, which themselves required mills to submit proof of export. In other words,

³²⁶ Notification No. 1(5)/2018-S.P.-I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 9 May 2018 (**Exhibit JE-75**), para. 2(c).

³²⁷ Appellate Body Report, *Canada – Autos*, para. 100. See also Panel Report, *Canada – Aircraft Credits and Guarantees*, para. 7.365 and Panel Report, *US – FSC (Article 21.5 – EC)*, para. 8.54-8.56.

³²⁸ Notification No. 20(43)/2015-S.P.-I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 2 December 2015 (**Exhibit JE-76**), Proforma-A, para. 3(d)-(e) and 5(c).

³²⁹ Notification No. 1(5)/2018-S.P.-I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 9 May 2018 (**Exhibit JE-75**), Proforma-A, para. 3(e) and 4(c); Notification No. 1(14)/2018-S.P.-I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 5 October 2018 ("Scheme for assistance to sugar mills") (**Exhibit JE-74**), No., Proforma-A, para. 3(e) and 4(c).

³³⁰ DFPD Order of 18 September 2015, "Allocation of sugar factory-wise Minimum Indicative Export Quotas (MIEQ) under tradable export scrip schemes" (**Exhibit JE-109**), para. 3-4; Notification No. 1(4)/2018-S.P.-I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 9 May 2018 (**Exhibit JE-111**), para. 4-5; DFPD Order of 28 September 2018, "Allocation of sugar factory-wise Minimum Indicative Export Quotas (MIEQ) of sugar for export in sugar season 2018-19 under tradable export scrip schemes" (**Exhibit JE-108**), para. 4-5.

the payments are dependent for their existence on mills providing evidence of having discharged their export obligations.³³¹

304. To conclude, through its production subsidy schemes India provides export subsidies within meaning of Article 9.1(a).

2. India's buffer stock schemes operate with Minimum Indicative Export Quotas to provide export subsidies within the meaning of Article 9.1(a)

305. As with India's production subsidies, India's buffer stock subsidies are also linked to MIEQs and are thereby contingent on export performance within the meaning of Article 9.1(a) of the Agreement on Agriculture.

(a) India's buffer stock subsidies are "provi[ded] by governments or their agencies..."

306. India's buffer stock subsidies are provided by "governments or their agencies" within the meaning of Article 9.1(a). The buffer stock schemes are administered by DFPD. Sugar mills are required to submit requisite documentation on a quarterly basis to DFPD in order to claim the subsidies.³³² Further, DFPD budget documents demonstrate that government funds have been allocated to finance the schemes.³³³

(b) India's buffer stock subsidies are "direct subsidies"

307. India's buffer stock subsidies are notionally intended to reimburse mills' insurance, storage and interest charges arising from holding their stock allocations, and their value is determined by reference to the value of individual mills' stocks.³³⁴ However, as with India's production subsidies, the buffer stock subsidies are paid directly to farmers to satisfy mills'

³³¹ Appellate Body Report, *US – Upland Cotton*, para. 574.

³³² Notification No. 1(6)/2018-SP-I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 15 June 2018 (**Exhibit JE-78**), para. 9; Notification No. 1(8)/2019-SP-I. of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 31 July 2019 (**Exhibit JE-77**), para. 9.

³³³ Central Government of India's 2019-20 Expenditure Budget (**Exhibit JE-121**), Notes on Demands and Grants, 2019–20, Department of Food and Public Distribution, p. 58, line 12.

³³⁴ Notification No. 1(6)/2018-SP-I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 15 June 2018 (**Exhibit JE-78**), para. 3; Notification No. 1(8)/2019-SP-I. of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 31 July 2019 (**Exhibit JE-77**), para. 3.

cane dues and arrears.³³⁵ The buffer stock schemes utilize the same administrative arrangements that are used to distribute payments under India's production subsidy schemes.³³⁶

308. Australia has established in Section V.C.1(b) that payments made according to this arrangement are "direct subsidies" as they involve a transfer of economic resources from a grantor to a recipient for less than full consideration.³³⁷ Australia considers the same reasoning applies to India's buffer stock subsidies. Thus, India's buffer stock subsidies are "direct subsidies" within the meaning of Article 9.1(a).

(c) India's buffer stock subsidies are provided "to a firm, to an industry, to producers of an agricultural product, to a cooperative or other association of such producers, or to a marketing board..."

309. Australia has established in Section V.C.1(c) that sugar mills qualify as recipients of export subsidies recognized by Article 9.1(a), and considers this element is satisfied in relation to India's buffer stock subsidies.

(d) India's buffer stock subsidies are "contingent on export performance"

310. In the first instance, Australia submits that India's buffer stock subsidies are *de jure* contingent upon export performance, via their direct link with MIEQs.

311. However, if the Panel is not satisfied that *de jure* export contingency exists, Australia submits, in the alternative, that the Panel should nevertheless find that India's buffer stock subsidies are *de facto* contingent upon export performance on the basis that they are in fact linked with MIEQs via India's monthly stockholding orders.

i. India's buffer stock subsidies are, in the first instance, *de jure* "contingent on export performance"

312. Design differences between the 2018 and 2019 iterations of the buffer stock scheme have caused export contingency to arise in different ways in each of the years.

³³⁵ Notification No. 1(6)/2018-SP-I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 15 June 2018 (**Exhibit JE-78**), para. 1.

³³⁶ Notification No. 1(6)/2018-SP-I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 15 June 2018 (**Exhibit JE-78**), para. 9(a); Notification No. 1(8)/2019-SP-I. of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 31 July 2019 (**Exhibit JE-77**), para. 9(a).

³³⁷ Appellate Body Report, *Canada – Dairy*, para. 87.

313. Beginning with the 2018 scheme, on 31 December 2018 DFPD issued an amendment to the scheme's eligibility criteria, which states:

Provided that for the quarterly reimbursement of the buffer subsidy in respect of quarter III (January-March, 2019) and quarter IV (April-June, 2019), the sugar mill is required to fully comply with all the orders/directives issued by Department of Food & Public Distribution for compliance during 2018-19 sugar season.³³⁸

314. Australia has established that MIEQ orders are issued under Clause 5 of the Sugar (Control) Order 1966. The words used in the eligibility amendment create a necessary implication that the MIEQ order issued for the 2018–19 season is one of "all" of the "orders/directives issued by Department of Food and Public Distribution... during 2018–19 sugar season" that mills needed to have "fully complied with" to be eligible for the scheme.³³⁹ The amendment therefore creates, by necessary implication, a *de jure* export contingency: that as of 31 December 2018, sugar mills were required to export in order to receive the buffer stock subsidies.

315. The 2019 scheme notification does not frame the eligibility criteria in the same terms as the 31 December 2018 amendment to the 2018 scheme. Nevertheless, the Central Government took sugar mills' MIEQ performance into account when it determined the quantity of buffer stock allocations under the 2019 scheme. The notification states:

The Central Government shall make mill-wise allocation of buffer stock having regard to the stock held by it. In case a sugar mill has failed to export any quantity up to June, 2019 against the MIEQ issued via [sic] directive dated 28.09.2018 of DFPD, its stock shall be considered after deducting the quantity equivalent to its allocated MIEQ...³⁴⁰

316. The value of the subsidy payments available to individual mills is determined by reference to the value of the stock they have been allocated to hold,³⁴¹ and stock value is calculated at the uniform rate of INR 31 per kilogram of sugar,³⁴² consistent with the MSP for

³³⁸ Notification No. 1(6)/2018-SP-I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 31 December 2018 (**Exhibit JE-112**).

³³⁹ Appellate Body Report, *Canada – Autos*, para. 100. See also Panel Report, *Canada – Aircraft Credits and Guarantees*, para. 7.365 and Panel Report, *US – FSC (Article 21.5 – EC)*, paras. 8.54-8.56.

³⁴⁰ Notification No. 1(8)/2019-SP-I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 31 July 2019 (**Exhibit JE-77**), para. 2.

³⁴¹ Notification No. 1(8)/2019-SP-I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 31 July 2019 (**Exhibit JE-77**), para. 3(a)-(b).

³⁴² Notification No. 1(8)/2019-SP-I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 31 July 2019 (**Exhibit JE-77**), para. 3(d).

sugar.³⁴³ Therefore, the higher the quantity a mill has been allocated to hold, the more valuable their stock is; in turn, their entitlement to the buffer stock subsidy payment increases.

317. As the extract above demonstrates, mills that failed to export in satisfaction of their MIEQs as of June 2019 had the equivalent amount of un-exported sugar deducted from the quantity of stock they otherwise may have been allocated to hold under the scheme. That is, those mills are permitted to hold less and so receive a lower subsidy, whereas mills that satisfactorily exported in accordance with their MIEQ obligations are permitted to hold more stock and therefore receive subsidies of a higher value.

318. Accordingly, on the face of the instruments constituting India's buffer stock subsidy schemes, the value of the subsidy mills receive is "tied to" export performance and therefore *de jure* export contingent within the meaning of Article 9.1(a).

ii. India's buffer stock subsidies are, in the alternative, *de facto* "contingent on export performance"

319. In the alternative, Australia submits that the total configuration of facts constituting the interaction between India's buffer stock subsidy scheme, monthly stockholding orders and MIEQ orders demonstrates that the buffer stock subsidies are contingent upon export performance on a *de facto* basis. Upon an objective observation, it is clear that the design, structure and expected operation of these three measures, operating together, are geared to induce exports.

320. In short, the buffer stock subsidy payments are "tied to"³⁴⁴ MIEQ orders and actual export performance via the monthly stockholding orders.³⁴⁵ In the following paragraphs, Australia explains the linkages between these three measures and identifies each of the facts that cumulatively serve to demonstrate the existence of the *de facto* export contingency.

321. Beginning in June 2018, the Central Government has issued monthly stockholding orders flowing from Order S.O. 2347(E), which states:

In exercise of the powers conferred by section 3 of the Essential Commodities Act, 1955 (10 of 1955) read with clause 4 and 5 of the Sugar (Control) Order, 1966, the Central Government

³⁴³ Order S.O.874(E) of 14 February 2019 of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution (**Exhibit JE-18**).

³⁴⁴ Appellate Body Report, *Canada – Aircraft (Article 21.5 – Brazil)*, para. 47 (quoting Appellate Body Report, *Canada – Aircraft*, para. 171).

³⁴⁵ Appellate Body Report, *EC and certain member States – Large Civil Aircraft*, para. 1050.

hereby directs that every producer producing sugar by vacuum pan process shall hold such quantity of white sugar or refined sugar at the end of each month as may be specified by the Central Government for each month... This order shall come into force with immediate effect.³⁴⁶

322. The monthly orders direct individual sugar mills to hold designated volumes of sugar in stock at the end of the month in relation to which the order is made. The designated stock volumes are determined according to the following formula:

- the volume of sugar held by the mill on the first day of the relevant month; plus
- the volume of sugar produced by the mill during the relevant month; minus
- a volume of sugar that the mill is permitted to sell or despatch domestically in the relevant month, which is allocated in column 4 of a table that is attached to each order (domestic sales quota); minus
- the volume of sugar that the mill despatches for export in the relevant month.³⁴⁷

323. To recall, as with MIEQ orders, compliance with monthly stockholding orders is mandatory as they are issued under the Essential Commodities Act 1955 and the Sugar (Control) Order 1966. This is confirmed by the inclusion of the statement at the end of each monthly stockholding order: "Any violation of this order would attract the penal provisions under the Essential Commodities Act, 1955, as amended from time to time".³⁴⁸

324. Between 31 July and 31 December 2018, sugar mills' eligibility to receive buffer stock subsidies was conditioned upon mills' full compliance with the monthly stockholding orders, identified in the 2018 buffer stock scheme notification in the following manner:

Order No, 5-1/2018-Sugar Control, dated 07.06.2018 relating to maintaining minimum stocks of sugar after sale of maximum specified quantity for the month of June, 2018 and similar Orders to be issued for subsequent period.^{349 350}

³⁴⁶ Order No. S.O. 2347(E) of 7 June 2018 (**Exhibit JE-20**).

³⁴⁷ See for example Order F. No. 5-1/2018-Sugar Control of the Ministry of Consumer Affairs, Food & Public Distribution of 30 July 2018 (**Exhibit JE-22**); and Order F. No. 5-1/2019-Sugar Control of the Ministry of Consumer Affairs, Food & Public Distribution of 31 December 2019 (**Exhibit JE-39**).

³⁴⁸ See for example Order F. No. 5-1/2018-Sugar Control of the Ministry of Consumer Affairs, Food & Public Distribution of 30 July 2018 (**Exhibit JE-22**), para. 5, and Order F. No. 5-1/2019-Sugar Control of the Ministry of Consumer Affairs, Food & Public Distribution of 31 December 2019 (**Exhibit JE-39**), para. 4.

³⁴⁹ Notification No. 1(6)/2018-SP-I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 15 June 2018 (**Exhibit JE-78**), para. 4(d)(ii), which states: "Order No. 5-1/2018-Sugar Control, dated 07.06.2018 relating to maintaining minimum stocks of sugar after sale of maximum specified quantity for the month of June, 2018 and similar Orders to be issued for subsequent period."

³⁵⁰ The monthly stockholding orders bear the common file number "File No. 5-1/2018-Sugar Control" for those issued in 2018, or "File No. 5-1/2019 ([Month],2019)-Sugar Control" for those issued in 2019.

325. The buffer stock scheme's eligibility criteria did not stipulate or require compliance with MIEQ orders until the introduction of the 31 December 2018 amendment, outlined above.

326. Nevertheless, the monthly stockholding orders – which mills participating in the buffer stock scheme always were (and continue to be) required to comply with as a condition for receiving subsidies under the scheme – incentivize export by taking mills' performances against their MIEQ obligations into account when determining their monthly domestic sales quotas, allocated in column 4 of each monthly order. In general terms, the incentive is created by permitting mills to sell extra volumes of sugar, above their allocated domestic sales quotas, on the basis of having performed favourably against their MIEQ obligations. The size of these additional volumes is determined by direct reference to the volumes that mills have exported during a defined period.

327. The export incentive arises from the fact that exporting is less profitable for Indian sugar mills than domestic selling. The world sugar price has dropped to record lows in recent years,³⁵¹ whereas India sets the minimum domestic sugar price at an artificially higher level via the MSP. In the absence of government intervention, Indian sugar mills would avoid exporting and would choose to maximize their profit by selling only on the domestic market. However, that profit maximizing option has been constrained by the government imposing a legal obligation on mills to export in accordance with MIEQ orders.

328. By permitting mills to make additional domestic sales as a reward for complying with their export obligations, the stockholding orders do not merely enable a reimbursement for the potential profits mills have lost by selling on the export market. Rather, when domestically selling additional volumes of sugar that are equivalent to, or otherwise determined by reference to, volumes they have exported, sugar mills gain an additional benefit in the form of expanded access to the higher domestic price. Exporting provides mills with an opportunity to generate more sales revenue than they would if they were limited to selling only the notional domestic sales quotas allocated to them under the monthly orders and did not export. Permitting these additional sales allowances as a consequence of having exported therefore leads mills to export.

³⁵¹ See "Indian Sugar Glut Pushes Prices Close to Decade Lows; New Delhi is expected to renew subsidy program that will boost exports from the world's biggest sugar producer", *Wall Street Journal*, 26 August 2019 (**Exhibit AUS-4**). See also Green Pool, India Analysis, 9 November 2018 (**Exhibit AUS-2**).

329. To demonstrate, the stockholding order issued for the month of August 2018 employed the following methodology for determining mills' additional sales allowances over and above their domestic sales quotas by reference to their export performance:

The sugar mills who have exported sugar under Minimum Indicative Export Quota (MIEQ), allocated vide Order No. 1(4)/2018-1 dated 09.05.2018, either directly or by way of trading export quota to third parties may also sell/dispatch the additional quantity of sugar equivalent to actual export during 2017-18 sugar season till July, 2018 or 50% of the their MIEQ, whichever is less, in addition to the quantity of white/refined sugar prescribed for domestic sale/despatch as indicated in column 4 of the table...³⁵²

330. The August and September 2018 monthly orders required sugar mills to submit an undertaking confirming the quantity they had exported by the 20th day of the month, "failing which it will be treated as a violation of stockholding limit order and also similar benefit will not be extended to them in future."³⁵³

331. To recall, requiring an entity to provide proof of exportation as a condition for receiving a subsidy payment is one means by which a subsidy may be rendered "conditional on export performance" within the meaning of Article 9.1(a).³⁵⁴ Here, the requirement to submit proof of export was mandatory to achieve full compliance with the monthly stockholding orders, in circumstances where full compliance with the monthly stockholding orders was an eligibility condition for receiving subsidy payments under the buffer stock scheme.

332. The operation of the stockholding orders was amended after DFPD issued the 2018–19 MIEQ order on 28 September 2018.³⁵⁵

333. Firstly, the stockholding orders issued following the introduction of the MIEQ order state that "sugar mills are required to export the entire quantity of Minimum Indicative Export Quota (MIEQ) allocated to them for export during Sugar Season 2018–19".³⁵⁶ That is, the stockholding orders affirmed the mandatory effect of MIEQ orders.

³⁵² Order F. No. 5-1/2018-Sugar Control of the Ministry of Consumer Affairs, Food & Public Distribution of 30 July 2018 (**Exhibit JE-22**), para. 4(i).

³⁵³ Order F. No. 5-1/2018-Sugar Control of the Ministry of Consumer Affairs, Food & Public Distribution of 30 July 2018 (**Exhibit JE-22**), para. 4(ii) (emphasis added); Order F. No. 5-1/2018-Sugar Control of the Ministry of Consumer Affairs, Food & Public Distribution of 31 August 2018 (**Exhibit JE-23**), paragraph 4(ii) (emphasis added).

³⁵⁴ Appellate Body Report, *US – Upland Cotton*, para. 582.

³⁵⁵ DFPD Order of 28 September 2018, "Allocation of sugar factory-wise Minimum Indicative Export Quotas (MIEQ) of sugar for export in sugar season 2018-19 under tradable export scrip schemes" (**Exhibit JE-108**).

³⁵⁶ See for example Order F. No. 5-1/2018-Sugar Control of the Ministry of Consumer Affairs, Food & Public Distribution of 31 October 2018 (**Exhibit JE-25**), para. 6 (emphasis added); Order F. No. 5-1/2018-Sugar Control of the Ministry of

334. Further, the stockholding order issued on 31 October 2018 for the month of November 2018 introduced a requirement for mills to set quarterly export targets and submit them to DFPD so it could monitor their export performance.³⁵⁷ Mills that failed to submit a quarterly export target to DFPD were assigned a deemed quarterly export target equal to one quarter of their overall 2018–19 MIEQ allocation.³⁵⁸ The order then states:

In case, a sugar mill fails to achieve its quarterly export target, the equivalent quantity of un-exported sugar during the said quarter shall be deducted in three equal instalments from the quantity of sugar to be allocated to them in Column 4 of table of monthly stockholding limit order for each month in the subsequent quarter.³⁵⁹

335. Since the February 2019 stockholding order, DFPD has annexed a second table to each monthly order that displays the specific quantities, in metric tonnes, that mills have had deducted from their domestic sales quotas on account of having failed to export against their quarterly export targets, as well as the "incentive" increase in domestic sales quotas that mills have been granted on account of having fulfilled their quarterly export targets.³⁶⁰

336. Comparing the tables attached to the monthly orders and examining them together as a whole reflects a trend: whereas in the earlier months of 2019 a higher number of mills received deductions for failing to export than those that received increases for positive export performance,³⁶¹ the number of mills receiving increases has risen each month to the extent that,

Consumer Affairs, Food & Public Distribution of 30 November 2018 (**Exhibit JE-26**), para. 7; Order F. No. 5-1/2018-Sugar Control of the Ministry of Consumer Affairs, Food & Public Distribution of 28 December 2018 (**Exhibit JE-27**), para. 6; and Order F. No. 5-1/2019-Sugar Control of the Ministry of Consumer Affairs, Food & Public Distribution of 31 January 2019 (**Exhibit JE-28**), para. 4.

³⁵⁷ Order F. No. 5-1/2018-Sugar Control of the Ministry of Consumer Affairs, Food & Public Distribution of 31 October 2018 (**Exhibit JE-25**), para. 6. See also Press information Bureau, Government of India, "Government advises Sugar Mills to undertake export of sugar as per their allocated quantity of 'Minimum Indicative Export Quotas'", 14 December 2018 (**Exhibit JE-122**), paras. 2 and 3.

³⁵⁸ Order F. No. 5-1/2018-Sugar Control of the Ministry of Consumer Affairs, Food & Public Distribution of 30 November 2018 (**Exhibit JE-26**), para. 7; Order F. No. 5-1/2018-Sugar Control of the Ministry of Consumer Affairs, Food & Public Distribution of 28 December 2018 (**Exhibit JE-27**), para. 6.

³⁵⁹ Order F. No. 5-1/2018-Sugar Control of the Ministry of Consumer Affairs, Food & Public Distribution of 31 October 2018 (**Exhibit JE-25**), para. 6.

³⁶⁰ Order F. No. 5-1/2019-Sugar Control of the Ministry of Consumer Affairs, Food & Public Distribution of 31 January 2019 (**Exhibit JE-28**). The tables annexed to the 31 January 2019 and 28 February 2019 (**Exhibit JE-29**) orders include three columns labelled: "Deduction on account of nil export against quarterly export target", "Incentive on account of fulfilling quarterly export target" and "Deduction on account of violation of stock holding limit order for the month of [month]". In the orders issued 25 March 2019 (**Exhibit JE-30**), 30 April 2019 (**Exhibit JE-31**), 31 May 2019 (**Exhibit JE-32**), June 2019 (date unspecified in the order) (**Exhibit JE-33**), 31 July 2019 (**Exhibit JE-34**), 30 August 2019 (**Exhibit JE-35**), 30 September 2019 (**Exhibit JE-36**) and 31 October 2019 (**Exhibit JE-37**), the columns in the annexed tables have been labelled: "Incentive on account of export performance against MIEQ", "Incentive for sacrifice of sugar due to production of ethanol from B-Heavy molasses" and "Deduction on account of violation of stock holding limit order for the month of [month]". That is, the orders ceased articulating any deductions made in respect of failures to export against quarterly MIEQ targets. The column relating to MIEQ has not been included in the 29 November 2019 (**Exhibit JE-38**) or 31 December 2019 (**Exhibit JE-39**) orders.

³⁶¹ See, for example, Order F. No. 5-1/2019-Sugar Control of the Ministry of Consumer Affairs, Food & Public Distribution of 28 February 2019 (**Exhibit JE-29**).

since May 2019³⁶² an overwhelming majority of mills have been receiving incentive increases. The rise in this number reveals that the export incentive created by the monthly stockholding orders is working: more sugar mills are exporting than those that are not.³⁶³

337. The 2019 buffer stock scheme was introduced on 31 July 2019. With the introduction of this iteration of the scheme, the eligibility criteria reverted to the pre-31 December 2018 arrangement whereby receipt of buffer stock subsidies is conditioned upon mills' compliance with a narrower class of individually specified DFPD orders, being the MSP order and monthly stockholding orders, but not including MIEQ orders.³⁶⁴

338. Monthly stockholding orders that have been issued since the introduction of the 2019 buffer stock scheme have, in principle, continued to implement the export incentivising arrangement that was in place during the 2018 buffer stock scheme. That is, mills that have satisfied between 75 and 100% of their 2018–19 MIEQ obligations are "given incentive" of an additional 10% sales allowance above their monthly domestics sales quota; mills that have satisfied between 50 and 75% of their 2018–19 MIEQ obligations are "given incentive" of an additional 7.5% sales allowance above their monthly domestic sales quota; and no deductions are made from domestic sales quotas on the basis of non-fulfilment of MIEQ obligations.³⁶⁵

339. Each mill that fully complies with the stockholding orders (and exports in accordance with the incentive they create) satisfies the eligibility criteria to receive subsidies under the buffer stock scheme. It is therefore objectively clear that the buffer stock subsidy scheme, operating in conjunction with the monthly stockholding orders and MIEQ program, is by its design, structure and modalities of operation, geared towards increased export performance, and, in practice, is objectively achieving this outcome.

340. India's buffer stock subsidies are *de facto* "contingent upon export performance" within the meaning of Article 9.1(a).

³⁶² Order No. 5-1/2019-Sugar Control, Department of Food and Public Distribution, 30 April 2019 (**Exhibit JE-31**).

³⁶³ See, for example, Order F. No. 5-1/2019-Sugar Control of the Ministry of Consumer Affairs, Food & Public Distribution of 31 October 2019 (**Exhibit JE-37**).

³⁶⁴ Notification No. 1(8)/2019-SP-I. of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 31 July 2019 (**Exhibit JE-77**), para. 4(d)(i)-(ii).

³⁶⁵ Order F. No. 5-1/2019-Sugar Control of the Ministry of Consumer Affairs, Food & Public Distribution of 31 July 2019 (**Exhibit JE-34**), para. 3(iv); Order F. No. 5-1/2019-Sugar Control of the Ministry of Consumer Affairs, Food & Public Distribution of 30 August 2019 (**Exhibit JE-35**), para. 3(iv); Order F. No. 5-1/2019-Sugar Control of the Ministry of Consumer Affairs, Food & Public Distribution of 30 September 2019 (**Exhibit JE-36**), para. 3(iv); Order F. No. 5-1/2019-Sugar Control of the Ministry of Consumer Affairs, Food & Public Distribution of 31 October 2019 (**Exhibit JE-37**), para. 3(iv).

341. The facts demonstrate that the monthly stockholding orders tie the buffer stock scheme to actual export performance under the MIEQ program:

- Compliance with monthly stockholding orders is mandatory under the Essential Commodities Act 1955 and Sugar (Control) Order 1966.
- Compliance with monthly stockholding orders is a specific eligibility criterion for receiving buffer stock subsidies.
- Monthly stockholding orders incentivize export by permitting sugar mills to make additional domestic sales, above their allocated domestic sales quotas, of volumes determined by reference to their favourable export performance against their MIEQ obligations, thereby enabling them to generate higher sales revenue.

342. The incentive mechanism works, demonstrated by the fact that the numbers of mills exporting over the course of 2019 has increased.

3. India's transport, freight and marketing subsidies are export subsidies within the meaning of Article 9.1(a)

343. India's transport, freight and marketing subsidies for sugar producers are conditionally available on sugar mills exporting in accordance with MAEQs and are therefore export subsidies within the meaning of Article 9.1(a) of the Agreement on Agriculture.

(a) India's transport, freight and marketing subsidies are "provi[ded] by governments or their agencies"

344. India's transport, freight and marketing subsidies are administered by DFPD. Sugar mills are required to submit claims in two tranches to DFPD in order to receive the subsidy.³⁶⁶ DFPD budget documents indicate that government funds have been allocated to finance the scheme for 2019–20.³⁶⁷ The subsidies are therefore provided by "government"³⁶⁸ within the meaning of Article 9.1(a).

³⁶⁶ Notification No. 1(14)/2019-S.P.-I. of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 12 September 2019 (**Exhibit JE-114**), para. 4.

³⁶⁷ Central Government of India's 2019-20 Expenditure Budget (**Exhibit JE-121**), Notes on Demands and Grants, 2019–20, Department of Food and Public Distribution, p. 58, line 14.

³⁶⁸ Appellate Body Report, *Canada – Dairy*, para. 97.

(b) India's transport, freight and marketing subsidies are "direct subsidies"

345. India's transport, freight and marketing subsidy payments are notionally intended to assist sugar mills to cover expenses associated with exporting sugar in accordance with their MAEQ allocations. However, as with India's production subsidies and buffer stock subsidies, the payments are made directly to farmers to satisfy mills' sugarcane dues and arrears.³⁶⁹ The scheme provides lump sum payments to sugar mills in respect of three categories of marketing or transport expenses.³⁷⁰ However, the amounts of the payments are not linked to actual costs of those expenses; indeed, the scheme's notification states that the payments "would not be reimbursement" of any particular expenses.³⁷¹

346. The transport, freight and marketing subsidy scheme utilizes the same administrative arrangements that the production subsidies and buffer stock subsidies use to distribute payments.³⁷² Australia has established in Section V.C.1(b) that payments made according to that arrangement are "direct subsidies" as they involve a transfer of economic resources from a grantor to a recipient for less than full consideration.³⁷³ Australia considers the same reasoning applies to India's transport, freight and marketing subsidies, and that they are "direct subsidies" within the meaning of Article 9.1(a).

(c) India's transport, freight and marketing subsidies are provided "to a firm, to an industry, to producers of an agricultural product, to a cooperative or other association of such producers, or to a marketing board"

347. Australia has established in Section V.C.1(c) that sugar mills qualify as recipients of export subsidies recognized by Article 9.1(a), and considers this element is satisfied in relation to India's transport, freight and marketing subsidies.

³⁶⁹ Notification No. 1(14)/2019-S.P.-I. of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 12 September 2019 (**Exhibit JE-114**), para. 5(ii).

³⁷⁰ Notification No. 1(14)/2019-S.P.-I. of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 12 September 2019 Notification, No. 1(14)/2019-S.P.-I, Department of Food and Public Distribution, 12 September 2019 (**Exhibit JE-114**), para. 3(i).

³⁷¹ Notification No. 1(14)/2019-S.P.-I. of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 12 September 2019 Notification, No. 1(14)/2019-S.P.-I, Department of Food and Public Distribution, 12 September 2019 (**Exhibit JE-114**), para. 3(iii).

³⁷² Notification No. 1(14)/2019-S.P.-I. of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 12 September 2019 (**Exhibit JE-114**), para. 5(ii).

³⁷³ Appellate Body Report, *Canada – Dairy*, para. 87.

(d) India's transport, freight and marketing subsidies are "contingent on export performance"

348. India's transport, freight and marketing subsidies are *de jure* export contingent because they are, in law, dependent on mills having exported in accordance with their MAEQ allocations.

349. Under the heading "Eligibility", the scheme's notification states:

The sugar mills should have exported sugar up to the extent of their Maximum Admissible Export Quantity (MAEQ) determined by the Central Government for such mills for the sugar season 2019-20, either themselves or through a merchant exporter. However, to become eligible to get assistance a sugar mill would be required to export at least 50% of its MAEQ.³⁷⁴

350. This provision sets out the condition of exportation expressly on the face of the notification, rendering the measure another example of the "simplest" case of *de jure* export contingency.³⁷⁵

351. Finally, India's transport, freight and marketing subsidy scheme requires sugar mills to submit documentary evidence of their export performance in support of their claims for subsidy payments. When submitting claims, mills need to declare the quantity of sugar they have exported³⁷⁶ and submit documentation constituting proof of export.³⁷⁷ As with India's production subsidies and buffer stock subsidies, the transport, freight and marketing payments are dependent for their existence on mills providing evidence of having discharged their export obligations.³⁷⁸

4. India's Duty Free Import Authorisation is an export subsidy within the meaning of Article 9.1(a)

352. India's DFIA scheme exempts eligible sugar exporters from customs import duties on the basis on past export performance. Through this scheme, India provides export subsidies within the meaning of Article 9.1(a).

³⁷⁴ Notification No. 1(14)/2019-S.P.-I. of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 12 September 2019 (**Exhibit JE-114**), para. 2(a).

³⁷⁵ Appellate Body Report, *Canada – Autos*, para. 100. See also Panel Report, *Canada – Aircraft Credits and Guarantees*, para. 7.365 and Panel Report, *US – FSC (Article 21.5 – EC)*, paras. 8.54–8.56.

³⁷⁶ Notification No. 1(14)/2019-S.P.-I. of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 12 September 2019 (**Exhibit JE-114**), Proforma-A, para. 5.

³⁷⁷ Notification No. 1(14)/2019-S.P.-I. of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 12 September 2019 (**Exhibit JE-114**), Proforma-A, para. 9.

³⁷⁸ Appellate Body Report, *US – Upland Cotton*, para. 574.

(a) India's Duty Free Import Authorisation subsidies are "provi[ded] by governments or their agencies..."

353. The DFIA scheme is a component of India's Foreign Trade Policy 2015–2020 (FTP).³⁷⁹ The FTP is implemented by the Department of Commerce, Directorate General of Foreign Trade, a governmental authority within the Ministry of Commerce and Industry. Applications for DFIA are made to Regional Authority offices of the Directorate General of Foreign Trade.³⁸⁰ Accordingly, the DFIA scheme subsidies are provided by "governments or their agencies" within the meaning of Article 9.1(a).

(b) India's Duty Free Import Authorisation subsidies are "direct subsidies"

354. Eligible sugar mills that successfully apply for the DFIA scheme are authorized by the Directorate General of Foreign Trade to import duty free within a defined period of time. The sugar mills that benefit from the scheme have a direct relationship with the Directorate General, without any intermediaries or intervening factors.

355. The financial contribution that the DFIA scheme provides to eligible exporters is in the form of a waiver of import duties. It is a measure through which the government foregoes the collection of revenue that would otherwise be due in absence of the measure.³⁸¹

356. Australia considers that the DFIA scheme creates an "exception" to a "general" rule of taxation, meaning it is permissible to apply a "but for" test in determining whether revenue that had been "otherwise due" is foregone.³⁸²

357. Section 2 of India's Customs Tariff Act 1975 states:

The rates at which duties of customs shall be levied under the Customs Act, 1962, are specified in the First and Second Schedules.³⁸³

358. Chapter 17 of the First Schedule to India's Customs Tariff Act 1975, lists the standard rates of customs duties that must be paid in relation to sugars and sugar confectionery products,³⁸⁴ except for those entitled to certain customs duty reductions or exemptions.

³⁷⁹ Notification 01/2015-2020, Foreign Trade Policy, 2015-2020 (**Exhibit AUS-40**).

³⁸⁰ Notification 01/2015-2020, Foreign Trade Policy, 2015-2020 (**Exhibit AUS-40**), para 4.29.

³⁸¹ Appellate Body Report, *US – FSC (Article 21.5 – EC)*, para. 91.

³⁸² Appellate Body Report, *US – FSC (Article 21.5 – EC)*, para. 91.

³⁸³ Customs Tariff Act 1975 (**Exhibit AUS-38**), Section 2.

³⁸⁴ Customs Tariff Act 1975 (**Exhibit AUS-38**), First Schedule, Chapter 17.

359. "But for" DFIA, sugar importers would be required to pay standard customs duties on sugar imports in accordance with the rates specified in Chapter 17 of the First Schedule. However, by virtue of DFIA, participating enterprises gain an exemption from paying basic customs duty on sugar imports for the duration of the duty free entitlement, namely from 1 October 2019 to 30 September 2021.³⁸⁵

360. In cases of revenue forgone that is otherwise due, as in the case of DFIA, the "benefit" analysis is straightforward: the removed duty liability represents a direct benefit to participating sugar mills as they are better off than they would be had they not received the exemption.

361. The DFIA scheme subsidies are, therefore, "direct subsidies" within the meaning of Article 9.1(a).

(c) India's Duty Free Import Authorisation subsidies are provided "to a firm, to an industry, to producers of an agricultural product, to a cooperative or other association of such producers, or to a marketing board..."

362. Australia has established in Section V.C.1(c) that sugar mills fall within the qualified list of recipients of export subsidies within the meaning of Article 9.1(a), and considers this element is also satisfied in relation to India's DFIA subsidies.

(d) India's Duty Free Import Authorisation subsidies are "...contingent on export performance"

363. The final element of an Article 9.1(a) export subsidy is that it must be contingent on export performance. DFIA is available on a post-export basis in relation to products for which "Standard Input Output Norms" (SION) have been notified.³⁸⁶ White sugar and raw sugar came within the remit of the DFIA scheme as a result of an amendment to the FTP notified on 28 March 2018, which states:

...Export of white sugar under DFIA is allowed under SION SIno-E 52 till 30.9.2018 and DFIA in such cases shall be issued only on or after 1.10.2019. Such DFIA's shall be valid for imports till 30.9.2021.³⁸⁷

...

...No Duty Free Import Authorisation shall be issued for an input which is subjected to pre-import condition or where SION prescribes 'Actual User' condition or Appendix-4J prescribes

³⁸⁵ Notification 01/2015-2020, Foreign Trade Policy, 2015-2020 (**Exhibit AUS-40**), para. 1-2.

³⁸⁶ Notification 01/2015-2020, Foreign Trade Policy, 2015-2020 (**Exhibit AUS-40**), para. 4.27(i).

³⁸⁷ Notification No. 57/2015-2020, Department of Commerce, 28 March 2018 (**Exhibit AUS-41**), para. 1.

pre import condition for such an input. *However, this restriction is not applicable for 'Raw Sugar' on exports made till 30.9.2018.*³⁸⁸

364. The amendment provides that white sugar is a product for which SION have been notified, and that entities that exported white sugar between 28 March and 30 September 2018 may be eligible to receive the import duty exemption between 1 October 2019 and 30 September 2021. DFIA for sugar imports is therefore "tied to" past export performance.

365. The DFIA scheme is a *de jure* export subsidy, as the existence of the export contingency is demonstrated on the basis of the words of the FTP and amending notification that constitute the measure. It is another example of the "simplest" case "in which the condition of exportation is set out expressly... on the face of the law, regulation or other legal instrument".³⁸⁹ Thus, the DFIA subsidies are "contingent upon export performance within the meaning of Article 9.1(a).

5. Conclusion: India's export subsidies are inconsistent with its obligations under the Agreement on Agriculture

366. Australia has demonstrated that India provides export subsidies within the meaning of Article 9.1(a) of the Agreement on Agriculture. Accordingly, India provides export subsidies in a manner inconsistent with its obligations under Articles 3.3 and 8 of the Agreement on Agriculture.

367. If the Panel disagrees with Australia's characterisation of India's export subsidies, Australia requests the Panel find India is nevertheless acting inconsistently with its obligations under Articles 8 and 10.1 of the Agreement on Agriculture.

VI. INDIA'S EXPORT SUBSIDIES ARE INCONSISTENT WITH ITS OBLIGATIONS UNDER THE AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES

368. In the previous Section, Australia established that India provides export subsidies in a manner that is inconsistent with its obligations under Articles 3.3 and 8 of the Agreement on Agriculture. Following the order of analysis Australia outlined in Section IV, and noting that

³⁸⁸ Notification No. 57/2015-2020, Department of Commerce, 28 March 2018 (**Exhibit AUS-41**), para. 2 (emphasis in original).

³⁸⁹ Appellate Body Report, *Canada – Autos*, para. 100. See also Panel Report, *Canada – Aircraft Credits and Guarantees*, para. 7.365 and Panel Report, *US – FSC (Article 21.5 – EC)*, paras. 8.54-8.56.

India's export subsidies are not permitted by the Agreement on Agriculture, Australia considers they are not exempt from actions based on Articles 3.1(a) and 3.2 of the SCM Agreement.³⁹⁰

369. Australia submits that India's production subsidies, buffer stock subsidies, transport, freight and marketing subsidies, and DFIA scheme are also prohibited under Article 3.1(a) of the SCM Agreement and, in providing those subsidies, India acts inconsistently with its obligation under Article 3.2 of the SCM Agreement.

370. This Section proceeds in two parts. Firstly, Australia outlines India's legal obligations in relation to export subsidies under the SCM Agreement. Secondly, Australia establishes that India's export subsidies are prohibited by the SCM Agreement and therefore provided in a manner inconsistent with its obligations under the SCM Agreement.

A. LEGAL STANDARD: INDIA'S OBLIGATIONS UNDER ARTICLE 3 OF THE SCM AGREEMENT

371. Article 3.1(a) of the SCM Agreement prohibits subsidies that are contingent upon export performance. Article 3.2 imposes an obligation on Members to not grant or maintain such export subsidies. In the paragraphs to follow Australia addresses the legal definition of a "subsidy" under Article 1.1, and the "contingent... upon export performance" standard under Article 3.1(a). Australia also addresses the exemption from the applicability of Article 3.1(a) for certain Members by virtue of Article 27.

1. "Subsidies" within the meaning of Article 1.1

372. As a threshold matter, Article 3 of the SCM Agreement applies to governmental actions that meet the definition of a "subsidy" under Article 1. Article 1.1 relevantly provides:

1.1 For the purpose of this Agreement, a subsidy shall be deemed to exist if:

- (a)(1) there is a financial contribution by a government or any public body within the territory of a Member (referred to in this Agreement as "government"), i.e. where:
 - (i) a government practice involves a direct transfer of funds (e.g. grants, loans and equity infusion), potential direct transfers of funds or liabilities (e.g. loan guarantees)
 - (ii) government revenue that is otherwise due is foregone or not collected (e.g. fiscal incentives such as tax credits)¹; ...

³⁹⁰ Panel Report, *US – Upland Cotton*, para. 7.751.

and

(b) a benefit is thereby conferred.

373. To fall within Article 1.1 a measure must be:

- a "financial contribution"
- by a "government or any public body"
- that confers a "benefit" on the recipient.

374. Australia now considers each of these elements in turn.

(a) "...financial contribution..."

375. The subparagraphs to Article 1.1(a)(1) constitute an exhaustive list of governmental actions that are deemed to be a "financial contribution" for the purposes of the SCM Agreement.³⁹¹

376. Article 1.1(a)(1)(i) concerns governmental actions that involve a "direct transfer of funds". This phrase may be read according to the plain and ordinary meaning of its terms. Again, "direct" may be understood as "without intervening factors or intermediaries";³⁹² "transfer" denotes a "conveyance or removal from one place, person, etc. to another...";³⁹³ "funds" may be understood simply as "[a] sum of money, *esp.* one saved or made available for a particular purpose".³⁹⁴

377. On this provision, the Appellate Body has observed:

The direct transfer of funds in subparagraph (i) therefore captures conduct on the part of the government by which money, financial resources, and/or financial claims are made available to a recipient.³⁹⁵

378. Article 1.1(a)(1)(ii) concerns financial contributions in the form of "government revenue that is otherwise due is foregone or not collected..." The term "revenue" may be

³⁹¹ Panel Report, *US – Large Civil Aircraft (2nd complaint)*, para. 7.955.

³⁹² Oxford English Dictionary, OED Online, "direct, adj. and adv." (**Exhibit JE-120**).

³⁹³ Oxford English Dictionary, OED Online, "transfer, n." (**Exhibit AUS-84**).

³⁹⁴ Oxford English Dictionary, OED Online, "fund, n." (**Exhibit AUS-85**).

³⁹⁵ Appellate Body Report, *US – Large Civil Aircraft (2nd complaint)*, para 614.

defined as "[a]n individual source or item of (private or public) income; (also) the amount of income deriving from this."³⁹⁶ Taxation is the quintessential example of government revenue.

379. As noted in Section V.B.3(b), the Appellate Body has explained that in circumstances where a measure at issue is an "exception" to a "general" rule of taxation, it is permissible to apply a "but for" test in determining whether revenue that had been "otherwise due" is foregone.³⁹⁷ The "but for" test involves examining the situation that would have existed but for the presence of the measure and determining whether there would have been a higher tax liability in the absence of the measure.³⁹⁸

(b) "...government or any public body..."

380. The financial contribution in question must be provided by a "government or any public body". Again, the term "government" denotes "[t]he governing power in a country or state; the body of people charged with the duty of governing", or "[t]he continuous exercise of authority over a person, group, etc.; guardianship, protection; control".³⁹⁹

381. The Appellate Body has observed that the term "government" under the SCM Agreement encompasses both the government in the "narrow sense" and "any public body within the territory of a Member".⁴⁰⁰

(c) "...benefit..."

382. A financial contribution that confers a benefit meets the definition of a "subsidy" for the purpose of the SCM Agreement. The definition of "benefit" is "[a]dvantage, profit, good" or "[a] natural advantage or gift". A "benefit" arises when a financial contribution has made "the recipient 'better off' than it would otherwise have been, absent that contribution."⁴⁰¹

383. Article 14 of the SCM Agreement offers relevant context for determining whether a recipient has a "benefit" under Article 1.1(b).⁴⁰² Article 14 cross-references Article 1.1, and provides methodologies for comparing what a recipient receives from government versus what

³⁹⁶ Oxford English Dictionary, OED Online, "revenue, n." (**Exhibit AUS-86**).

³⁹⁷ Appellate Body Report, *US – FSC (Article 21.5 – EC)*, para. 91.

³⁹⁸ Panel Report, *US – FSC*, para. 7.45.

³⁹⁹ Oxford English Dictionary, OED Online, "government, n." (**Exhibit AUS-80**).

⁴⁰⁰ Appellate Body Report, *US – Anti-Dumping and Countervailing Duties (China)*, para. 288.

⁴⁰¹ Appellate Body Report, *US – Large Civil Aircraft (2nd complaint)*, paras. 635 – 636, 662, and 690 (referring to Appellate Body Report, *Canada – Aircraft*, para. 157).

⁴⁰² SCM Agreement, Article 14.

it otherwise could have obtained in the market in relation to a set of examples (i.e. governmental provision of equity, loans, loan guarantees, and goods and services).

384. The Appellate Body has followed the method of establishing the existence of a "benefit" by reference to "the market", and considered that a financial contribution will only confer an advantage if it is provided on terms that are more advantageous than those that would have been available to the recipient on the market.⁴⁰³

2. "Contingent... upon export performance" within the meaning of Article 3.1(a)

385. Article 3 of the SCM Agreement relevantly provides:

3.1 Except as provided in the Agreement on Agriculture, the following subsidies, within the meaning of Article 1, shall be prohibited:

- (a) subsidies contingent, in law or in fact⁴, whether solely or as one of several other conditions, upon export performance, including those illustrated in Annex I ...

3.2 A Member shall neither grant nor maintain subsidies referred to in paragraph 1.

⁴ This standard is met when the facts demonstrate that the granting of a subsidy, without having been made legally contingent upon export performance, is in fact tied to actual or anticipated exportation or export earnings. The mere fact that a subsidy is granted to enterprises which export shall not for that reason alone be considered to be an export subsidy within the meaning of this provision.

386. Subsidies prohibited by Article 3 are deemed to be "specific" within the meaning of Article 2 of the SCM Agreement.⁴⁰⁴

387. To recall, the Appellate Body has explained that there is no reason to read the requirement of "contingent upon export performance" in the Agreement of Agriculture as different from the same requirement imposed by the SCM Agreement, given the two Agreements use precisely the same words to define "export subsidies".⁴⁰⁵

388. Australia has set out the legal standards for export contingency above in Section V.B.3(d) including *de jure* and *de facto* export contingency, and relies on those standards in formulating its arguments under the SCM Agreement in Section VI.B.

⁴⁰³ Panel Report, *Canada – Aircraft*, para. 9.112.

⁴⁰⁴ SCM Agreement, Article 2.3.

⁴⁰⁵ Appellate Body Report, *US – FSC*, para. 141.

3. Applicability of Article 27 of the SCM Agreement

389. In the past, India has benefited from SDT under Article 27 and Annex VII of the SCM Agreement, which exempts certain countries from the prohibition on export subsidies in Article 3.1(a).

390. Australia notes that, as of at least 2017, India is no longer entitled by virtue of Article 27 of the SCM Agreement to an exemption from the application of Article 3.1 concerning prohibited export subsidies. Australia provides reasoning on the inapplicability of Article 27 of the SCM Agreement to the facts in this dispute in **Annex G**.

B. INDIA'S EXPORT SUBSIDIES ARE INCONSISTENT WITH ARTICLE 3 OF THE SCM AGREEMENT

391. India grants export subsidies for sugar in a manner inconsistent with Articles 3.1(a) and 3.2 of the SCM Agreement. Specifically, Australia claims that the following measures implemented by India provide export subsidies within the meaning of the SCM Agreement:

- production subsidy schemes, operating in conjunction with MIEQ;
- buffer stock subsidy schemes, operating in conjunction with MIEQ;
- transport, freight and marketing subsidy schemes, operating in conjunction with MAEQ; and
- the DFIA scheme.

392. Australia presents below its detailed claims and arguments with respect to each of these measures.

1. India's production subsidies are inconsistent with Articles 3.1(a) and 3.2

393. Through its production subsidy schemes, implemented for the 2015–16, 2017–18 and 2018–19 sugar seasons and detailed in **Annex A**, India provides export subsidies inconsistent with Articles 3.1(a) and 3.2 of the SCM Agreement.

(a) India's production subsidies involve a "financial contribution"

394. Under its production subsidy schemes, India makes a "financial contribution" to sugar mills in the form of a "direct transfer of funds" within the meaning of Article 1.1(a)(1)(i).

395. Australia outlined in Section V.C.1(b) the administrative arrangements that India employs in each iteration of its production subsidy scheme to deliver direct payments to sugarcane farmers on behalf of sugar mills, or to make payments directly to sugar mills. The payments were to the value of INR 45 per metric tonne (INR 4.5 per qtl) of sugar produced in the 2015–16 sugar season;⁴⁰⁶ INR 55 per metric tonne (INR 5.5 per qtl) of sugar produced in the 2017–18 sugar season;⁴⁰⁷ and INR 138.80 per metric tonne (INR 13.88 per qtl) of sugar produced in the 2018–19 sugar season.⁴⁰⁸

396. Australia considers this practice constitutes conduct by the Central Government by which financial resources, in this case debt relief or simple monetary payments, are made available to sugar mills,⁴⁰⁹ and is therefore a "financial contribution" within the meaning of Article 1.1(a)(1)(i).

(b) India's production subsidies involve a financial contribution by a "government"

397. India's production subsidies are administered by DFPD, which is a department of the Central Government. Australia relies on the analysis in Section V.C.1(a) for present purposes and considers India's production subsidies are provided by a "government" within the meaning of Article 1.1(a)(1).

(c) India's production subsidies confer a "benefit"

398. India's production subsidies confer a "benefit" on sugar mills within the meaning of Article 1.1(b).

399. Australia has demonstrated in Section V.C.1(b) that India's production subsidies are paid either directly to farmers on behalf of sugar mills to clear sugarcane arrears, or directly to sugar mills that do not owe cane arrears. In both scenarios, sugar mills are left better off than they would be if the payments were not made:⁴¹⁰ they are either relieved of debts, or they

⁴⁰⁶ Notification No. 20(43)/2015-S.P.-I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 2 December 2015 (**Exhibit JE-76**), para. 1–2.

⁴⁰⁷ Notification No. 1(5)/2018-S.P.-I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 9 May 2018 (**Exhibit JE-75**), para. 1 and 3.

⁴⁰⁸ Notification No. 1(14)/2018-S.P.-I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 5 October 2018 ("Scheme for assistance to sugar mills") (**Exhibit JE-74**), para. 1 and 3; and Central Government of India's 2019-20 Expenditure Budget (**Exhibit JE-121**), Notes on Demands and Grants, 2019–20, Department of Food and Public Distribution, pp. 57-58, lines 10-11.

⁴⁰⁹ Appellate Body Report, *US – Large Civil Aircraft (2nd complaint)*, para. 614.

⁴¹⁰ Appellate Body Report, *US – Large Civil Aircraft (2nd complaint)*, paras. 635 – 636, 662, and 690 (referring to Appellate Body Report, *Canada – Aircraft*, para. 157).

simply receive a grant. The sugar mills are not required to pay the funds back in either circumstance.

400. Australia considers there is no basis to perform a market comparison in this case as the payments are effectively a gift from the government, "and it is clear that the market does not give such gifts."⁴¹¹ The context provided by Article 14 of the SCM Agreement confirms this view in that it does not identify any comparable product or methodology for determining a comparison between what a government provides and what is available in the market in circumstances such as these.

(d) India's production subsidies are "contingent upon export performance"

401. India's production subsidies are *de jure* export contingent because they are, in law, conditionally available on mills having discharged export obligations arising from MIEQ orders.

402. Noting again that the export contingency requirement under both the Agreement on Agriculture and the SCM Agreement is the same,⁴¹² Australia relies on the analysis in Section V.C.1(d) for present purposes and considers India's production subsidies are "contingent upon export performance" within the meaning of Article 3.1(a).

403. In conclusion, Australia has demonstrated that India grants production subsidies within the meaning of Article 1.1 of the SCM Agreement that are contingent upon export performance and therefore inconsistent with Articles 3.1(a) and 3.2 of the SCM Agreement.

2. India's buffer stock subsidies are inconsistent with Articles 3.1(a) and 3.2

404. Through its buffer stock subsidy schemes, implemented in 2018 and 2019 and detailed in **Annex C**, India provides export subsidies inconsistent with Articles 3.1(a) and 3.2 of the SCM Agreement.

(a) India's buffer stock subsidies involve a "financial contribution"

405. Under its buffer stock schemes, India makes a "financial contribution" to sugar mills in the form of a "direct transfer of funds" within the meaning of Article 1.1(a)(1)(i).

⁴¹¹ Panel Report, *US – Large Civil Aircraft (2nd complaint)*, para. 7.170.

⁴¹² Appellate Body Report, *US – FSC*, para. 141.

406. Australia has demonstrated in Section V.C.2(b) that, as with India's production subsidies, the buffer stock subsidies are paid directly to farmers on behalf of mills, or directly to mills. The buffer stock scheme utilizes the same administrative arrangements that the production subsidies use to achieve this outcome.⁴¹³ Under both the 2018 and 2019 iterations of the scheme, the value of the payments was determined by reference to interest and insurance costs incurred in holding the stock, which in turn was determined by reference to the value of their stock allocation.⁴¹⁴

407. Australia considers this practice constitutes conduct by the Central Government by which money or financial resources, in this case either debt relief or simple monetary payments, are made available to sugar mills,⁴¹⁵ and is therefore a "financial contribution" within the meaning of Article 1.1(a)(1)(i).

(b) India's buffer stock subsidies involve a financial contribution by a "government"

408. India's buffer stock subsidies are administered by DFPD, a department of the Central Government. The analysis in Section V.C.2(a) applies equally in the present context, and Australia therefore considers India's buffer stock subsidies are provided by a "government" within the meaning of Article 1.1(a)(1).

(c) India's buffer stock subsidies confer a "benefit"

409. India's buffer stock subsidies, as with its production subsidies, are either paid to sugarcane farmers on behalf of sugar mills to clear debts, or are paid directly to sugar mills. Sugar mills are better off in either scenario than they would be had the payments not been made.⁴¹⁶ Australia considers the same reasoning set out in Section VI.B.1(c) in relation to India's production subsidies also applies to India's buffer stock subsidies, and that, accordingly, they confer a "benefit" on sugar mills within the meaning of Article 1.1(b).

⁴¹³ Notification No. 1(6)/2018-SP-I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 15 June 2018 (**Exhibit JE-78**), para. 1.

⁴¹⁴ Notification No. 1(6)/2018-SP-I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 15 June 2018 (**Exhibit JE-78**), para 3; Notification No. 1(8)/2019-SP-I. of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 31 July 2019 (**Exhibit JE-77**), para. 3.

⁴¹⁵ Appellate Body Report, *US – Large Civil Aircraft (2nd complaint)*, para. 614.

⁴¹⁶ Appellate Body Report, *US – Large Civil Aircraft (2nd complaint)*, paras. 635 – 636, 662, and 690 (referring to Appellate Body Report, *Canada – Aircraft*, para. 157).

(d) India's buffer stock subsidies are "contingent upon export performance"

410. Australia presents arguments in Section V.C.2(d) with regard to the *de jure* and *de facto* export contingency of India's buffer stock subsidies. Noting again that the export contingency requirement under both the Agreement on Agriculture and the SCM Agreement is the same,⁴¹⁷ Australia relies on the analysis in Section V.C.2(d) for present purposes and considers India's production subsidies are "contingent upon export performance" within the meaning of Article 3.1(a).

411. In conclusion, Australia has demonstrated that India grants buffer stock subsidies within the meaning of Article 1.1 of the SCM Agreement that are contingent upon export performance, and therefore inconsistent with Articles 3.1(a) and 3.2 of the SCM Agreement.

3. India's transport, freight and marketing subsidies are inconsistent with Articles 3.1(a) and 3.2

412. Through its production transport, freight and marketing assistance scheme, implemented for the 2019–2020, sugar seasons and detailed in **Annex D-03**, India provides export subsidies inconsistent with Articles 3.1(a) and 3.2 of the SCM Agreement.

(a) India's transport, freight and marketing subsidies involve a "financial contribution"

413. Under its transport, freight and marketing subsidy scheme, India makes a "financial contribution" to sugar mills in the form of a "direct transfer of funds" within the meaning of Article 1.1(a)(1)(i).

414. Australia has demonstrated in Section V.C.3(b) that India's transport, freight and marketing subsidy scheme employs the same administrative arrangement utilized under the production subsidy and buffer stock schemes to deliver direct payments to sugarcane farmers on behalf of mills, or directly to mills.⁴¹⁸

415. Australia considers this practice constitutes conduct by the Central Government by which financial resources, namely debt relief or simple monetary payments, are made available

⁴¹⁷ Appellate Body Report, *US – FSC*, para. 141.

⁴¹⁸ Notification No. 1(14)/2019-S.P.-I. of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 12 September 2019 (**Exhibit JE-114**), para. 5(ii).

to sugar mills,⁴¹⁹ and is therefore a "financial contribution" within the meaning of Article 1.1(a)(1)(i).

(b) India's transport, freight and marketing subsidies involve a financial contribution by a "government"

416. India's transport, freight and marketing subsidies are administered by DFPD, which is a department of the Central Government. The analysis presented in Section V.C.3(a) is equally applicable in the present context. Therefore India's transport, freight and marketing subsidies are provided by a "government" within the meaning of Article 1.1(a)(1).

(c) India's transport, freight and marketing subsidies confer a "benefit"

417. Australia has demonstrated in Section V.C.3(b) that India's transport, freight and marketing subsidies are paid either directly to farmers on behalf of sugar mills to clear sugarcane arrears, or directly to sugar mills that do not owe cane arrears. In both scenarios, sugar mills are left better off than they would be if the payments were not made:⁴²⁰ they are either relieved of debts, or they simply receive a grant that they are not required to repay.

418. Australia considers the same reasoning set out in Section VI.B.1(c) in relation to India's production subsidies, and in Section VI.B.2(c) in relation to India's buffer stock subsidies also applies to the transport, freight and marketing subsidies.

419. India's transport, freight and marketing subsidies therefore confer a "benefit" on sugar mills within the meaning of Article 1.1(b).

(d) India's transport, freight and marketing subsidies are "contingent upon export performance"

420. India's transport, freight and marketing subsidies are *de jure* export contingent because they are, in law, conditionally available or dependent on mills having exported at least 50% of their MAEQ allocations.

421. Noting again that the export contingency requirement under both the Agreement on Agriculture and the SCM Agreement is the same,⁴²¹ Australia considers the analysis presented in Section V.C.3(d) to be equally applicable in the present context, and that India's transport,

⁴¹⁹ Appellate Body Report, *US – Large Civil Aircraft (2nd complaint)*, para. 614.

⁴²⁰ Appellate Body Report, *US – Large Civil Aircraft (2nd complaint)*, paras. 635 – 636, 662, and 690 (referring to Appellate Body Report, *Canada – Aircraft*, para. 157).

⁴²¹ Appellate Body Report, *US – FSC*, para. 141.

freight and marketing subsidies are therefore "contingent upon export performance" within the meaning of Article 3.1(a).

422. In conclusion, Australia has demonstrated that India grants transport, freight and marketing subsidies within the meaning of Article 1.1 of the SCM Agreement that are contingent upon export performance and therefore inconsistent with Articles 3.1(a) and 3.2 of the SCM Agreement.

4. India's Duty Free Import Authorisation scheme is inconsistent with Articles 3.1(a) and 3.2

423. Through the DFIA scheme, detailed in **Annex F**, India provides export subsidies inconsistent with Articles 3.1(a) and 3.2 of the SCM Agreement. Australia demonstrates in the following paragraphs that India grants a subsidy within the meaning of Article 1.1 of the SCM Agreement, and that the subsidy is contingent upon export performance within the meaning of Article 3.1(a) of the SCM Agreement.

(a) India's Duty Free Import Authorisation scheme involves a "financial contribution"

424. The financial contribution that India makes to sugar exporters under the DFIA scheme is in the form of "government revenue that is otherwise due is foregone or not collected" within the meaning of Article 1.1(a)(1)(ii).

425. Australia has established in Section V.C.4(b) that the DFIA scheme provides an exception to India's general rules of taxation that constitutes a "financial contribution", and relies on that analysis for present purposes. Under the DFIA scheme India foregoes revenue that is otherwise due within the meaning of Article 1.1(a)(1)(ii) of the SCM Agreement.

(b) India's Duty Free Import Authorisation scheme involves a financial contribution by a "government"

426. India's FTP is published by the Department of Commerce, within the Ministry of Commerce and Industry of the Government of India.⁴²² The Directorate General of Foreign Trade, within the Department of Commerce, issued the amendment to the FTP that enabled the DFIA scheme to apply to sugar.⁴²³ India's customs tariffs system is administered by the

⁴²² Notification 01/2015-2020, Foreign Trade Policy, 2015-2020 (**Exhibit AUS-40**).

⁴²³ Notification 01/2015-2020, Foreign Trade Policy, 2015-2020 (**Exhibit AUS-40**).

Department of Revenue, within India's Ministry of Finance.⁴²⁴ India's DFIA scheme therefore involves a financial contribution by a "government" within the meaning of Article 1.1(a)(1) of the SCM Agreement.

(c) India's Duty Free Import Authorisation scheme confers a "benefit"

427. Through the DFIA scheme, India confers benefits to participating exporters by exempting customs duties normally due to the government. To recall, a benefit analysis under Article 1.1(b) of the SCM Agreements requires a determination of whether a recipient is "better off" because of the financial contribution.⁴²⁵

428. Australia has established in Section V.C.4(b) that where a benefit analysis follows an affirmative finding of financial contribution under Article 1.1(a)(1)(ii), namely revenue foregone that is otherwise due, the analysis is straightforward: "whenever there is revenue foregone by the government, a benefit is conferred."⁴²⁶

429. In the case of India's DFIA scheme, the financial contribution confers a benefit on participating entities within the meaning of Article 1.1(b) to the extent of the basic customs duty exemption. As a result of the exemption, participating enterprises are "better off" as they are not required to pay customs duties otherwise required under India's customs tariff schedule.

(d) India's Duty Free Import Authorisation scheme confers a benefit that is "contingent upon export performance"

430. Australia has established in Section V.C.4(d) that India's DFIA scheme is a *de jure* export subsidy, as the existence of the export contingency is evident on the basis of the words used in the FTP and amending notification that constitute the measure. Noting again that the export contingency requirement under both the Agreement on Agriculture and the SCM Agreement is the same,⁴²⁷ Australia considers India's production subsidies are "contingent upon export performance" within the meaning of Article 3.1(a).

⁴²⁴ Government of India, Department of Revenue, Ministry of Finance, "Tariff (as on 02.02.2018)", <http://www.cbic.gov.in/htdocs-cbec/customs/cst1718-020218/cst1718-0202-idx#> (**Exhibit AUS-42**).

⁴²⁵ Appellate Body Report, *US – Large Civil Aircraft (2nd complaint)*, para. 635. See Appellate Body Report *Canada – Aircraft*, para. 157.

⁴²⁶ Panel Report, *Brazil – Taxation*, para. 7.491.

⁴²⁷ Appellate Body Report, *US – FSC*, para. 141.

431. In summary, through its DFIA scheme, India grants subsidies within the meaning of Article 1.1 of the SCM Agreement that are contingent upon export performance and therefore inconsistent with Articles 3.1(a) and 3.2 of the SCM Agreement.

5. Conclusion: India's export subsidies are inconsistent with its obligations under the SCM Agreement

432. Australia has established that India provides export subsidies in a manner that is inconsistent with its obligations under Article 3.1(a) and 3.2 of the SCM Agreement. This follows Australia having demonstrated in Section V.C. that these subsidies are not authorized by the Agreement on Agriculture. Australia therefore respectfully requests that the Panel find that India's production subsidies, buffer stock subsidies, transport, freight and marketing subsidies and DFIA scheme are export subsidies inconsistent with Article 3.1(a) and 3.2 of the SCM Agreement.

433. Pursuant to Article 4.7 of the SCM Agreement: "If the measure in question is found to be a prohibited subsidy, the panel shall recommend that the subsidizing Member withdraw the subsidy without delay." Moreover, under Article 4.7 of the SCM Agreement, "[i]n this regard, the panel shall specify in its recommendation the time period within which the measure must be withdrawn." Australia further requests that the Panel specify, pursuant to Article 4.7, the time period for withdrawal of India's prohibited export subsidies.

VII. INDIA'S FAILURE TO NOTIFY ITS DOMESTIC SUPPORT AND EXPORT SUBSIDIES IS INCONSISTENT WITH ITS OBLIGATIONS UNDER THE AGREEMENT ON AGRICULTURE, THE SCM AGREEMENT AND THE GENERAL AGREEMENT ON TARIFFS AND TRADE 1994

434. Transparency is a fundamental element of the multilateral trading system. Many WTO agreements require Members to submit notifications of certain trade-related policies or practices to the WTO and other Members. The submission of notifications is a core obligation necessary for ensuring the effectiveness of the rules and obligations agreed by Members. Notifications are an essential mechanism to ensure transparency and facilitate monitoring of compliance with Members' WTO obligations.

435. In this Section Australia establishes that India has failed to meet its WTO obligations to notify its domestic support and export subsidies for sugarcane and sugar. Part A sets out

India's obligations under the Agreement on Agriculture, the SCM Agreement, and the GATT 1994. In Part B Australia demonstrates India's non-compliance with those obligations.

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

436. India has obligations with respect to notifying its support to and subsidies for sugarcane and sugar under Article 18 of the Agreement on Agriculture, Article 25 of the SCM Agreement and Article XVI of the GATT 1994.

1. Notification obligation under the Agreement on Agriculture

437. Compliance with the Agreement on Agriculture is facilitated by the submission of notifications by Members on their relevant levels of support and subsidisation.

438. Article 18 of the Agreement on Agriculture provides (in part):

1. Progress in the implementation of commitments negotiated under the Uruguay Round reform programme shall be reviewed by the Committee on Agriculture.
2. 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, as well as on the basis of such documentation as the Secretariat may be requested to prepare in order to facilitate the review process.
3. In addition to the notifications to be submitted under paragraph 2, any new domestic support measure, or modification of an existing measure, for which exemption from reduction is claimed shall be notified promptly. This notification shall contain details of the new or modified measure and its conformity with the agreed criteria as set out either in Article 6 or Annex 2.

439. The Agreement on Agriculture established the WTO Committee on Agriculture, which oversees the implementation of the Agreement.⁴²⁸ The Committee "shall" review progress in implementing the Uruguay Round reform programme on the basis of Members' notifications.⁴²⁹ The notification requirements and formats were adopted by the Committee at its meeting on 8 June 1995 and are set out in G/AG/2, 30 June 1995.

440. The Committee requires Members with no base or annual commitment levels shown in Section I of Part IV of their Schedule to submit an annual notification of their Current Total

⁴²⁸ Agreement on Agriculture, Articles 17 and 18.1; WT/L/43, 17 February 1995.

⁴²⁹ Agreement on Agriculture, Article 18; Organization of Work and Working Procedures of the Committee on Agriculture adopted by the Committee at its Meeting on 28 March 1995, G/AG/1, para. 2 and 7.

AMS.⁴³⁰ The Committee requires Members with no base or annual commitment levels shown in Section II of Part IV of their Schedule to submit an annual notification – following the end of the year in question – of their export subsidy commitments.⁴³¹

441. The compliance with Members' obligations under the Agreement both in respect of domestic support and export subsidies, and in respect of reviewing progress, is fundamentally supported by the submission of notifications. The timely submission of notifications is essential to enabling the Committee to fulfil its review and oversight function. It is also imperative that notifications be transparent and complete with respect to a Member's measures, and not omit measures that are inconsistent with the Agreement so as to avoid scrutiny and prevent the Committee from performing its review function.

442. In summary, Members are obligated: to comply with the disciplines and their commitments under the Agreement on Agriculture, to review progress in implementing the Agreement through the Committee on Agriculture, and to provide timely and complete notifications to ensure compliance with the substantive provisions of the Agreement.

443. India is accordingly required to notify domestic support and export subsidies to the other Members through its Committee on Agriculture notifications. Further, India has an obligation to notify the other Members of any new or modified domestic support measure that it claims is consistent with its obligations by virtue of exemptions from reduction commitments. This notification must contain details of the measure and its conformity with either Article 6 or Annex 2.

2. Notification obligation under the SCM Agreement

444. Like the Agreement on Agriculture, the SCM Agreement established the WTO Committee on Subsidies and Countervailing Measures, whose responsibilities include examining notifications under Article 25.1 of the SCM Agreement.⁴³²

445. Articles 25.1 and 25.2 of the SCM Agreement provide:

1. Members agree that, without prejudice to the provisions of paragraph 1 of Article XVI of GATT 1994, their notifications of subsidies shall be submitted not later than 30 June of each year and shall conform to the provisions of paragraphs 2 through 6 [of Article 25].

⁴³⁰ G/AG/2, 30 June 1995, p. 11.

⁴³¹ G/AG/2, 30 June 1995, p. 24.

⁴³² SCM Agreement, Articles 24.1 and 26.1.

2. Members shall notify any subsidy as defined in paragraph 1 of Article 1 [of the SCM Agreement], which is specific within the meaning of Article 2 [of the SCM Agreement], granted or maintained within their territories.

446. India must thus notify the Members of subsidies falling within Article 1.1 of the SCM Agreement, which are specific within the meaning of Article 2, that India grants or maintains within its territory.

3. Notification obligation under the GATT 1994

447. As stated in Article 25.1 of the SCM Agreement, the notification requirements under the SCM Agreement are "without prejudice" to a Member's obligations pursuant to Article XVI:1 of the GATT 1994. Article XVI:1 provides, in part:

If any contracting party grants or maintains any subsidy, including any form of income support or price support, which operates directly or indirectly to increase exports of any product from, or to reduce imports of any product into, its territory, it shall notify the CONTRACTING PARTIES in writing of the extent and nature of the subsidization, of the estimated effect of the subsidization on the quantity of the affected product or products imported into or exported from its territory and of the circumstances making the subsidization necessary...

448. India is therefore obliged under 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.⁴³³

B. INDIA HAS FAILED TO NOTIFY ITS DOMESTIC SUPPORT AND SUBSIDIES CONCERNING SUGAR AND SUGARCANE

449. India has failed to notify its domestic support and subsidy measures concerning sugar and sugarcane. Australia sets out below India's failure to comply with its notification obligations under, firstly, the Agreement on Agriculture, secondly, the SCM Agreement, and thirdly – in the alternative – the GATT 1994.

1. India has failed to notify its support and subsidies for sugar and sugarcane as required by the Agreement on Agriculture

450. As Australia has established in Section III, India provides domestic support in favour of producers of sugarcane. This includes domestic support measures that are new or have been modified compared to measures existing at the commencement of the application of the

⁴³³ The "CONTRACTING PARTIES" is to be read as WTO Members.

Agreement on Agriculture. As described above, the FRP has been varied regularly since 1994, as have the SAPs. New measures providing or maintaining support to sugarcane have also been introduced at the central and state level.

451. India's 1995–96 annual domestic support notification included domestic support in favour of producers of sugarcane, but sugarcane has not been included in any of its subsequent annual domestic support notifications.⁴³⁴ As Australia has established in this submission, India has provided non-exempt domestic support to sugarcane including market price support, calculated as an AMS for sugarcane, that is above its permitted *de minimis* level, at least in marketing years 2014–15, 2015–16, 2016–17, 2017–18 and 2018–19. India was therefore required to notify the Membership by submitting notifications including such domestic support to the Committee on Agriculture. It failed to do so.

452. Domestic support in the form of product-specific AMS for sugarcane has not been included in any of India's notifications since 1995–96, though India has notified market price support for rice, wheat, pulses, coarse cereals, jute, mustard seed, rapeseed, cotton, groundnut, soybean, and sunflower, even where it considered this to be below *de minimis*.⁴³⁵

453. India has also not notified the Membership, pursuant to Article 18.3, of any details of any measures that provide domestic support to sugarcane that it may claim are consistent with its obligations by virtue of exemptions from reductions, or details of the conformity of any such measures with either Article 6 or Annex 2. While India included buffer stock operations for sugar as a food security measure in its notification for marketing years 1996–97 and 1997–98,

⁴³⁴ See India's Notification concerning domestic support commitments for marketing year 1995–96, G/AG/N/IND/1, 17 June 1998, in particular Supporting Tables DS:5 and DS:6, pp. 7–8; India's Notification concerning domestic support commitments for marketing years 1996–97 and 1997–98, G/AG/N/IND/2, 2 June 2002, in particular supporting tables DS:4, DS:5 and DS:7, pp. 6–13; India's Notification concerning domestic support commitments for marketing years 1998–99 to 2003–04, G/AG/N/IND/7, 9 June 2011, in particular supporting tables DS:4, DS:5, DS:6 and DS:7; pp. 6–23; India's Notification concerning domestic support commitments for marketing years 2004–05 to 2010–11, G/AG/N/IND/10, 10 September 2014 pp. 7–27 and G/AG/N/IND/10/Corr. 1; India's Notification concerning domestic support commitments for marketing years 2011–12 to 2013–14, G/AG/N/IND/11, 13 July 2017, in particular supporting tables DS:4, DS:5 and DS:7, pp. 5–15; India's Notification concerning domestic support commitments for marketing years 2014–15 to 2015–16, G/AG/N/IND/12, 1 May 2018, in particular supporting tables DS:4, DS:5 and DS:7, pp. 5–11; India's Notification concerning domestic support commitments for marketing year 2016–17, G/AG/N/IND/13, 20 July 2018, in particular supporting tables DS:4, DS:5 and DS:7, and G/AG/N/IND/13/Corr.1; India's Notification concerning domestic support commitments for marketing year 2017–18, G/AG/N/IND/15, 29 March 2019, in particular supporting tables DS:4 and DS5, pp. 5–7.

⁴³⁵ See, for example, G/AG/N/IND/2, 2 June 2002, in particular supporting tables DS:4, DS:5, and DS:7, pp. 6–13; G/AG/N/IND/7, in particular supporting tables DS:4, DS:5, DS:6; and DS:7; pp. 6–23; G/AG/N/IND/10, pp. 7–27; G/AG/N/IND/12, 1 May 2018, in particular supporting tables DS:4, DS:5 and DS:7, pp. 5–11; G/AG/N/IND/11, 13 July 2017, in particular supporting tables DS:4, DS:5, and DS:7, pp. 5–15; 20 July 2018, in particular supporting tables DS:4, DS:5 and DS:7; G/AG/N/IND/15, 29 March 2019, in particular supporting tables DS:4 and DS5, pp. 5–7. By referencing these notifications, Australia does not necessarily accept the accuracy and/or completeness of the notified levels of support.

labelling these exempt from its reduction commitments by virtue of Annex 2,⁴³⁶ India has failed to include such support in its subsequent notifications.

454. With respect to export subsidies, Australia has established in Sections V and VI that India has maintained export subsidies for sugar since at least 2014. India last submitted a notification of its export subsidies for sugar in 2009–10, which covered the marketing years 2004–05 to 2009–10.⁴³⁷ Accordingly, India has not met its obligation to notify the Membership of its export subsidies for sugar.

455. As India has failed to notify the Members of any of its annual domestic support for sugarcane in the Committee on Agriculture subsequent to 1995–1996, and India has not submitted an export subsidy notification for sugar since 2009–10, it has acted inconsistently with Article 18 of the Agreement on Agriculture.

2. India has failed to notify its subsidies as required by the SCM Agreement

456. India is also obliged under Article 25 of the SCM Agreement to notify the Members of subsidies falling within Article 1.1, which are specific within the meaning of Article 2, that India grants or maintains within its territory.

457. Australia has demonstrated in Section VI that India grants or maintains subsidies prohibited under Article 3 of the SCM Agreement. Subsidies prohibited by Article 3 are deemed to be "specific" within the meaning of Article 2 of the SCM Agreement.⁴³⁸

458. As India has failed to notify these prohibited export subsidies since 2009–10, India is in breach of its notification obligations under Article 25 of the SCM Agreement.

3. India has failed to notify its subsidies as required by the GATT 1994

459. If the Panel does not find that India has acted inconsistently with its notification obligations under the Agreement on Agriculture or the SCM Agreement, in the alternative, Australia requests the Panel find that India has failed to comply with Article XVI:1 of the GATT 1994.

⁴³⁶ India's Notification concerning domestic support commitments for marketing years 1996–96, G/AG/N/IND/1, 2 June 2002, DS:1, p. 3.

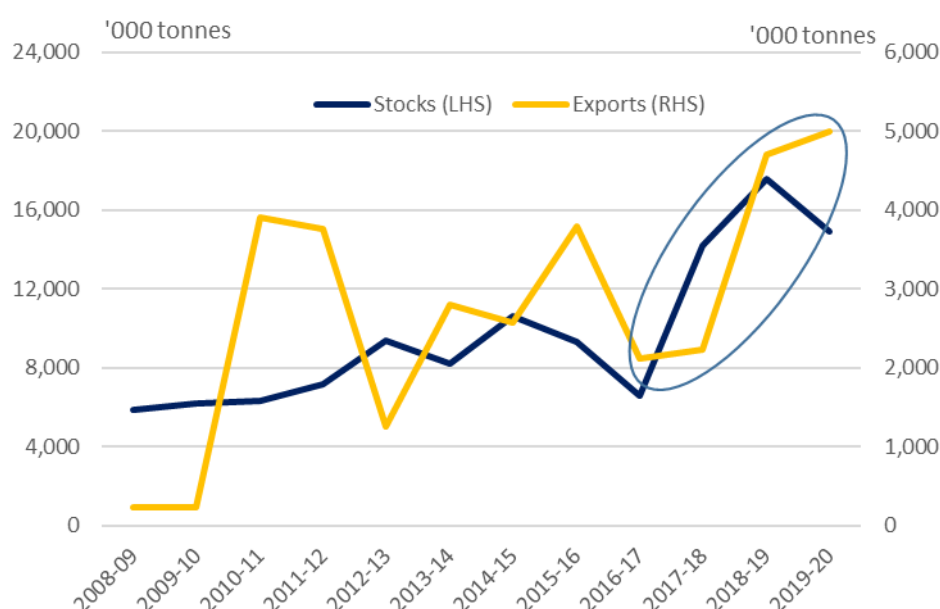
⁴³⁷ See India's Notification concerning export subsidy commitments G/AG/N/IND/9, 30 July 2012, in particular supporting table ES:2, pp. 2–7. By referencing this notification, Australia does not necessarily accept its accuracy and/or completeness.

⁴³⁸ SCM Agreement, Article 2.3.

460. Australia recalls the GATT 1994 requires Members that grant or maintain any subsidy that operates directly or indirectly to increase exports of any product from, or to reduce imports of any product into, its territory, is required to notify the Membership of in writing of the extent and nature of the subsidization, of the estimated effect of the subsidization on the quantity of the affected product or products imported into or exported from its territory and of the circumstances making the subsidization necessary.⁴³⁹

461. India's subsidization of sugarcane and sugar has correlated with a significant rise in sugar exports since 2008, as shown in Figure 5.⁴⁴⁰

FIGURE 5 – Indian sugar stocks and exports 2008–09 to 2019–20



462. India's subsidisation creates oversupply in its domestic market. Australia has established in Section III that India grants and maintains subsidies in the form of product-specific domestic support for sugarcane. This subsidisation encourages and enables production that is decoupled from supply and demand. India's sugar surpluses strongly correlate with surpluses on the global market.⁴⁴¹ Domestic oversupply of sugarcane and sugar has led India to implement mandatory export quotas and export subsidies.

⁴³⁹ GATT 1994, Article XVI, para. 1.

⁴⁴⁰ United States Department of Agriculture, Foreign Agricultural Service, "Sugar: World Markets and Trade", November 2019 (**Exhibit AUS-3**), p. 1.

⁴⁴¹ Green Pool, India Analysis, 9 November 2018 (**Exhibit AUS-2**), p. 1: "There is a strong correlation ($R^2=0.63$) ... Surpluses and deficits in the global market drive price, and India's sugar balance drives the global balance".

463. Australia has demonstrated in Sections V and VI that India also grants and maintains export subsidies that are contingent, in law or in fact, on the export of sugar.

464. Accordingly, India grants or maintains subsidies that operate to directly or indirectly increase exports of sugar from India.

465. Even the announcements by the Government of India regarding its subsidies have a real impact on the global sugar market.⁴⁴² They are taken by the market as a sign that its exports will increase.

466. India was therefore required under Article XVI:1 the GATT 1994 to notify the Membership in writing of the extent and nature of the subsidization, estimated effect of the subsidization on the quantity of the affected product or products imported into or exported from its territory and of the circumstances making the subsidization necessary. India has not so notified the Membership. India's responses to questions by the Members in the Committee on Agriculture have not addressed these matters.⁴⁴³

4. Conclusion: India has failed to meet its notification obligations with respect to sugar and sugarcane

467. India has not met its obligations to notify its domestic support and subsidy measures concerning sugar and sugarcane. It has therefore acted inconsistently with its obligations pursuant to Article 18 of the Agreement on Agriculture and Article 25 of the SCM Agreement, or, in the alternative, pursuant to Article XVI:1 of the GATT 1994. Australia requests that the Panel find accordingly.

⁴⁴² See CCEA, Cabinet approves comprehensive policy to deal with excess sugar production in the country, 26 September 2018 (**Exhibit JE-73**); Green Pool, India Analysis, 9 November 2018 (**Exhibit AUS-2**), p. 2: "[India's] only hope of escaping the mounting domestic stocks in the short term is to export the surplus production onto the global market. The Indian industry has spent the past 6-9 months imploring the Indian government to provide export subsidies for this purpose. The global market fell sharply in 2018 in response to this threat of large compulsory exports (See DFPD 1(4)/2018-S.P-1) under generous subsidies (See DFPD 1(14)/2018-S.P-1). These were set in place on 27 September 2018 and 5 October 2018 respectively... With subsidised exports occurring under the 17/18 export subsidy programme, and widely broadcast debate over further export subsidies and rising cane prices in 2018/19, the market fell to below 10 c/lb – some 40% below the bottom of the range for COP for globally efficient producers of 14-16 c/lb."; See also "India Approves 5 Mil MT of Sugar Exports with Subsidy for 2018–2019 Season", Sugar Asia Magazine, 1 October 2018 (**Exhibit AUS-35**), p. 1, showing that sugar futures hit a decade-low of USD 9.9 cents (USD 0.0983) per pound on 27 September 2018: "The Indian government on 26 September announced 5 million mt of mandated sugar exports for the 2018-19 (October-September) season. To aid the exports, the government announced a Rupee 139/mt (\$1.9/mt) of sugarcane production subsidy along with a three tier transportation subsidy. The export subsidy for 5 million mt of sugar exports works out to \$150/mt, including the production and transportation subsidy, as per S&P Global Platts Analytics... The markets reacted bearishly to the news, with the front-month New York No.11 sugar futures, the global benchmark for raw sugar, plunging... to a 10-year low at 9.90 cents/lb (\$218.26/mt)."

⁴⁴³ See, for example, G/AG/W/181, pp. 6–8; G/AG/W/189, pp. 21–25.

VIII. CONCLUSION

468. For the reasons set out in this submission, Australia requests that the Panel make the following findings:

- Through its market price support and other non-exempt direct payments, India provides domestic support for sugarcane that exceeds the *de minimis* level of 10 per cent of the value of production contrary to India's obligations under Article 7.2(b) of the Agreement on Agriculture, or, in the alternative, Articles 3.2 and 6.3.
- India's production and buffer stock subsidies operating in conjunction with the MIEQ orders; its transport, freight and marketing subsidies linked to MAEQs; and its DFIA scheme:
 - 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
 - constitute 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 any of 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.

469. Pursuant to Article 19.1 of the DSU, Australia requests the Panel to recommend that India bring its measures into conformity with the covered agreements of the WTO mentioned in paragraph 468. In relation to the export subsidies prohibited by Article 3 of the SCM Agreement, Australia further requests that the Panel, consistent with Article 4.7 of the SCM Agreement, recommend India withdraw those measures without delay and within a time-period specified by the Panel.

ANNEX A: PRODUCTION SUBSIDIES

A-01 "Scheme for extending production subsidy to sugar mills" for the 2015–16 season

470. India provided cash grants to sugar mills valued at the amount INR 4.5 per quintal (100 kilograms) of cane crushed "to be used for payment of sugarcane price dues of the current sugar season 2015–16 relating to the Fair and Remunerative Price (FRP) of sugarcane fixed by the Central Government for that sugar season and sugarcane price arrears of previous seasons".⁴⁴⁴ Mills were entitled to receive payments based on either the actual cane they crushed in 2015–16, or based on their average sugar production over the previous three sugar seasons, whichever was lower.⁴⁴⁵ The funds were paid to cane farmers on behalf of mills that owed sugarcane price arrears, or directly to mills that owed no sugarcane price arrears.⁴⁴⁶ Mills were required to submit a utilization certificate demonstrating that funds provided had been used for their intended purpose of paying the sugarcane price.⁴⁴⁷

471. Eligibility for the subsidy was dependent or conditional on mills achieving export targets, i.e. having achieved at least 80% of MIEQ allocations notified on 18 September 2015:

iii. Those mills which have achieved at least 80% of the targets as per terms and conditions under the Minimum Indicative Export Quota (MIEQ) scheme notified on 18.09.2015 and in case of mills having distillation capacities to produce ethanol have achieved 80% of the targets notified on 16.09.2015 by the Department under the EBP shall be eligible for the above production subsidy.⁴⁴⁸

472. The 2015–16 MIEQ order provides that sugar mills that did not export in accordance with MIEQ "shall be deemed to be violating the directives of the Government."⁴⁴⁹

A-02 "Scheme for Assistance to Sugar Mills" for the 2017–18 sugar season

473. India provided cash grants to sugar mills valued at the increased amount of INR 5.5 per quintal (100 kilograms) of cane crushed "to be used for payment of cane price dues of farmers

⁴⁴⁴ Notification No. 20(43)/2015-S.P.-I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 2 December 2015 (**Exhibit JE-76**), paras. 1 and 2.

⁴⁴⁵ Notification No. 20(43)/2015-S.P.-I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 2 December 2015 (**Exhibit JE-76**), para. 2.

Notification No. 20(43)/2015-S.P.-I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 2 December 2015 (**Exhibit JE-76**), para. 3. See also Press Information Bureau, Cabinet Committee on Economic Affairs, "Direct subsidy to sugarcane growers" (Press Release), 18 November 2015 (**Exhibit JE-126**).

⁴⁴⁷ Notification No. 20(43)/2015-S.P.-I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 2 December 2015 (**Exhibit JE-76**), para. 3.

⁴⁴⁸ Notification No. 20(43)/2015-S.P.-I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 2 December 2015 (**Exhibit JE-76**), para. 2(iii).

⁴⁴⁹ DFPD Order of 18 September 2015, "Allocation of sugar factory-wise Minimum Indicative Export Quotas (MIEQ) under tradable export scrip schemes" (**Exhibit JE-109**).

for the current sugar season 2017–18 relating to the Fair and Remunerative Price (FRP) of sugarcane fixed by the Central Government for that sugar season and cane price arrears of previous sugar seasons".⁴⁵⁰ Mills were entitled to receive payments based on either the actual cane they crushed in 2017–18, or based on their average sugar production over the previous two sugar seasons and then present season up until February 2018, whichever was lower.⁴⁵¹ Again, the funds were paid to cane farmers on behalf of mills that owed sugarcane price arrears, or directly to mills that owed no sugarcane price arrears.⁴⁵² Mills were required to submit a utilization certificate demonstrating that funds provided had been used for their intended purpose of paying the sugarcane price to farmers.⁴⁵³

474. Eligibility for the subsidy was conditional on compliance with all DFPD orders during the 2017–18 season:

Mills which fulfill the following conditions, will be eligible for assistance under this Scheme:

...(c) The mill should have fully complied with all the orders/directives of the Department of Food and Public Distribution (DFPD) to the sugar mills during the 2017–18 sugar season.⁴⁵⁴

475. The 2017–18 MIEQ order is an order issued by DFPD. The MIEQ notification includes a provision to the effect that non-complying mills will be deemed to have violated Central Government directives issued under Clause 5 of the Sugar (Control) Order 1966.⁴⁵⁵

A-03 "Scheme for Assistance to Sugar Mills" for the 2018–19 sugar season

⁴⁵⁰ Notification No. 1(5)/2018-S.P.-I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 9 May 2018 (**Exhibit JE-75**), paras. 1 and 3.

⁴⁵¹ Notification No. 1(5)/2018-S.P.-I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 9 May 2018 (**Exhibit JE-75**), para. 3(ii); Press Information Bureau, Ministry of Consumer Affairs, Food and Public Distribution, "Sugar Industries" (Press Release), 23 July 2019 (**Exhibit JE-16**), para. 3; Central Government of India's 2019-20 Expenditure Budget (**Exhibit JE-121**), Notes on Demands and Grants, 2019–20, Department of Food and Public Distribution, p. 57, line 10.

⁴⁵² Notification No. 1(5)/2018-S.P.-I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 9 May 2018 (**Exhibit JE-75**), para. 3.

⁴⁵³ Notification No. 1(5)/2018-S.P.-I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 9 May 2018 (**Exhibit JE-75**), para. 4.

⁴⁵⁴ Notification No. 1(5)/2018-S.P.-I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 9 May 2018 (**Exhibit JE-75**), para., No. 2(c).

⁴⁵⁵ DFPD Order of 28 March 2018, "Allocation of sugar factory-wise Minimum Indicative Export Quotas (MIEQ) under tradable export scrip schemes" (**Exhibit JE-107**), para. 7. The 2017-18 MIEQ order annexed a list setting out an allocation of 20 lakh (2 million) metric tonnes of sugar for export distributed among sugar mills nationally, taking into account each mill's average sugar production of the previous two years and the then current season up to February 2018. Mills undertaking sugar production for the first time in 2017–18 were given an option to export their allocated MIEQ or up to 6% of their sugar production in 2017–18, whichever was less. By subsequent notification on 23 August 2018, the Central Government permitted mills to export sugar produced in either or both the 2017–18 and the 2018–19 seasons towards their 2017–18 allocations: see DFPD Order of 23 August 2018, "Revised allocation of sugar factory-wise Minimum Indicative Export Quotas (MIEQ) under tradable export scrip schemes" (**Exhibit JE-124**).

476. India provided cash grants to sugar mills valued at the further increased amount of INR 13.88 per quintal (INR 138.80 per metric tonne) of cane crushed "to be used for payment of cane price dues of farmers for the sugar season 2018–19 relating to the Fair and Remunerative Price (FRP) of sugarcane fixed by the Central Government for that sugar season and cane price arrears of previous sugar seasons".⁴⁵⁶ Mills were entitled to receive payments based on the actual cane they crushed in 2018–19, or based on their average sugar production over the previous three sugar seasons, whichever was lower.⁴⁵⁷ Again, the funds were paid either to cane farmers on behalf of mills that owed sugarcane price arrears arising from the 2018–19 season FRP and arrears from previous seasons. Mills that owed no sugarcane price arrears received payments directly.⁴⁵⁸ Mills were required to submit a utilization certificate demonstrating that funds provided had been used for their intended purpose of paying the sugarcane price to farmers.⁴⁵⁹

477. Eligibility for the subsidy is conditional on compliance with all DFPD orders during the 2018–19 season:

(c) The mill should have fully complied with all the orders/directives of Department of Food and Public Distribution (DFPD) to the sugar mills for compliance during sugar season 2018-19 till the date of submission of the claim.⁴⁶⁰

⁴⁵⁶ Notification No. 1(14)/2018-S.P.-I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 5 October 2018 ("Scheme for assistance to sugar mills") (**Exhibit JE-74**), paras. 1 and 3; Central Government of India's 2019-20 Expenditure Budget (**Exhibit JE-121**), Notes on Demands and Grants, 2019–20, Department of Food and Public Distribution, p. 58, line 11.

⁴⁵⁷ Notification No. 1(14)/2018-S.P.-I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 5 October 2018 ("Scheme for assistance to sugar mills") (**Exhibit JE-74**), para. 3.

⁴⁵⁸ Notification No. 1(14)/2018-S.P.-I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 5 October 2018 ("Scheme for assistance to sugar mills") (**Exhibit JE-74**), para. 3.

⁴⁵⁹ Notification No. 1(14)/2018-S.P.-I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 5 October 2018 ("Scheme for assistance to sugar mills") (**Exhibit JE-74**), para. 4.

⁴⁶⁰ Notification No. 1(14)/2018-S.P.-I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 5 October 2018 ("Scheme for assistance to sugar mills") (**Exhibit JE-74**), para. 2(c).

478. On 28 September 2018, DFPD announced the MIEQ allocation for the current 2018–19 season.⁴⁶¹ The 2018–19 MIEQ notification articulates that mills "are required" to undertake export:

2. The sugar mills are required to undertake export of raw or white/refined sugar allocated under MIEQ as per Annexure-A or 16.7 kg of sugar per MT of actual cane crushed by them during 2018-19 sugar season, whichever is lower.⁴⁶²

479. The MIEQ Notification also provides that the MIEQ are mandatory in nature:

8. The sugar mills shall ensure export of the Minimum Indicative Export Quota of sugar allocated to them by 30.09.2019.

480. The MIEQ Notification additionally provides that the allocation of MIEQ is "in exercise of powers conferred by Clause 5 of the Sugar (Control) Order, 1966".⁴⁶³

⁴⁶¹ DFPD Order of 28 September 2018, "Allocation of sugar factory-wise Minimum Indicative Export Quotas (MIEQ) of sugar for export in sugar season 2018-19 under tradable export scrip schemes" (**Exhibit JE-108**). The 2018-19 MIEQ order allocated 50 lakh (5 million) metric tonnes of sugar for export distributed nationally among 521 sugar mills that were operational in the 2017–18 season. The allocated quotas take into account each mill's average sugar production in the 2015–16, 2016–17 and 2017–18 seasons. Mills have the option of exporting their MIEQ allocation as set out in the scheme notification's annexure, or 16.7kg of sugar per MT of actual cane crushed, whichever is lower.

⁴⁶² DFPD Order of 28 September 2018, "Allocation of sugar factory-wise Minimum Indicative Export Quotas (MIEQ) of sugar for export in sugar season 2018-19 under tradable export scrip schemes" (**Exhibit JE-108**), para. 2.

⁴⁶³ DFPD Order of 28 September 2018, "Allocation of sugar factory-wise Minimum Indicative Export Quotas (MIEQ) of sugar for export in sugar season 2018-19 under tradable export scrip schemes" (**Exhibit JE-108**), *chapeau*.

ANNEX B: SOFT LOANS

B-01 "Scheme for Extending Financial Assistance to Sugar Undertakings" for the 2013–14 sugar season

481. India implemented the "Scheme for Extending Financial Assistance to Sugar Undertakings" for the 2013–14 sugar season "with a view to improve the liquidity position of sugar factories for enabling them to clear sugarcane price arrears from previous sugar seasons and timely settlement of sugarcane price of current sugar season relating to the Fair and Remunerative Price (FRP) fixed by the Central Government".⁴⁶⁴ The scheme enabled mills to take out loans with participating lending institutions to pay "cane price arrears for previous sugar seasons and timely settlement of cane price of current sugar season relating to the Fair and Remunerative Price (FRP) fixed by the Central Government".⁴⁶⁵

482. The loans were for five year terms with the first two years interest free, and the Central Government financed mills' interest liabilities up to 12%, or the actual interest rates charged by lending institutions, whichever was lower, for the remaining three years.⁴⁶⁶ Mills were required to submit a utilization certificate demonstrating that the loan funds had been used for their intended purpose of paying the sugarcane price.⁴⁶⁷ The scheme remained active until at least 30 September 2019. Budget documents for 2016–17,⁴⁶⁸ 2017–18,⁴⁶⁹ 2018–19⁴⁷⁰ and 2019–20⁴⁷¹ indicate that funds were allocated to maintain the scheme in each of those financial years.

⁴⁶⁴ Notification No. 20-90/2013-SP.-II, Ministry of Consumer Affairs, Food and Public Distribution, 3 January 2014 (**Exhibit AUS-23**).

⁴⁶⁵ Notification No. 20-90/2013-SP.-II, Ministry of Consumer Affairs, Food and Public Distribution, 3 January 2014 (**Exhibit AUS-23**), para. 1; Communication F. No. 3/77/2013-AC, Ministry of Finance, Department of Financial Services, Operational Guidelines for "Scheme for Extending Financial Assistance to Sugar Undertakings", 9 January 2014 (**Exhibit AUS-26**); Communication F. No. 3/77/2013-AC of the Ministry of Finance, Department of Financial Services, 27 January 2014 (**Exhibit AUS-34**); Communication CPP/AKS/613, State Bank of India, 5 February 2014 (**Exhibit AUS-27**); Communication No. 1(1)/2014-SP-I, Ministry of Consumer Affairs, Food and Public Distribution, 19 February 2014 (**Exhibit AUS-36**); Notification No. 1(1)/2014-SDF, Ministry of Consumer Affairs, Food and Public Distribution, 7 August 2014 (**Exhibit AUS-37**).

⁴⁶⁶ Notification No. 20-90/2013-SP.-II, Ministry of Consumer Affairs, Food and Public Distribution, 3 January 2014 (**Exhibit AUS-23**).

⁴⁶⁷ Notification No. 20-90/2013-SP.-II, Ministry of Consumer Affairs, Food and Public Distribution, 3 January 2014 (**Exhibit AUS-23**), para. 5.

⁴⁶⁸ Central Government of India's 2016-17 Expenditure Budget (**Exhibit AUS-47**), Notes on Demands for Grants, 2016-17, Department of Food and Public Distribution, Demand No. 17, pp. 89-90 and 93.

⁴⁶⁹ Central Government of India's 2017-18 Expenditure Budget (**Exhibit JE-125**), Notes on Demands for Grants, 2017-18, Department of Food and Public Distribution, Demand No. 16, pp. 59 and 61.

⁴⁷⁰ Central Government of India's 2018-19 Expenditure Budget (**Exhibit AUS-48**), Notes on Demands for Grants, 2018-19, Department of Food and Public Distribution, Demand No. 16, pp. 57 and 59.

⁴⁷¹ Central Government of India's 2019-20 Expenditure Budget (**Exhibit JE-121**), Notes on Demands and Grants, 2019-20, Department of Food and Public Distribution, p. 58.

B-02 "Scheme for Extending Soft Loan to Sugar Mills" for the 2014–15 sugar season

483. India implemented a soft loan scheme that provided funds "with a view to facilitate payment of cane dues of the farmers for the current sugar season 2014–15".⁴⁷² The scheme enabled mills to take out loans with participating lending institutions to pay "cane price arrears of farmers for the sugar season 2014 –15 relating to the Fair and Remunerative Price (FRP) of sugarcane fixed by the Central Government for that sugar season".⁴⁷³

484. The loans were for a non-specified term, and the Central Government financed mills' interest liabilities up to 10 per cent, or the actual interest rates charged by lending institutions, whichever was lower, for a period of one year.⁴⁷⁴ In a development upon the 2013–14 scheme, funds loaned in accordance with the 2014–15 scheme were paid directly to sugarcane farmers on behalf of mills to satisfy cane dues and arrears.⁴⁷⁵ Mills were required to submit a utilization certificate demonstrating the loan funds had been used for this purpose.⁴⁷⁶

B-03 "Scheme for Extending Soft Loan to Sugar Mills" for the 2018–19 sugar season

485. India implemented a soft loan scheme "with a view to facilitate payment of cane dues of the farmers for the current sugar season 2018 –19".⁴⁷⁷ The scheme enabled mills to take out loans with participating lending institutions to pay "cane price arrears of farmers for the sugar season 2018 –19 relating to the Fair and Remunerative Price (FRP) of sugarcane fixed by the Central Government for that sugar season".⁴⁷⁸ The loans were again for a non-specified term, and the Central Government financed mills' interest liabilities up to 7%, or the actual rates

⁴⁷² Notification No. 1(5)/2015-S.P.-I. of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 23 June 2015 (**Exhibit JE-83**).

⁴⁷³ Notification No. 1(5)/2015-S.P.-I. of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 23 June 2015 (**Exhibit JE-83**), para. 1.

⁴⁷⁴ Notification No. 1(5)/2015-S.P.-I. of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 23 June 2015 (**Exhibit JE-83**), para. 3; Ministry of Consumer Affairs, Food and Public Distribution, Notification No.1(7)/2015-S.P.-I., 5 October 2015 (**Exhibit JE-133**).

⁴⁷⁵ Notification No. 1(5)/2015-S.P.-I. of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 23 June 2015 (**Exhibit JE-83**), para. 3(viii); Ministry of Consumer Affairs, Food and Public Distribution, Notification No. 1(7)/2015-S.P.-I., 18 August 2015 (**Exhibit JE-132**); Press Information Bureau, Cabinet Committee on Economic Affairs, "Direct subsidy to sugarcane growers" (Press Release), 18 November 2015 (**Exhibit JE-126**): "To further help the industry clear cane dues arrears, the Government has disbursed soft loans to the extent of Rs. 4,047 crore. To ensure that farmers are paid their dues expeditiously, the financial assistance has been passed on directly to the sugarcane farmers by the banks after obtaining the list from the mills. Furthermore, the Government has provided one year moratorium on this loan, and will bear the interest subvention cost to the extent of Rs. 600 crore for the said period."

⁴⁷⁶ Notification No. 1(5)/2015-S.P.-I. of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 23 June 2015 (**Exhibit JE-83**), para. 4.

⁴⁷⁷ Notification 1(4)/2019-S.P.-I. of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 2 March 2019 (**Exhibit JE-82**).

⁴⁷⁸ Notification 1(4)/2019-S.P.-I. of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 2 March 2019 (**Exhibit JE-82**), para. 1.

charged by a lending institution, whichever is lower, for a period of one year.⁴⁷⁹ Funds loaned in accordance with the 2018–19 scheme were paid directly to sugarcane farmers on behalf of mills to satisfy cane dues and arrears.⁴⁸⁰ Mills were required to submit a utilization certificate demonstrating the loan funds had been used for this purpose.⁴⁸¹

⁴⁷⁹ Notification 1(4)/2019-S.P.-I. of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 2 March 2019 (**Exhibit JE-82**), para. 3(i). See also Press Information Bureau, Ministry of Consumer Affairs, Food and Public Distribution, "Sugar Industries" (Press Release), 23 July 2019 (**Exhibit JE-16**).

⁴⁸⁰ Notification 1(4)/2019-S.P.-I. of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 2 March 2019 (**Exhibit JE-82**), para. 3(viii).

⁴⁸¹ Notification 1(4)/2019-S.P.-I. of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 2 March 2019 (**Exhibit JE-82**), para. 5.

ANNEX C: BUFFER STOCK SUBSIDIES

C-01 "Scheme for Creation and Maintenance of Buffer Stock of 30 Lakh MT" (2018–19)

486. India implemented the 2018–19 (1 July–30 June) buffer stock subsidy scheme "with a view to improve liquidity of the sugar industry; enabling them to clear cane price arrears of farmers and stabilize domestic sugar price".⁴⁸² The Central Government allocated 30 lakh (3 million) metric tonnes to be held by 447 sugar mills nationally.⁴⁸³ Funds released under the scheme were provided ostensibly "as reimbursement of the carrying cost towards maintenance of the buffer stock" but were "to be used firstly for payment of cane price dues of farmers for the current sugar season 2017–18 as also for arrears of previous seasons".⁴⁸⁴ The value of financial assistance available to individual mills was determined by reference to interest and insurance costs incurred in holding the stock, which in turn was determined by reference to the value of their stock allocation.⁴⁸⁵ As with the production subsidies and soft loans, the buffer stock subsidy funds were paid directly to farmers on behalf of mills to satisfy sugarcane price arrears, and mills that owed no sugarcane price arrears received payments directly.⁴⁸⁶ Mills were again required to submit a utilization certificate demonstrating the subsidy funds had been used for this purpose.⁴⁸⁷

487. From 31 December 2018, mills were required to "fully comply with all the orders/directives issued by Department of Food a Public Distribution for compliance during 2018–19 season"⁴⁸⁸ as a condition for receiving the subsidy in the January–March and April–June 2019 quarters. This includes the 2018–19 MIEQ orders.⁴⁸⁹

⁴⁸² Notification No. 1(6)/2018-SP-I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 15 June 2018 (**Exhibit JE-78**).

⁴⁸³ DFPD Order of 29 June 2018 regarding the final allocation of 30 Lakh MT of buffer stock to sugar mills (**Exhibit JE-123**).

⁴⁸⁴ DFPD Order of 29 June 2018 regarding the final allocation of 30 Lakh MT of buffer stock to sugar mills (**Exhibit JE-123**), para. 1.

⁴⁸⁵ Notification No. 1(6)/2018-SP-I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 15 June 2018 (**Exhibit JE-78**), para. 3.

⁴⁸⁶ Notification No. 1(6)/2018-SP-I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 15 June 2018 (**Exhibit JE-78**), para. 9(a).

⁴⁸⁷ Notification No. 1(6)/2018-SP-I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 15 June 2018 (**Exhibit JE-78**), para. 10.

⁴⁸⁸ Notification No. 1(6)/2018-SP-I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 31 December 2018 (**Exhibit JE-112**).

⁴⁸⁹ DFPD Order of 28 September 2018, "Allocation of sugar factory-wise Minimum Indicative Export Quotas (MIEQ) of sugar for export in sugar season 2018-19 under tradable export scrip schemes" (**Exhibit JE-108**).

**C-02 "Scheme for Creation and Maintenance of Buffer Stock of 40 Lakh MT"
(2019–20)**

488. India implemented the 2019–20 (1 July–30 June) buffer stock subsidy scheme "with a view to improve liquidity of the sugar industry; enabling them to clear cane price arrears of farmers and to stabilize domestic sugar price".⁴⁹⁰ The Central Government increased the allocation in 2019 to 40 lakh (4 million) metric tonnes that is held by 529 sugar mills nationally.⁴⁹¹ Funds released under the scheme are provided ostensibly "as reimbursement of the carrying cost towards maintenance of the buffer stock" but "are to be used firstly for payment of cane price dues of farmers for the current sugar season 2018–19 and 2019–20 as also for arrears of previous sugar seasons".⁴⁹² The value of financial assistance available to individual mills,⁴⁹³ the arrangement whereby funds were paid directly to farmers on the mill's behalf,⁴⁹⁴ and the requirement to submit a utilization certificate⁴⁹⁵ all replicated the 2018–19 iteration of the scheme.

489. The Central Government took sugar mills' MIEQ performance into account when it determined the quantity of buffer stock allocations under the 2019–20 scheme. The notification states:

The Central Government shall make mill-wise allocation of buffer stock having regard to the stock held by it. In case a sugar mill has failed to export any quantity up to June, 2019 against the MIEQ issued via directive dated 28.09.2018 of DFPD, its stock shall be considered after deducting the quantity equivalent to its allocated MIEQ.⁴⁹⁶

490. The value of the subsidy payments available to individual mills is determined by reference to the value of the stock they have been allocated to hold,⁴⁹⁷ and stock value is calculated at the uniform rate of INR 31 per kilogram of sugar,⁴⁹⁸ consistent with the MSP for

⁴⁹⁰ Notification No. 1(8)/2019-SP-I. of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 31 July 2019 (**Exhibit JE-77**).

⁴⁹¹ Ministry of Consumer Affairs, Food and Public Distribution, Order, 26 July 2019 (**Exhibit JE-127**).

⁴⁹² Notification No. 1(8)/2019-SP-I. of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 31 July 2019 (**Exhibit JE-77**), para. 1.

⁴⁹³ Notification No. 1(8)/2019-SP-I. of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 31 July 2019 (**Exhibit JE-77**), para. 3.

⁴⁹⁴ Notification No. 1(8)/2019-SP-I. of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 31 July 2019 (**Exhibit JE-77**), para. 9(a).

⁴⁹⁵ Notification No. 1(8)/2019-SP-I. of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 31 July 2019 (**Exhibit JE-77**), para. 10.

⁴⁹⁶ Notification No. 1(8)/2019-SP-I. of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 31 July 2019 (**Exhibit JE-77**), para. 2.

⁴⁹⁷ Notification No. 1(8)/2019-SP-I. of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 31 July 2019 (**Exhibit JE-77**), para. 3(a) and (b).

⁴⁹⁸ Notification No. 1(8)/2019-SP-I. of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 31 July 2019 (**Exhibit JE-77**), para. 3(d).

sugar. Accordingly, the higher the quantity a mill has been allocated to hold the more valuable their stock is, and their entitlement to the buffer stock subsidy payment increases.

ANNEX D: TRANSPORT, FREIGHT AND MARKETING SUBSIDIES

D-01 "Raw Sugar Export Incentive Scheme" for the 2014–15 sugar season

491. In 2014, India introduced Rule 20B of the Sugar Development Fund Rules 1983 to provide for a scheme for "Defraying expenditure on marketing and promotion services for raw sugar production", also referred to as the "Raw Sugar Export Incentive Scheme".⁴⁹⁹ This scheme provided an export subsidy linked to the payment of sugarcane price arrears. The instrument provided the funds "shall be used for making payment to the farmers and shall be released after adjusting or recovering any amounts, if over-due, towards Sugar Development Loans and LSPEF [Levy Sugar Price Equalisation Fund] dues".⁵⁰⁰

492. Payments were, at least, as follows:

- Feb–Mar 2014: INR 3,300 (USD \$53.20)/mt for sugar produced during the 2013–14 and 2014–15 sugar seasons⁵⁰¹
- Apr–May 2014: INR 2,277/mt⁵⁰²
- Jun–Jul 2014: INR 3,300/mt⁵⁰³
- Aug–Sept 2014: INR 3,371/mt⁵⁰⁴
- Oct 2014–Sept 2015: INR 4,000/mt⁵⁰⁵

⁴⁹⁹ Notification G.S.R. 128(E). of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 28 February 2014 (**Exhibit JE-80**); See Government of India, Department of Food and Public Distribution, Ministry of Consumer Affairs, Food and Public Distribution, "Sugar and Sugarcane Policy", <https://dfpd.gov.in/sugar-sugarcane-policy.htm> (**Exhibit AUS-46**): "Provided financial assistance through 'raw sugar export incentive scheme'. Rs. 425 crore was disbursed under the scheme".

⁵⁰⁰ Notification G.S.R. 128(E). of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 28 February 2014 (**Exhibit JE-80**), para. 9.

⁵⁰¹ Notification G.S.R. 128(E). of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 28 February 2014 (**Exhibit JE-80**), para. 4.

⁵⁰² Ministry of Consumer Affairs, Food and Public Distribution, G.S.R.326(E), 7 May 2014 (**Exhibit JE-129**).

⁵⁰³ Ministry of Consumer Affairs, Food and Public Distribution, G.S.R. 572(E), 8 August 2014 (**Exhibit JE-131**), para. 4.

⁵⁰⁴ Ministry of Consumer Affairs, Food and Public Distribution, G.S.R. 572(E), 8 August 2014 (**Exhibit JE-131**).

⁵⁰⁵ Notification G.S.R. 127(E). of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 27 February 2015, Sugar Development Fund (Amendment) Rules, 2015 (**Exhibit AUS-130**), para. 4; Press Information Bureau, Cabinet Committee on Economic Affairs, "Direct subsidy to sugarcane growers" (Press Release), 18 November 2015 (**Exhibit JE-126**): "To improve liquidity of sugar mills and facilitate payment of cane dues arrears, the Government had increased the export incentive on raw sugar from Rs 3300/MT to Rs. 4000/MT in the sugar season 2014-15".

D-02 "Scheme for defraying expenditure towards internal transport, freight, handling and other charges to facilitate export" for the 2018–19 sugar season

493. In 26 September 2018, India announced the "Scheme for defraying expenditure towards internal transport, freight, handling and other charges to facilitate export"⁵⁰⁶ for the 2018–19 sugar season to the value of INR 1,375 crore (INR 13.75 billion), with distribution as follows:

- INR 1,000 per metric tonne of sugar for mills located within 100 km of ports;
- INR 2,500 per metric tonne of sugar for mills located beyond 100 km from ports and in coastal states; and
- INR 3,000 per metric tonne of sugar for mills located in non-coastal states or actual expenditure, whichever is lower.

494. The subsidies provided were linked to the actual costs of expenditure, but capped as per the announced per tonne amount set out above – that is, mills were able to claim payments of a value equivalent to actual expenditure, or the announced per tonne amount, whichever was lower. The scheme's notification states that the "Purpose of Assistance" is for "[t]he funds to be provided as assistance to facilitate export is to be used for payment of cane price dues of farmers for the sugar season 2018–19 relating to the Fair and Remunerative Price (FRP) of sugarcane fixed by the Central Government for that season and cane price arrears of previous sugar seasons". The subsidy is credited into the accounts of farmers, and must be accompanied by a utilization certificate in the same manner as is required for the production subsidies, soft loans and buffer stock subsidies.

495. Eligibility to receive the payments was conditional on compliance with all DFPD orders during the 2018–19 season:

- (c) The mill should have fully complied with all the orders/directives of Department of Food and Public Distribution (DFPD) to the sugar mills for compliance during sugar season 2018-19 till the date of submission of the claim.⁵⁰⁷

⁵⁰⁶ Notification No. 1(14)/2018-S.P.-I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 5 October 2018 ("Scheme for defraying expenditure towards internal transport, handling and other charges on export") (**Exhibit JE-79**). See also CRISIL, "Policy boost for sugar mills: Exports to pick up despite weak international prices", 3 October 2018 (**Exhibit AUS-70**), p. 3, which suggests this subsidy "is expected to lower export linked transport expenses by 50-60%."

⁵⁰⁷ Notification No. 1(14)/2018-S.P.-I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 5 October 2018 ("Scheme for defraying expenditure towards internal transport, handling and other charges on export") (**Exhibit JE-79**), para. 2(c).

496. Although this eligibility provision adopts the broadly framed "all the orders/directives" of DFPD that is also commonly used in many of India's production subsidy and buffer stock subsidy notifications, a supplementary amendment to the notification made the link between the subsidies paid under the scheme and export under MIEQ explicit:

...The sugar mill which has originally manufactured the raw/white sugar or MIEQ holder in case of export through third party, as the case may be, shall be deemed to have fulfilled export obligation under MIEQ and shall be eligible to receive assistance referred to in the above Scheme in respect of the quantity of refined sugar so exported...⁵⁰⁸

497. On 28 September 2018, DFPD announced the MIEQ allocation for the current 2018–19 season.⁵⁰⁹ The 2018–19 MIEQ notification articulates that mills "are required" to undertake export:

2. The sugar mills are required to undertake export of raw or white/refined sugar allocated under MIEQ as per Annexure-A or 16.7 kg of sugar per MT of actual cane crushed by them during 2018-19 sugar season, whichever is lower.⁵¹⁰

498. The MIEQ Notification also provides that the MIEQ are mandatory in nature:

8. The sugar mills shall ensure export of the Minimum Indicative Export Quota of sugar allocated to them by 30.09.2019.⁵¹¹

499. The MIEQ Notification additionally provides that the allocation of MIEQ is "in exercise of powers conferred by Clause 5 of the Sugar (Control) Order, 1966".⁵¹²

⁵⁰⁸ Ministry of Consumer Affairs, Food and Public Distribution, Notification S.O. 6322(E), 26 December 2018 (**Exhibit JE-128**).

⁵⁰⁹ DFPD Order of 28 September 2018, "Allocation of sugar factory-wise Minimum Indicative Export Quotas (MIEQ) of sugar for export in sugar season 2018-19 under tradable export scrip schemes" (**Exhibit JE-108**). The 2018-19 MIEQ order allocated 50 lakh (5 million) metric tonnes of sugar for export distributed nationally among 521 sugar mills that were operational in the 2017–18 season. The allocated quotas take into account each mill's average sugar production in the 2015–16, 2016–17 and 2017–18 seasons. Mills have the option of exporting their MIEQ allocation as set out in the scheme notification's annexure, or 16.7kg of sugar per MT of actual cane crushed, whichever is lower.

⁵¹⁰ DFPD Order of 28 September 2018, "Allocation of sugar factory-wise Minimum Indicative Export Quotas (MIEQ) of sugar for export in sugar season 2018-19 under tradable export scrip schemes" (**Exhibit JE-108**), para. 2.

⁵¹¹ DFPD Order of 28 September 2018, "Allocation of sugar factory-wise Minimum Indicative Export Quotas (MIEQ) of sugar for export in sugar season 2018-19 under tradable export scrip schemes" (**Exhibit JE-108**), para. 8.

⁵¹² DFPD Order of 28 September 2018, "Allocation of sugar factory-wise Minimum Indicative Export Quotas (MIEQ) of sugar for export in sugar season 2018-19 under tradable export scrip schemes" (**Exhibit JE-108**), *chapeau*.

D-03 "Scheme for providing assistance to sugar mills for expenses on marketing costs including handling, upgrading and other processing costs and costs of international and internal transport and freight charges on export of sugar" for the 2019–20 sugar season

500. On 28 August 2019, India announced a new round of sugar export subsidies for the sugar season 2019–20 (commencing on 1 October 2019), significantly increasing the payment rate, to INR 10,448 per metric tonne.⁵¹³ This will be worth a total of INR 62.7 billion. The funding is again "to be used for payment of cane price dues of farmers for the sugar season 2019–20 and cane price arrears of previous sugar seasons, if any".⁵¹⁴

501. The scheme provides lump sum payments to sugar exporters according to the following values:

- for marketing including handling, quality up-gradation, debagging and re-bagging and other processing costs etc: INR 4400 per metric tonne
- for internal transport and freight charges including loading, unloading, and fobbing etc: INR 3428 per metric tonne
- for ocean freight against shipment from Indian ports to the ports of destination countries etc: INR 2620 per metric tonne

502. The payments for ocean freight are not available for sugar exported via land. All three lump sum categories are provided not as a direct reimbursement, but rather as general assistance for such expenses. Sugar mills cannot claim for other expenses or for costs above the prescribed rates.⁵¹⁵ This appears different to the transport, freight and marketing subsidies provided in 2018–19, which were linked to actual expenditure.

503. The amounts of assistance are to be directly credited into the accounts of farmers, and must be accompanied by a utilization certificate in the same manner as is required for the production subsidies, soft loans and buffer stock subsidies.

⁵¹³ See CRISIL, Impact Note, "Sugar exports seen up 20%, prices 8%", September 2019 (**Exhibit AUS-11**).

⁵¹⁴ Notification No. 1(14)/2019-S.P.-I. of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 12 September 2019 (**Exhibit JE-114**), para. 5(i).

⁵¹⁵ Notification No. 1(14)/2019-S.P.-I. of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 12 September 2019 (**Exhibit JE-114**), paras. 3(ii)-(iii).

504. Eligibility to claim the payments is conditioned upon mills exporting at least 50% of their MAEQ allocations. The notification states:

The sugar mills should have exported sugar up to the extent of their Maximum Admissible Export Quantity (MAEQ) determined by the Central Government for such mills for the sugar season 2019-20, either themselves or through a merchant exporter. However, to become eligible to get assistance a sugar mill would be required to export at least 50% of its MAEQ.⁵¹⁶

⁵¹⁶ Notification No. 1(14)/2019-S.P.-I. of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 12 September 2019 (**Exhibit JE-114**), para. 2(a).

ANNEX E: OTHER STATE-LEVEL MEASURES PROVIDING SUPPORT

E-01 Andhra Pradesh

505. As described in Section III.A.2(a), Andhra Pradesh has offered a purchase tax remittance and budgeted to provide associated assistance to sugar mills.

506. Andhra Pradesh further provides "Loans to cooperative sugar factories for payment of the Fair and Remunerative Price".⁵¹⁷

E-02 Bihar

507. Bihar implemented a soft loan program in 2015 "for payment of the outstanding reed value for the crushing season 2014-15 to the sugarcane producing farmers in the state".⁵¹⁸ Under this program, the state government undertook to cover a portion of sugar mills' interest repayment liabilities for a period of six years, until 2020-21.⁵¹⁹

508. As of 17 May 2018, Bihar offers a rebate of the sugarcane purchase tax for cane purchased in the crushing season 2017–18 to 'new' sugar mills or mills unable to run without state aid.⁵²⁰

509. In March 2019, Bihar introduced a production subsidy or grants program to assist sugar mills to pay cane dues and arrears to sugarcane farmers. The total assistance package is valued at INR 112 crores (INR 1.12 billion).⁵²¹ Eligible sugar mills may claim INR 125 per metric tonne (INR 12.50 per quintal) of sugarcane that they purchased in the 2018–19 sugar season up until 31 January 2019,⁵²² and use the grants to adjust cane dues and arrears from either the 2017–18 or 2018–19 sugar seasons.⁵²³ It appears that the grants are payable to sugar mills

⁵¹⁷ State of Andhra Pradesh's Budget Estimates 2018-19 for Industries and Commerce Department (**Exhibit JE-85**), p. 33; State of Andhra Pradesh's Budget Estimates for Industries and Commerce Department 2017-18 (**Exhibit AUS-62**), p. 30; State of Andhra Pradesh's Budget Estimates for Industries and Commerce Department 2016-17 (**Exhibit JE-134**), p. 37; State of Andhra Pradesh's Budget Estimates 2015-16 for Industries and Commerce Department (**Exhibit JE-86**), p. 41.

⁵¹⁸ Notification of the State government of Bihar, 24 July 2015 (English) (**Exhibit JE-87-B**), "Subject", (original) (**Exhibit JE-87-A**).

⁵¹⁹ Notification of the State government of Bihar, 24 July 2015 (English) (**Exhibit JE-87-B**), para. 3(b), (original) (**Exhibit JE-87-A**).

⁵²⁰ Notification of the Sugarcane Department of the State government of Bihar of 5 March 2019 (English translation) (**Exhibit JE-81-B**), (original) (**Exhibit JE-81-A**); Government of Bihar, Department of Sugarcane Industry, Notification SO. No. 02/Regu-01-505/2017-805 (**Exhibit JE-91**): "In exercise of powers conferred by Section-49 (2) (b) of *Bihar Sugarcane (Regulation of Supply and Purchase) Act*, 1981 as Revised Act (Bihar Act No-11, 1994), the State Government, grants rebate to the Sugar Mills of the state in cane purchase tax for the cane purchased in the crushing season 2017-18." See also Bihar Sugarcane (Regulation of Supply and Purchase) Act 1981 (**Exhibit JE-50**), Section 49.

⁵²¹ Resolution No. 02/Regulation – 01-506/2018-363, Government of Bihar, 5 March 2019 (**Exhibit AUS-71**).

⁵²² Resolution No. 02/Regulation – 01-506/2018-363, Government of Bihar, 5 March 2019 (**Exhibit AUS-71**), para. 2(i).

⁵²³ Resolution No. 02/Regulation – 01-506/2018-363, Government of Bihar, 5 March 2019 (**Exhibit AUS-71**), para. 2(v).

during both the 2018–19 and 2019–20 financial years, with funds for the overall package being allocated from the state budget across both of those financial years.⁵²⁴

E-03 Gujarat

510. Gujarat operates a soft loan scheme called "Scheme (1): Interest relief against Purchase tax / Soft loan to Sugar Co-operative societies".⁵²⁵ Under this scheme, Gujarat provides interest relief to sugar mills that took out private loans in accordance with the Central Government's "Scheme for extending soft loan to sugar mills" notified on 23 June 2015 (see **Annex B-02**). Whereas the Central Government scheme provided interest subvention for one year on loans taken out under the scheme, the Gujarat scheme offers interest subvention on the second and third years of those loans. The scheme limits the amount of interest payable by mills on their loans to 7%. The state government thus pays any interest liability above 7% as may be applied by the lending institution.⁵²⁶

511. Gujarat also operates a soft loan scheme called "Scheme (4): Liquidity support loan to Sugar Co-operative Societies".⁵²⁷ Under this scheme the state government offers loans to sugar mills that are unable to obtain loans from the Reserve Bank of India or the National Bank for Agriculture and Rural Development due to having negative net worth. The instrument outlines the eligibility terms for the scheme as follows:

...the sugar cooperative societies whose net worth is negative, who made profit in the last two years and who did not get liquidity support loan from the last 15 years or have not received subsidy / relief from the state government are eligible for getting loans from the state government, with the objective to sustain trust of the sugarcane producing farmers.⁵²⁸

512. The value of the scheme for the 2018–19 season is INR 200 lakh (INR 20 million). Further evidence for the funding of the program is provided by Government of Gujarat budget estimates papers.⁵²⁹

E-04 Haryana

⁵²⁴ Resolution No. 02/Regulation – 01-506/2018-363, Government of Bihar, 5 March 2019 (**Exhibit AUS-71**).

⁵²⁵ Government of Gujarat, Sugar Director, Scheme (1), "Interest relief against Purchase tax / Soft loan to Sugar Co-operative societies", 18 June 2018 (**Exhibit JE-92**).

⁵²⁶ Government of Gujarat, Sugar Director, Scheme (1), "Interest relief against Purchase tax / Soft loan to Sugar Co-operative societies", 18 June 2018 (**Exhibit JE-92**).

⁵²⁷ Government of Gujarat, Sugar Director, Scheme (4), "Liquidity support loan to Sugar Co-operative Societies", 18 June 2018 (**Exhibit JE-93**).

⁵²⁸ Government of Gujarat, Sugar Director, Scheme (4), "Liquidity support loan to Sugar Co-operative Societies", 18 June 2018 (**Exhibit JE-93**).

⁵²⁹ Government of Gujarat, Budget Estimates of Agriculture, Farmers Welfare & Co-operation Department for 2019-20 (**Exhibit AUS-72**), Demand No. 5, Major Head 2425: Co-operation, p. 141.

513. Haryana has offered "financial assistance to private sugar mills for making payments to the cane growers" and soft loans or loan relief.⁵³⁰ The financial assistance and loans represent up to INR 16 per quintal (INR 160 per metric tonne) and were reportedly to "clear the cane dues of SY [sugar year] 2018".⁵³¹

E-05 Karnataka

514. Karnataka offers a "Payment of Incentive Price for Sugar Cane through Sugar Factories".⁵³² Karnataka operates a revenue-sharing scheme under the Karnataka Sugar Cane (Regulation of Purchase and Supply) Act 2013, which allows sugarcane farmers to receive an incentive sugarcane price higher than the FRP.⁵³³ Karnataka has budgeted a total amount of INR "1.00 lakh", or INR 100,000 for the payment of "incentive price" for sugarcane through sugar factories for the 2018–19 financial year.⁵³⁴

⁵³⁰ Finance Department of the State of Haryana, Budget 2019–20: Explanatory Memorandum on Welfare and Development Schemes (**Exhibit JE-58**), Government of Haryana, Budget 2019–20, Annual Financial Statement and Explanatory Memorandum on the Budget (**Exhibit AUS-65**), Annexure III, pp. III-8; Haryana Detailed Estimate of Capital Expenditure 2018–19 (**Exhibit AUS-32**), Demand No.45, p. 321 and p 340–2; See also Haryana Detailed Estimate of Capital Expenditure 2019–20 (**Exhibit AUS-88**), p. 323 and 342–4; Government of Haryana, Directorate of Information, Public Relations and Languages, "Haryana Government has released Rs.350 crore to the cooperative sugar mills to provide major relief to sugarcane farmers", 28 May 2019 (**Exhibit AUS-33**).

⁵³¹ "State subsidies for farmers to improve mills' liquidity, clear cane dues", Business Standard, 19 October 2018 (**Exhibit JE-94**), noting: "...the Haryana government has also announced financial assistance (subsidy and soft loans) of INR 16 per quintal (INR 1600 per mt) to clear the cane dues of SY2018". See also Government of Haryana, Directorate of Information, Public Relations and Languages, "Haryana Government has released Rs.350 crore to the cooperative sugar mills to provide major relief to sugarcane farmers", 28 May 2019 (**Exhibit AUS-33**).

⁵³² State government of Karnataka's Detailed Budget Estimates of Expenditure for the year 2019-20 (**Exhibit JE-90**), Demand No: 03, p. 44.

⁵³³ Annual Report of the Commissioner for Cane Development and Director of Sugar for the Year 2017-18 (**Exhibit JE-139**), para. 8.

⁵³⁴ State government of Karnataka's Detailed Budget Estimates of Expenditure for the year 2019-20 (**Exhibit JE-90**), Demand No: 03, p. 44.

E-06 Maharashtra

515. Maharashtra has offered a sugarcane purchase tax rebate in 2013–14,⁵³⁵ 2014–15, 2015–16 and 2016–17⁵³⁶ "to give the fair and remunerative price to the farmers".⁵³⁷

E-07 Punjab

516. In 2018–19 Punjab has paid an amount INR 25 per quintal (INR 250 per metric tonne) directly to cane farmers, to a value of INR 52.75 crore (INR 527.5 million).⁵³⁸ This has been described as payment of a part of the SAP on behalf of private sugar mills. Punjab also provided assistance to mills to clear sugarcane arrears for the sugar season 2017–18, to a value of INR 215 crore (INR 2.15 billion). These measures have been outlined by the Central Government as follows:

It has been informed by state government of Punjab that they have also provided Rs.215 crores assistance to co-operative sugar mills to clear the cane arrears of farmers for sugar season 2017-18. For the sugar season 2018-19, the State Government has provided Rs 25/- per qtl. (Rs.52.75 crores) out of the State Agreed Price (SAP) on behalf of private sugar mills till 07-07-2019 to clear cane price arrears.⁵³⁹

⁵³⁵ Maharashtra Purchase Tax on Sugarcane Act 1962 (**Exhibit JE-95**), Section 12B provides: "(1) The State Government may, by notification in the Official Gazette, remit or exempt the whole or any part of the tax paid or payable by any factory or unit for such period or periods, either prospectively or retrospectively, as specified in the notification, ... (e) for the purpose of assisting the sugar factories in the State, to give the fair and remunerative price to the farmers for the years 2013-14 and 2014-15."

⁵³⁶ Section 12B of the Maharashtra Purchase Tax on Sugarcane Act, 1962 was amended in April 2017 to extend the rebate beyond 2014-15: Trade Circular No.VAT/AMD-2017/1A/2/Adm-8, Amendments to the Maharashtra Value Added Tax Act, Sugarcane Purchase Tax Act, Profession Tax Act and Extra Tax Rules, 20 April 2017 (**Exhibit AUS-50**), para. A(2); Government of Maharashtra, Finance Department of the Notification, No. SCPT-1117/CR-03/Taxation-3, 19 April 2017 (**Exhibit JE-96**): "In exercise of the powers conferred by Clause (e) of Section 12B of the Maharashtra Purchase Tax on Sugarcane Act 1962 (Mah. IX of 1962) and all of the powers enabling it in this behalf, the Government of Maharashtra hereby, exempts the whole of the sugarcane purchase tax paid or payable by the sugar factories in the State for the year 2015-16 and 2016-17, to give the fair and remunerative price to the farmers."

⁵³⁸ Press Information Bureau, Ministry of Consumer Affairs, Food and Public Distribution, 'Payment of Dues to Sugarcane-Growing Farmers' (Press Release), 19 July 2019 (**Exhibit JE-97**); Notification of the State Government of Punjab, SAP for the 2018/19 season, 28 November 2019 (**Exhibit JE-61**); see also "Punjab Govt to pay Rs 25 per quintal directly to cane farmers", The Tribune, 6 December 2018, <https://www.tribuneindia.com/news/archive/pvt-sugar-mill-owners-to-clear-payments-of-cane-growers-capt-amarinder-693812> (**Exhibit AUS-66**).

⁵³⁹ Press Information Bureau, Ministry of Consumer Affairs, Food and Public Distribution, 'Payment of Dues to Sugarcane-Growing Farmers' (Press Release), 19 July 2019 (**Exhibit JE-97**).

E-08 Tamil Nadu

517. Tamil Nadu offers "Loans to Co-operative Sugar Mills".⁵⁴⁰

518. As described in Section III.A.2(e) and Section III.C.2(c), Tamil Nadu is transitioning to a revenue sharing model,⁵⁴¹ and introduced on 24 July 2018, a "transitional production incentive" payment to cane farmers, "to safeguard the farmers' interests until the revenue sharing model was fully implemented".⁵⁴²

E-09 Telangana

519. Telangana has budgeted for "Assistance to Cane Suppliers as Purchase Tax Incentive" in 2018–19.⁵⁴³ It is not clear if this is to pay the sugarcane price or is provided to producers as an amount in addition to the sugarcane price.

E-10 Uttar Pradesh

520. Uttar Pradesh offered a rebate on the sugarcane purchase tax payable on cane purchased during crushing season 2014–15 to assist "sugar mills facing hardship in paying cane price to farmers in the with a view to facilitate them make payment of cane price to cane farmers in a better way at earliest" [sic].⁵⁴⁴ The rebate was equivalent to INR 2 per quintal (INR 20 per metric tonne) of cane actually crushed during the 2014–15 season.⁵⁴⁵ On 28 January 2016, the government granted the rebate for the 2015–16 sugar season, with the same terms as for the 2014–15 season.⁵⁴⁶

521. Uttar Pradesh has offered an official government guarantee, and waiver of guarantee fees, on loans taken out by sugar mills in the state under the Central Government's "Scheme for extending soft loan to sugar mills" notified on 23 June 2015 (see **Annex B-02**).⁵⁴⁷

⁵⁴⁰ See Government of Tamil Nadu, Budget Estimate 2019–20, Industries Department, Demand 27 (**Exhibit AUS-55**), pp. 12, 51 and 62.

⁵⁴¹ Speech of Thiru O. Panneerselvam, Hon'ble Deputy Chief Minister, Government of Tamil Nadu, presenting the Budget for the year 2018-2019 to the Legislative Assembly on 15th March 2018 (**Exhibit JE-89**), pp. 19–20.

⁵⁴² Order G.O.(Ms).No.191, Government of Tamil Nadu, Agriculture (S1) Department, 24 July 2018 (**Exhibit AUS-54**); Tamil Nadu Sugar Factories Control Act 1949 (**Exhibit JE-67**).

⁵⁴³ Government of Telangana, Industries and Commerce Department, Budget Estimates 2018-19 (**Exhibit JE-98**), p. 31.

⁵⁴⁴ Communication No. 1112/एस.ची.उ.अनु-1/13-2503/2010, Sugarcane and Sugar Commissioner Uttar Pradesh, 25 November 2014 (English translation) (**Exhibit AUS-73-B**), (original) (**Exhibit AUS-73-A**).

⁵⁴⁵ Communication No. 1112/एस.ची.उ.अनु-1/13-2503/2010, Sugarcane and Sugar Commissioner Uttar Pradesh, 25 November 2014 (English translation) (**Exhibit AUS-73-B**), para. 2, (original) (**Exhibit AUS-73-A**).

⁵⁴⁶ Communication No. 1/2016/119/एस.ची.उ.अनु-1/16-2503/2010, Sugarcane and Sugar Commissioner Uttar Pradesh, 28 January 2016 (English translation) (**Exhibit AUS-74-B**), (original) (**Exhibit AUS-74-A**).

⁵⁴⁷ Communication No. 11/2015/1081 एस.सी/18-2-2015/2014, Government of Uttar Pradesh, 24 September 2015 (English translation) (**Exhibit AUS-75-B**), (original) (**Exhibit AUS-75-A**).

The guarantee and guarantee fee waiver was offered "with a view to streamline the payment of sugarcane arrear to farmers... in order to meliorate sugarcane price arrear situation of Sugar Mills for the sugarcane season 2014–15" [sic].⁵⁴⁸ The guarantee was to the value of INR 139.90 crore (INR 1.399 billion) and was made available to 22 mills – i.e. 22 members of the Uttar Pradesh Sahkari Chini Mills Association Ltd.

522. In May 2018, the state government approved expenditure of INR 125.00 crore (INR 1.25 billion) to providing loans to sugar mills of the Uttar Pradesh Co-operative Sugar Mills Association Ltd for the purpose of paying sugarcane price arrears for the 2016–17 sugar season.⁵⁴⁹ Under the measure, loans were offered for a ten year term at an interest rate of 14%, with the possibility of a 2.5% interest rebate if regular repayments are maintained.⁵⁵⁰ Repayment of the first instalment and interest on loans issued under the scheme fell due on 12 May 2019, one year after the issue of the order, and is required to be paid directly to the Accountant General of the Government of Uttar Pradesh.⁵⁵¹

523. In September 2018 Uttar Pradesh provided a soft loan of INR 4,000 crore (INR 40 billion) at an interest rate of 5% for five years to sugar mills that had paid at least 30% of their total cane dues, with compounding interest of 12% charged in case of default.⁵⁵²

524. Uttar Pradesh provided financial assistance of INR 4.5 per quintal (INR 45 per metric tonne) against the purchase of cane by sugar mills for the crushing season 2017–18.⁵⁵³

⁵⁴⁸ Communication No. 11/2015/1081 ए.सी.सी/18-2-2015/2014, Government of Uttar Pradesh, 24 September 2015 (English translation) (**Exhibit AUS-75-B**), *chapeau*, (original) (**Exhibit AUS-75-A**), p. 1.

⁵⁴⁹ Communication No. 1/2018/434/46-2-2018-102 (1)/18, Government of Uttar Pradesh, 12 May 2018 (English translation) (**Exhibit AUS-76-B**), (original) (**Exhibit AUS-76-A**).

⁵⁵⁰ Communication No. 1/2018/434/46-2-2018-102 (1)/18, Government of Uttar Pradesh, 12 May 2018 (English translation) (**Exhibit AUS-76-B**), paras. 1(i)-(ii), (original) (**Exhibit AUS-76-A**).

⁵⁵¹ Communication No. 1/2018/434/46-2-2018-102 (1)/18, Government of Uttar Pradesh, 12 May 2018 (English translation) (**Exhibit AUS-76-B**), paras. (v) and 4, (original) (**Exhibit AUS-76-A**).

⁵⁵² "Sweet & Sour: UP offers Rs 4000 crore loan, subsidy to clear cane dues", Financial Express, 26 September 2018, <https://www.financialexpress.com/industry/sweet-sour-up-offers-rs-4000-crore-loan-subsidy-to-clear-cane-dues/1326772/> (**Exhibit AUS-77**): "Under immense pressure to get the cane dues of the last season cleared urgently before the new season begins in less than a month's time, the Yogi Adityanath government in Uttar Pradesh on Tuesday announced a soft loan of Rs 4,000 crore plus a subsidy of Rs 4.50/quintal to clear the dues of the farmers by November 30. Briefing newsmen after the cabinet meeting, the chief minister said the soft loans will be provided through banks and other financial institutions on an interest rate of 5% for five years to all those sugar mills that have paid at least 30% of their total cane dues. In case of default, a compounding interest of 12% would be charged. "The prices of sugar in domestic and international markets have reached an all-time low, which is one of the reasons why mills are unable to clear their dues. This soft loan will help the industry in clearing these dues," said an official in the department."

⁵⁵³ Press Information Bureau, Information and Public Relations Department, Uttar Pradesh, "Chief Minister reviews operations of sugar mills, cane purchase and payments at a high-level meeting", 20 November 2018 (**Exhibit AUS-78**): "...the State Government has provided financial assistance worth Rs. 500 crore against purchase of cane Rs. 4.50 per quintal, by sugar mills. Under this, the first instalment of Rs 160 crore has been released, of which the payment process is underway."

525. On 4 April 2019, Uttar Pradesh approved expenditure of INR 25 crore (INR 250 million) to provide loans to three specific Uttar Pradesh sugar mills, Mohiuddinpur (Meerut), Pipaiich (Gorakhpur) and Mundeve (settlement), "for the payment of outstanding sugarcane value... for the crushing season 2018–19."⁵⁵⁴ These loans were offered on the same terms as those announced in the 12 May 2018 order, i.e. at an interest rate of 14%, with the possibility of a 2.5% rebate if regular repayments are maintained, for a ten year term.⁵⁵⁵

In the next one week the amount through Escrow account will be transferred to the bank accounts of the cane farmers"; See also "Sweet & Sour: UP offers Rs 4000 crore loan, subsidy to clear cane dues", Financial Express, 26 September 2018, <https://www.financialexpress.com/industry/sweet-sour-up-offers-rs-4000-crore-loan-subsidy-to-clear-cane-dues/1326772/> (**Exhibit AUS-77**) and "State subsidies for farmers to improve mills' liquidity, clear cane dues", Business Standard, 19 October 2018 (**Exhibit JE-94**).

⁵⁵⁴ Notification of the State government of Uttar Pradesh of 4 April 2019 (English translation) (**Exhibit JE-84-B**) (original) (**Exhibit JE-84-A**), para. 1.

⁵⁵⁵ Notification of the State government of Uttar Pradesh of 4 April 2019 (English translation) (**Exhibit JE-84-B**), para. 3(b), (original) (**Exhibit JE-84-A**).

ANNEX F: DUTY FREE IMPORT AUTHORISATION SCHEME

526. Section 5 of the Foreign Trade (Development and Regulation) Act 1992 enables the Central Government to announce a foreign trade policy, and to amend it from time to time.⁵⁵⁶ On 1 April 2015, the Central Government issued the Foreign Trade Policy 2015–2020 (FTP). The FTP covers a broad range of matters including trade facilitation, customs duties and procedures, export promotion, and trade disputes.⁵⁵⁷

527. Chapter 4 of the FTP, titled "Duty Exemption / Remission Schemes" provides that "[s]chemes under this Chapter enable duty free import of inputs for export production...".⁵⁵⁸ "Advance Authorisation" (AA) and the "Duty Free Import Authorisation" (DFIA) scheme are duty exemption schemes promulgated under Chapter 4.⁵⁵⁹

528. The DFIA scheme enables authorisation to be issued to allow duty free import of inputs that are to be used for export production.⁵⁶⁰ Authorisation under the scheme provides exemption from payment of Basic Customs Duty.⁵⁶¹ DFIA is available on a post-export basis in relation to products for which SION have been notified.⁵⁶² A minimum value addition of 20% is required to be achieved from the imported input to the exported product.⁵⁶³ Applications for DFIA can be filed up to 12 months before the export of the product, and within a period of 12 months from export or 6 months from the date of realisation of export proceeds, whichever it later, and may be extended to 24 months.⁵⁶⁴

529. On 28 March 2018,⁵⁶⁵ the Directorate General of Foreign Trade amended the FTP to insert the following two subparagraphs:

1. Para 4.25 (c) is amended to read as under:

(c) Export of white sugar under DFIA is allowed under SION SI.No-E 52 till 30.9.2018 and DFIA in such cases shall be issued only on or after 1.10.2019. Such DFIA's shall be valid for imports till 30.9.2021

⁵⁵⁶ Foreign Trade (Development and Regulation) Act 1992 (**Exhibit AUS-39**), Section 5.

⁵⁵⁷ Notification 01/2015-2020, Foreign Trade Policy, 2015-2020 (**Exhibit AUS-40**).

⁵⁵⁸ Notification 01/2015-2020, Foreign Trade Policy, 2015-2020 (**Exhibit AUS-40**), p. 71, para. 4.00.

⁵⁵⁹ Notification 01/2015-2020, Foreign Trade Policy, 2015-2020 (**Exhibit AUS-40**), p. 71, para. 4.01(a)(i)-(ii).

⁵⁶⁰ Notification 01/2015-2020, Foreign Trade Policy, 2015-2020 (**Exhibit AUS-40**), p. 83, para 4.25.

⁵⁶¹ Notification 01/2015-2020, Foreign Trade Policy, 2015-2020 (**Exhibit AUS-40**), p. 84, para 4.26(i).

⁵⁶² Notification 01/2015-2020, Foreign Trade Policy, 2015-2020 (**Exhibit AUS-40**), p. 84, para 4.27(i).

⁵⁶³ Notification 01/2015-2020, Foreign Trade Policy, 2015-2020 (**Exhibit AUS-40**), p. 85, para 4.28.

⁵⁶⁴ Notification 01/2015-2020, Foreign Trade Policy, 2015-2020 (**Exhibit AUS-40**), p. 85, para 4.29.

⁵⁶⁵ Notification No. 57/2015-2020, Department of Commerce, 28 March 2018 (**Exhibit AUS-41**).

2. Para 4.27(iv) is amended to read as under:

(iv) No Duty Free Import Authorisation shall be issued for an input which is subjected to pre-import condition to pre-import condition or where SION prescribes 'Actual User' condition or Appendix-4J prescribes pre import condition for such an input. However, this restriction is not applicable for 'Raw Sugar' on exports made till 30.9.2018.

530. The effect of the insertion of paragraph 4.25(c) is that mills that exported white sugar between 28 March 2018 (the date of the notification) and 30 September 2018 are eligible to import raw sugar duty-free between 1 October 2019 and 30 September 2021. That is, mills that exported during the 2017–18 sugar season are eligible to have import duties waived on imports to take place during the 2019–20 and 2020–21 sugar seasons.

531. In a press release of 2 May 2018, the Central Government promoted DFIA as one among other measures implemented to support the sugar industry: "Further, to facilitate and incentivize export of surplus sugar by sugar mills, Government has allowed Duty Free Import Authorization (DFIA) Scheme in respect of sugar."⁵⁶⁶

⁵⁶⁶ Press Information Bureau, Cabinet Committee on Economic Affairs, "Cabinet approves financial assistance to sugar mills for clearing cane dues of farmers (Press Release), 2 May 2018 (**Exhibit AUS-79**), para. (e).

ANNEX G: APPLICABILITY OF ARTICLE 27 OF THE SCM AGREEMENT

532. Article 27 of the SCM Agreement relevantly provides that:

27.2 The prohibition of paragraph 1(a) of Article 3 shall not apply to:

- (a) developing country Members referred to in Annex VII.
- (b) other developing country Members for a period of eight years from the date of entry into force of the WTO Agreement, subject to compliance with the provisions in paragraph 4.⁵⁶⁷

533. Annex VII to the SCM Agreement provides that:

The developing country Members **not** subject to the provisions of paragraph 1(a) of Article 3 under the terms of paragraph 2(a) of Article 27 are:

- (a) Least developed countries designated as such by the UN which are Members of the WTO.
- (b) Each of the following developing countries which are Members of the WTO **shall be subject to the provisions which are applicable to other developing country Members according to paragraph 2(b) of Article 27 when GNP per capita has reached \$1,000 per annum**⁶⁸: Bolivia, Cameroon, Congo, Côte d'Ivoire, Dominican Republic, Egypt, Ghana, Guatemala, Guyana, **India**, Kenya, Morocco, Nicaragua, Nigeria, Pakistan, Philippines, Senegal, Sri Lanka, and Zimbabwe.

⁶⁸ The inclusion of developing country Members in this paragraph (b) is based on the most recent data from the World Bank on GNP per capita.

(emphasis added)

534. A methodology was established for calculating GNP per capita for the purposes of Article 27.2 and Annex VII of the SCM Agreement. Paragraph 10.1 of the 2001 Doha Ministerial Decision on Implementation-Related Issues and Concerns⁵⁶⁸ (Implementation Decision) stated that Ministers:

Agree that Annex VII(b) to the Agreement on Subsidies and Countervailing Measures includes the Members that are listed therein until their **GNP per capita reaches US\$1000 in constant 1990 dollars for three consecutive years**. This decision will enter into effect upon the adoption by the Committee on Subsidies and Countervailing Measures of an appropriate methodology for calculating constant 1990 dollars. If, however, the Committee on Subsidies and Countervailing Measures does not reach a consensus agreement on an appropriate

⁵⁶⁷ Paragraph 4 of Article 27 deals with requirements for phasing out export subsidies, explained further below.

⁵⁶⁸ WT/MIN(01)/17.

methodology by 1 January 2003, the methodology proposed by the Chairman of the Committee set forth in G/SCM/38, Appendix 2 shall be applied.⁵⁶⁹

535. According to the Implementation Decision and in light of no subsequent consensus being reached in the Committee, the methodology set out in the Chairman's report has been applied by the WTO Secretariat to the interpretation of Annex VII. This methodology, in simple terms, seeks to use 1990 GNP per capita figures as a fixed starting point and then adjusted to account for real growth. The formula is designed to account for the effects of domestic and global inflation in developing countries. Where GNP per capita is not adjusted for inflation, it may overstate a country's rate of economic development. Accordingly, fixing the GNP per capita at a point in time (i.e. at constant 1990 US dollars) provides an inflation-adjusted GNP per capita formula, which may better represent a developing country's real economic growth.

536. Under this formula, if India's GDP were to exceed the \$1000 constant 1990 USD limit for three consecutive years, it would no longer be eligible for the exemption in Article 27.2(a).

537. The Chairman's methodology indicated that the WTO Secretariat should update the calculations every year when the data became available, with the results circulated to all Members. The WTO Secretariat has performed this role annually since 2003. In 2017, India was found by the WTO Secretariat to have exceeded the limit for three consecutive years in 2013, 2014 and 2015.⁵⁷⁰ Accordingly, India was taken off the list of countries eligible for the Special and Differential treatment exemption via Annex VII of the SCM Agreement.

538. Therefore, India is subject to the provisions of Article 27.2(b) of the SCM Agreement, which applied for a period of eight years from the date of entry into force of the WTO Agreement,⁵⁷¹ a period which has now passed. Accordingly, the prohibition under Article 3.1(a) of the SCM Agreement applies to India.

⁵⁶⁹ WT/MIN(01)/17.

⁵⁷⁰ Secretariat Note G/SCM/110/Add.14 of 11 July 2017 provided that "Accordingly, Annex VII(b) to the *Agreement on Subsidies and Countervailing Measures* includes the following Members that are listed therein until their GNP per capita reaches US\$1,000 in constant 1990 dollars for three consecutive years: Bolivia, Plurinational State of; Cameroon; Congo; Côte d'Ivoire; Ghana; Honduras; Kenya; Nicaragua; Nigeria; Pakistan; Senegal; and Zimbabwe." This may be contrasted to Secretariat Note G/SCM/110/Add.13 of 19 May 2016, which provided that "Accordingly, Annex VII(b) to the *Agreement on Subsidies and Countervailing Measures* includes the following Members that are listed therein until their GNP per capita reaches US\$1,000 in constant 1990 dollars for three consecutive years: Bolivia, Plurinational State of; Cameroon; Congo; Côte d'Ivoire; Ghana; Guyana; Honduras; India; Kenya; Nicaragua; Nigeria; Pakistan; Senegal; and Zimbabwe." (emphasis added). See also Secretariat Note G/SCM/110/Add. 15 of 20 April 2018.

⁵⁷¹ SCM Agreement, Article 27.3.

539. Australia notes the recent decision of the panel in *India – Export Related Measures*, which states:

It is an undisputed fact that India has graduated from Annex VII(b). The text of Article 27.2(b), in its context and in light of the object and purpose of the SCM Agreement, leads us to conclude that the eight-year transition period from the date of entry into force of the WTO Agreement set forth in Article 27.2(b) has expired on 1 January 2003, also for Members graduating from Annex VII(b). Therefore, we find that Article 27 no longer excludes India from the application of Article 3.1(a) of the SCM Agreement.⁵⁷²

⁵⁷² Panel Report, *India – Export Related Measures*, para. 7.74 (report is pending outcome of appeal).

ANNEX H: TABLES OF CALCULATIONS⁵⁷³

TABLE 16 – Average sugar recovery rates by Indian State (per cent)⁵⁷⁴

	2014–15	2015–16	2016–17	2017–18	2018–19*
Andhra Pradesh	9.72	9.31	9.34	9.56	9.48
Bihar	9.1	9.69	9.08	9.3	9.29
Gujarat	10.48	10.37	10.56	10.2	10.40
Haryana	9.89	9.39	10.19	10.45	9.98
Karnataka	10.9	10.59	10.28	10.61	10.60
Maharashtra	11.67	11.19	11.19	11.25	11.33
Punjab	9.37	10.01	9.34	9.78	9.63
Tamil Nadu	8.1	8.47	9.08	8.03	8.42
Telangana	10.47	10.83	10.33	10.84	10.62
Uttar Pradesh	9.49	10.51	10.26	10.85	10.28
Uttarakhand	9.15	9.52	8.2	9.4	9.07
Other†	9.5	9.5	9.5	9.5	10.00
Total India	10.44	10.51	10.25	10.73	10.48

Notes:

* Figures estimated by averaging the recovery rates from 2014/15 to 2017/18.

† This calculation assumes that 'other' recovery rates are in line with the nominal recovery rate of 9.5% or 10%. We note the recovery rate of 'other states' inferred from the all India rate may differ, and may indicate that other recovery rates are underestimated.

⁵⁷³ Australia also submits these tables of calculations in Excel workbook form (**Exhibit AUS-1**).

⁵⁷⁴ Australia has sourced these figures from Indian Government sources. For sugar seasons 2014–15 to 2016–17 these have been sourced from CACP, Price Policy for Sugarcane (2019–20 sugar season), August 2018 (**Exhibit JE-53**), Annex Table 1.3, p. 56. The simple average of recovery rates from 2014–15 to 2017–18 has been used as an estimate of 2018–19 recovery rates.

TABLE 17 – Quantity of Eligible Production (metric tonnes, millions)⁵⁷⁵

	2014–15	2015–16	2016–17	2017–18	2018–19
Andhra Pradesh	9.99	9.35	7.83	7.79	8.09
Bihar	14.03	12.65	13.04	13.82	11.66
Gujarat	14.33	11.12	11.95	12.07	12.04
Haryana	7.17	6.69	8.22	9.63	7.57
Karnataka	43.78	37.83	27.38	31.14	42.01
Maharashtra	84.70	73.68	52.26	82.98	92.44
Punjab	7.04	6.61	7.15	8.02	7.77
Tamil Nadu	28.09	25.49	18.99	17.15	16.21
Telangana	3.34	2.41	2.06	2.60	2.80
Uttar Pradesh	133.06	145.39	140.17	177.03	179.71
Uttarakhand	6.17	5.89	6.48	6.27	6.33
Other	10.63	11.34	10.54	11.38	13.52
Total India	362.33	348.45	306.07	379.90	400.16

TABLE 18 – Value of Production (Total India) (INR millions)⁵⁷⁶

	2014–15	2015–16	2016–17	2017–18	2018–19
Value of production	784,330.00	746,600.00	724,950.00	1,015,740.00	1,222,234.07

⁵⁷⁵ Quantity of eligible production figures are based on all sugarcane production. Figures sourced from Department of Agriculture & Farmers Welfare, Directorate of Sugarcane Development, Sugarcane in India: State wise Production (**Exhibit JE-140**), and Department of Agriculture & Farmers Welfare, 1st advance estimates for 2019–20, 23 September 2019 (**Exhibit JE-141**); See also First Advance Estimates of Production of Foodgrains for 2019-20, Ministry of Agriculture and Farmers Welfare, 23 September 2019 (**Exhibit AUS-49**).

⁵⁷⁶ Value of production figures are sourced from Ministry of Statistics and Programme Implementation (MOSPI), National Accounts Statistics 2019, Statement 8.1.2 Crop-wise value of output (**Exhibit JE-106**).

TABLE 19 – Adjustment of Fixed External Reference Price (FERP) for quality differences (INR per metric tonne)

	2014–15			2015–16			2016–17			2017–18			2018–19		
	Recovery	Computed	Adjusted	Recovery	Computed	Adjusted	Recovery	Computed	Adjusted	Recovery	Computed	Adjusted	Recovery	Computed	Adjusted
	rate	intl. price of sugar in terms of sugarcane*	FERP	rate	intl. price of sugar in terms of sugarcane*	FERP	rate	intl. price of sugar in terms of sugarcane*	FERP	rate	intl. price of sugar in terms of sugarcane*	FERP	rate	intl. price of sugar in terms of sugarcane*	FERP
	(per cent) C1	(INR per mT) C2	(INR per mT)	(per cent) C1	(INR per mT) C2	(INR per mT)	(per cent) C1	(INR per mT) C2	(INR per mT)	(per cent) C1	(INR per mT) C2	(INR per mT)	(per cent) C1	(INR per mT) C2	(INR per mT)
Andhra Pradesh	9.72	1836.38	178.50	9.31	1836.38	170.97	9.34	1836.38	171.52	9.56	1836.38	175.56	9.48	1836.38	174.13
Bihar	9.1	1836.38	167.11	9.69	1836.38	177.95	9.08	1836.38	166.74	9.3	1836.38	170.78	9.29	1836.38	170.65
Gujarat	10.48	1836.38	192.45	10.37	1836.38	190.43	10.56	1836.38	193.92	10.2	1836.38	187.31	10.40	1836.38	191.03
Haryana	9.89	1836.38	181.62	9.39	1836.38	172.44	10.19	1836.38	187.13	10.45	1836.38	191.90	9.98	1836.38	183.27
Karnataka	10.9	1836.38	200.17	10.59	1836.38	194.47	10.28	1836.38	188.78	10.61	1836.38	194.84	10.60	1836.38	194.56
Maharashtra	11.67	1836.38	214.31	11.19	1836.38	205.49	11.19	1836.38	205.49	11.25	1836.38	206.59	11.33	1836.38	207.97
Punjab	9.37	1836.38	172.07	10.01	1836.38	183.82	9.34	1836.38	171.52	9.78	1836.38	179.60	9.63	1836.38	176.75
Tamil Nadu	8.1	1836.38	148.75	8.47	1836.38	155.54	9.08	1836.38	166.74	8.03	1836.38	147.46	8.42	1836.38	154.62
Telangana	10.47	1836.38	192.27	10.83	1836.38	198.88	10.33	1836.38	189.70	10.84	1836.38	199.06	10.62	1836.38	194.98
Uttar Pradesh	9.49	1836.38	174.27	10.51	1836.38	193.00	10.26	1836.38	188.41	10.85	1836.38	199.25	10.28	1836.38	188.73
Uttarakhand	9.15	1836.38	168.03	9.52	1836.38	174.82	8.2	1836.38	150.58	9.4	1836.38	172.62	9.07	1836.38	166.51
Other States	9.5	1836.38	174.46	9.5	1836.38	174.46	9.5	1836.38	174.46	9.5	1836.38	174.46	10.00	1836.38	183.64

Notes: * From India's AGST tables, G/AG/AGST/IND.

TABLE 20 – Calculations showing product-specific domestic support for sugarcane 2014–15

	Recovery Rate (RR)		AAP = FRP + average FRP premiums (INR per mT)			AAP = FRP or SAPs (INR per mT)			FERP	QEP	MPS		Product specific AMS	Value of production	Percentage of value of production
	Actual average RR	Base FRP Nominal RR	Base FRP	FRP premium	AAP in terms of FRP + average FRP premiums	SAP (mid)	Add. Amts (alt. claim)	AAP in terms of average FRP or SAPs	FERP Adjusted for average RR	QEP	MPS	Add. amts	MPS + additional amounts		
	(%)	(%)	(INR per mT)	(INR per mT per 0.1 % above nominal RR)	(INR per mT)	(INR per mT)	(INR per mT)	(INR per mT)	(INR per mT)	(millio n mT)	(INR millions)	(INR millions)	(INR millions)	(INR millions)	(%)
	C1	C2	C3	C4	C5 = C3+ (C1-C2)/0.1 *C4 (or C3 if ≤ 2200)	C6	C7	C8 (C5, or C6 if >C5)	C9	C10	C11 = (C8- C9)* C10	C12	C14 = C11 + C12	C15	C16 = C14/C15
Andhra Pradesh	9.72	9.5	2200	23.2	2251.04		[60]	2251.04	178.50	9.99	20,698.50	73.30	20,771.80		
Bihar	9.10	9.5	2200	23.2	2200.00*	2600		2600.00	167.11	14.03	34,143.41		34,143.41		
Gujarat	10.48	9.5	2200	23.2	2427.36			2427.36	192.45	14.33	32,026.22		32,026.22		
Haryana	9.89	9.5	2200	23.2	2290.48	3050		3050.00	181.62	7.17	20,563.43		20,563.43		
Karnataka	10.90	9.5	2200	23.2	2524.80			2524.80	200.17	43.78	101,763.20		101,763.20		
Maharashtra	11.67	9.5	2200	23.2	2703.44			2703.44	214.31	84.70	210,827.20		210,827.20		
Punjab	9.37	9.5	2200	23.2	2200.00*	2850		2850.00	172.07	7.04	18,849.96		18,849.96		
Tamil Nadu	8.10	9.5	2200	23.2	2200.00*	2650†		2650.00	148.75	28.09	70,267.71		70,267.21		
Telangana	10.47	9.5	2200	23.2	2425.04			2425.04	192.27	3.34	7,464.15		7,464.15		
Uttar Pradesh	9.49	9.5	2200	23.2	2200.00	2800		2800.00	174.27	133.06	349,381.93		349,381.93		
Uttarakhand	9.15	9.5	2200	23.2	2200.00	2800		2800.00	168.03	6.17	16,226.10		16,226.10		
Other States	9.50**	9.5	2200	23.2	2200.00			2200.00	174.46	10.63	21,539.63		21,539.63		
Total										362.33	903,751.21		903,824.51	784,330.00	115.24%

Notes: * As the state average recovery rate is below 9.5%, the base FRP amount applies.

** This calculation assumes that 'other' recovery rates are in line with the nominal recovery rate of 9.5%.

† This figure does not incorporate a SAP premium amount that would have applied if the state average recovery rate had been above 9.5%, as detailed in Section III.A.2(e) above.

TABLE 21 – Calculations showing product-specific domestic support for sugarcane 2015–16

	Recovery Rate (RR)		AAP = FRP + average FRP premiums (INR per mT)			AAP = FRP or SAPs (INR per mT)			FERP	QEP	MPS		Product specific AMS	Value of production	Percentage of value of production
	Actual average RR	Base FRP Nominal RR	Base FRP	FRP premium	AAP in terms of FRP + average FRP premiums	SAP (mid)	Add. Amts (alt. claim)	AAP in terms of average FRP or SAPs	FERP Adjusted for average RR	QEP	MPS	Add. amts	MPS + additional amounts		
	(%)	(%)	(INR per mT)	(INR per mT per 0.1 % above nominal RR)	(INR per mT)	(INR per mT)	(INR per mT)	(INR per mT)	(INR per mT)	(millio n mT)	(INR millions)	(INR million s)	(INR millions)	(INR millions)	(%)
	C1	C2	C3	C4	C5 = C3+ (C1-C2)/0.1 *C4 (or C3 if ≤ 2300)	C6	C7	C8 (C5, or C6 if >C5)	C9	C10	C11 = (C8- C9)* C10	C12	C14 = C11 + C12	C15	C16 = C14/C15
Andhra Pradesh	9.31	9.5	2300	24.2	2,300.00*		[60]	2300.00	170.97	9.35	19,912.85	66	19,978.85		
Bihar	9.69	9.5	2300	24.2	2,345.98	2600		2600.00	177.95	12.65	30,636.57		30,636.57		
Gujarat	10.37	9.5	2300	24.2	2,510.54			2510.54	190.43	11.12	25,799.59		25,799.59		
Haryana	9.39	9.5	2300	24.2	2,300.00*	3050		3050.00	172.44	6.69	19,256.66		19,256.66		
Karnataka	10.59	9.5	2300	24.2	2,563.78			2563.78	194.47	37.83	89,640.37		89,640.37		
Maharashtra	11.19	9.5	2300	24.2	2,708.98			2708.98	205.49	73.68	184,457.08		184,457.08		
Punjab	10.01	9.5	2300	24.2	2,423.42	2850		2850.00	183.82	6.61	17,615.44		17,615.44		
Tamil Nadu	8.47	9.5	2300	24.2	2,300.00*	2850†		2850.00	155.54	25.49	68,692.53		68,692.53		
Telangana	10.83	9.5	2300	24.2	2,621.86			2621.86	198.88	2.41	5,827.27		5,827.27		
Uttar Pradesh	10.51	9.5	2300	24.2	2,544.42	2800		2800.00	193.00	145.39	379,018.18		379,018.18		
Uttarakhand	9.52	9.5	2300	24.2	2,304.84	2800		2800.00	174.82	5.89	15,451.79		15,451.79		
Other States	9.5**	9.5	2300	24.2	2,300.00			2300.00	174.46	11.34	24,110.04		24,110.04		
Total										348.45	880,418.37		880,484.37	746,600.00	117.93%

Notes: * As the state average recovery rate is below 9.5%, the base FRP amount applies.

** This calculation assumes that 'other' recovery rates are in line with the nominal recovery rate of 9.5%.

† This figure does not incorporate a SAP premium amount that would have applied if the state average recovery rate had been above 9.5%, as detailed in Section III.A.2(e) above.

TABLE 22 – Calculations showing product-specific domestic support for sugarcane 2016–17

	Recovery Rate (RR)		AAP = FRP + average FRP premiums (INR per mT)			AAP = FRP or SAPs (INR per mT)			FERP	QEP	MPS		Product specific AMS	Value of production	Percentage of value of production
	Actual average RR	Base FRP Nominal RR	Base FRP	FRP premium	AAP in terms of FRP + average FRP premiums	SAP (mid)	Add. Amts (alt. claim)	AAP in terms of average FRP or SAPs	FERP Adjusted for average RR	QEP	MPS	Add. amts	MPS + additional amounts		
	(%)	(%)	(INR per mT)	(INR per mT per 0.1 % above nominal RR)	(INR per mT)	(INR per mT)	(INR per mT)	(INR per mT)	(INR per mT)	(millio n mT)	(INR millions)	(INR millions)	(INR millions)	(INR millions)	(%)
	C1	C2	C3	C4	C5 = C3+(C1- C2)/0.1 *C4 (or C3 if ≤ 2300)	C6	C7	C8 (C5, or C6 if >C5)	C9	C10	C11 = (C8- C9)* C10	C12	C14 = C11 + C12	C15	C16 = C14/C15
Andhra Pradesh	9.34	9.5	2300	24.2	2,300.00*		[60]	2,300.00	171.52	7.83	16,666.01	2,050	18,716.01		
Bihar	9.08	9.5	2300	24.2	2,300.00*	2800		2,800.00	166.74	13.04	34,327.13		34,327.13		
Gujarat	10.56	9.5	2300	24.2	2,556.52			2,556.52	193.92	11.95	28,233.05		28,233.05		
Haryana	10.19	9.5	2300	24.2	2,466.98	3150		3,150.00	187.13	8.22	24,363.70		24,363.70		
Karnataka	10.28	9.5	2300	24.2	2,488.76			2,488.76	188.78	27.38	62,968.86		62,968.86		
Maharashtra	11.19	9.5	2300	24.2	2,708.98			2,708.98	205.49	52.26	130,837.35		130,837.35		
Punjab	9.34	9.5	2300	24.2	2,300.00*	2900		2,900.00	171.52	7.15	19,514.10		19,514.10		
Tamil Nadu	9.08	9.5	2300	24.2	2,300.00*	2850†		2,850.00	166.74	18.99	50,949.68		50,949.68		
Telangana	10.33	9.5	2300	24.2	2,500.86			2,500.86	189.70	2.06	4,763.30		4,763.30		
Uttar Pradesh	10.26	9.5	2300	24.2	2,483.92	3050		3,050.00	188.41	140.17	401,105.85		401,105.85		
Uttarakhand	8.2	9.5	2300	24.2	2,300.00*	3070		3,070.00	150.58	6.48	18,909.06		18,909.06		
Other States	9.5**	9.5	2300	24.2	2,300.00			2,300.00	174.46	10.54	22,411.73		22,411.73		
Total										306.07	815,049.84		817,099.84	724,950.00	112.71%

Notes: * As the state average recovery rate is below 9.5%, the base FRP amount applies.

** This calculation assumes that 'other' recovery rates are in line with the nominal recovery rate of 9.5%.

† This figure does not incorporate a SAP premium amount that would have applied if the state average recovery rate had been above 9.5%, as detailed in Section III.A.2(e) above.

TABLE 23 – Calculations showing product-specific domestic support for sugarcane 2017–18

	Recovery Rate (RR)		AAP = FRP + average FRP premiums (INR per mT)			AAP = FRP or SAPs (INR per mT)			FERP	QEP	MPS		Product specific AMS	Value of production	Percentage of value of production
	Actual average RR	Base FRP Nominal RR	Base FRP	FRP premium	AAP in terms of FRP + average FRP premiums	SAP (mid)	Add. Amts (alt. claim)	AAP in terms of average FRP or SAPs	FERP Adjusted for average RR	QEP	MPS	Add. amts	MPS + additional amounts		
	(%)	(%)	(INR per mT)	(INR per mT per 0.1 % above nominal RR)	(INR per mT)	(INR per mT)	(INR per mT)	(INR per mT)	(INR per mT)	(millio n mT)	(INR millions)	(INR million s)	(INR millions)	(INR millions)	(%)
	C1	C2	C3	C4	C5 = C3+(C1- C2)/0.1 *C4 (or C3 if ≤ 2550)	C6	C7	C8 (C5, or C6 if >C5)	C9	C10	C11 = (C8- C9)* C10	C12	C14 = C11 + C12	C15	C16 = C14/C15
Andhra Pradesh	9.56	9.5	2550	26.8	2,566.08			2,566.08	175.56	7.79	18,621.21		18,621.21		
Bihar	9.3	9.5	2550	26.8	2,550.00	2800		2,800.00	170.78	13.82	36,347.87		36,347.87		
Gujarat	10.2	9.5	2550	26.8	2,737.60			2,737.60	187.31	12.07	30,787.35		30,787.35		
Haryana	10.45	9.5	2550	26.8	2,804.60	3250		3,250.00	191.90	9.63	29,458.36		29,458.36		
Karnataka	10.61	9.5	2550	26.8	2,847.48			2,847.48	194.84	31.14	82,590.48	0.1	82,590.58		
Maharashtra	11.25	9.5	2550	26.8	3,019.00			3,019.00	206.59	82.98	233,384.80		233,384.80		
Punjab	9.78	9.5	2550	26.8	2,625.04	3000		3,000.00	179.60	8.02	22,630.06		22,630.06		
Tamil Nadu	8.03	9.5	2550	26.8	2,550.00	2850†		2,850.00	147.46	17.15	46,359.35	1,463.3	47,822.65		
Telangana	10.84	9.5	2550	26.8	2,909.12			2,909.12	199.06	2.60	7,058.34		7,058.34		
Uttar Pradesh	10.85	9.5	2550	26.8	2,911.80	3150		3,150.00	199.25	177.03	522,381.50		522,381.50		
Uttarakhand	9.4	9.5	2550	26.8	2,550.00	3160		3,160.00	172.62	6.27	18,735.06		18,735.06		
Other States	9.5**	9.5	2550	26.8	2,550.00			2,550.00	174.46	11.38	27,032.74		27,032.74		
Total										379.90	1,075,387.11		1,076,850.41	1,015,740.00	106.02%

Notes: * As the state average recovery rate is below 9.5%, the base FRP amount applies.

** This calculation assumes that 'other' recovery rates are in line with the nominal recovery rate of 9.5%.

† This figure does not incorporate a SAP premium amount that would have applied if the state average recovery rate had been above 9.5%, as detailed in Section III.A.2(e) above.

TABLE 24 – Calculations showing product-specific domestic support for sugarcane 2018–19

	Recovery Rate (RR)		AAP = FRP + average FRP premiums (INR per mT)			AAP = FRP or SAPs (INR per mT)			FERP	QEP	MPS		Product specific AMS	Value of production	Percentage of value of production
	Forecast Actual average RR	Base FRP Nomin al RR	Base FRP	FRP premium	AAP in terms of FRP + average FRP premiums	SAP (mid)	Add. Amts (alt. claim)	AAP in terms of average FRP or SAPs	FERP Adjusted for average RR	QEP	MPS	Add. amts	MPS + additional amounts		
	(%)	(%)	(INR per mT)	(INR per mT per 0.1 % above nominal RR)	(INR per mT)	(INR per mT)	(INR per mT)	(INR per mT)	(INR per mT)	(millio n mT)	(INR millions)	(INR million s)	(INR millions)	(INR millions)	(%)
	C1	C2	C3	C4	C5 = C3+(C1- C2)/0.1 *C4 (or C3 if ≤ 2300)	C6	C7	C8 (C5, or C6 if >C5)	C9	C10	C11 = (C8- C9)* C10	C12	C14 = C11 + C12	C15	C16 = C14/C15
Andhra Pradesh	9.48	10	2750	27.5	2,612.50*			2,612.50	174.13	8.09	19,729.30		19,729.30	21,138.26	
Bihar	9.29	10	2750	27.5	2,612.50*	2900		2,900.00	170.65	11.66	31,826.73		31,826.73	33,816.61	
Gujarat	10.40	10	2750	27.5	2,860.69			2,860.69	191.03	12.04	32,133.07		32,133.07	34,432.38	
Haryana	9.98	10	2750	27.5	2,744.50†	3350		3,350.00	183.27	7.57	23,974.04		23,974.04	25,361.51	
Karnataka	10.60	10	2750	27.5	2,913.63			2,913.63	194.56	42.01	114,217.67		114,217.67	122,390.61	
Maharashtra	11.33	10	2750	27.5	3,114.38			3,114.38	207.97	92.44	268,675.63		268,675.63	287,900.92	
Punjab	9.63	10	2750	27.5	2,646.88†	3000		3,000.00	176.75	7.77	21,947.09		21,947.09	23,321.10	
Tamil Nadu	8.42	10	2750	27.5	2,612.50*			2,612.50	154.62	16.21	39,836.28	2000	41,836.28	42,342.36	
Telangana	10.62	10	2750	27.5	2,919.81			2,919.81	194.98	2.80	7,629.54		7,629.54	8,175.48	
Uttar Pradesh	10.28	10	2750	27.5	2,826.31	3150		3,150.00	188.73	179.71	532,183.34		532,183.34	566,101.62	
Uttarakhand	9.07	10	2750	27.5	2,612.50*	3170		3,170.00	166.51	6.33	19,009.97		19,009.97	20,063.88	
Other States	10.00**	10	2750	27.5	2,750.00			2,750.00	183.64	13.52	34,705.94		34,705.94	37,189.35	
Total										400.16	1,145,868.60		1,147,868.60	1,222,234.07	93.92%

Notes: * As the state average recovery rate is below 9.5%, the applicable amount is 2,612.50, as detailed in Section III.A.1 above.

** This calculation assumes that 'other' recovery rates are in line with the nominal recovery rate of 10%.

† This figure includes a proportionate reduction of INR 27.5 for every 0.1% decrease in the recovery rate, in respect of those mills with a recovery rate below the nominal rate of 10% but above 9.5%.