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## INDIA – MEASURES CONCERNING SUGAR AND SUGARCANE

### REQUEST FOR CONSULTATIONS BY BRAZIL

The following communication, dated 27 February 2019, from the delegation of Brazil to the delegation of India, is circulated to the Dispute Settlement Body in accordance with Article 4.4 of the DSU.

1. My authorities have instructed me to request consultations with the Government of India pursuant to Articles 1 and 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), Article 19 of the *Agreement on Agriculture*, and Article XXII:1 of the *General Agreement on Tariffs and Trade 1994*, with respect to all domestic support India provides in favour of agricultural producers of sugarcane and sugar, as well as all export subsidies India provides for sugar and sugarcane.

#### I. Background

2. In recent years, India has massively increased the level of domestic support under its support regime for sugarcane and sugar. For example, India has almost doubled the Fair and Remunerative Price for sugarcane from INR 1391.2 per tonne in 2010/11 to INR 2750 per tonne in 2018/19. That Fair and Remunerative Price is the minimum price that, under Indian Federal law, Indian sugar mills must pay Indian sugarcane producers. It constitutes one of India's most important support measures for sugarcane producers. In addition, some of India's States provide for higher minimum prices for sugarcane that local sugar mills must pay local sugarcane producers. Moreover, India has recently reintroduced a minimum price for sugar, pursuant to which sugar producers shall not sell white sugar or refined sugar in the domestic market at a price below the price fixed by the government.

3. Minimum prices for sugarcane and sugar, along with further support measures, incentivise Indian sugarcane farmers to grow large amounts of sugarcane. Specifically, India's domestic support regime for sugarcane and sugar has led to increased domestic production of sugarcane and sugar in India. With production exceeding domestic sugar demand, and resulting increases in sugar stocks, the Government of India further, and regularly, intervenes in the market. For the 2018/19 season alone, the Government of India has approved dozens of assistance programs, worth over INR 55 billion, to support the sugar industry.<sup>1</sup>

4. Moreover, sugar mills in India are assigned a mill-specific Minimum Indicative Export Quota ("MIEQ").<sup>2</sup> Under the MIEQ, sugar mills must export an allocated amount of sugar by the end of each season. The total amount that the mills are mandated to export has increased from 2 million tons in 2017/18 to 5 million tons in 2018/19, leading to substantial pricing pressures on world market prices. Certain of India's support measures are dependent on compliance with the MIEQ, or otherwise dependent on export performance.

<sup>1</sup> Press Information Bureau of the Government of India, Cabinet Committee on Economic Affairs, "Cabinet approves comprehensive policy to deal with excess sugar production in the country", 26 September 2018, available at <http://pib.nic.in/newsite/PrintRelease.aspx?relid=183700> (last visited 25 February 2019).

<sup>2</sup> See, e.g., Ministry of Consumer Affairs, Food and Public Distribution Notification No.1(4)/2018-SP-I of 28 September 2018; Ministry of Consumer Affairs, Food and Public Distribution Notification No.1(4)/2018-SP-I of 9 May 2018, and the related measures identified in Section III, below.

5. The specific measures that are the subject of this request for consultations are domestic support measures for sugarcane and sugar, as well as export subsidies for sugar and sugarcane, as specifically identified in Sections II and III, respectively.

## **II. Domestic Support Measures for Sugarcane and Sugar**

6. The domestic support measures and programs for sugarcane and sugar include, but are not limited to, the following:

7. Federal-level domestic support for sugarcane in the form of a mandatory minimum "Fair and Remunerative Price" that Indian sugar mills are required to pay sugarcane producers for any production delivered to the mill. This domestic support is provided under, including but not limited to, the following legal instruments:

- a. Sections 3 and 7 of the Essential Commodities Act, 1955, as amended;
- b. Sections 3, 3A, 4, 4A, and 5 of the Sugarcane (Control) Order, 1966, as amended;
- c. Annual communications fixing the Fair and Remunerative Price for sugarcane, including but not limited to the following:
  - Communication No. 3(3)/2013-SP.II by the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 14 February 2014 that announces the Fair and Remunerative Price for sugarcane to be paid by sugar mills for the 2014/15 season;
  - Communication No. 3(1)/2014-SP.II by the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 2 February 2015 that announces the Fair and Remunerative Price for sugarcane to be paid by sugar mills for the 2015/16 season;
  - Communication No. 3(7)/2015-SP.I by the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 12 April 2016 that announces the Fair and Remunerative Price for sugarcane to be paid by sugar mills for the 2016/17 season;
  - Communication No. 3(3)/2016-SP-II by the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 1 June 2017 that announces the Fair and Remunerative Price for sugarcane to be paid by sugar mills for the 2017/18 season;
  - Communication by the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution that announces the Fair and Remunerative Price for sugarcane to be paid by sugar mills for the 2018/19 season;<sup>3</sup> and,
  - All other Federal government Communications, and other instruments, including successor instruments, and any amendments thereto, that provide for a Fair and Remunerative Price for sugarcane for the 2014/15, 2015/16, 2016/17, 2017/18, 2018/19 seasons and subsequent seasons.
- d. All Notifications fixing the "Fair and Remunerative Price" to be paid for sugarcane on a mill-specific basis, including but not limited to the following:

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<sup>3</sup> See Press Release, Press Information Bureau, Ministry of Consumer Affairs, Food & Public Distribution entitled "Cabinet approves determination of Fair and Remunerative Price payable by Sugar Mills for 2018-19 sugar season", dated 18 July 2018, available at <http://www.pib.nic.in/PressReleaseDetail.aspx?PRID=1539077> (last visited 25 February 2019).

- Notification G.S.R. 752(E) of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 1 October 2015, fixing the fair and remunerative price for the 2014/15 season;
- Notification G.S.R. 195(E) of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 28 February 2018, fixing the fair and remunerative price for the 2014/15 season;
- Notification G.S.R. 932(E) of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 30 September 2016, fixing the fair and remunerative price for the 2015/16 season;
- Notification G.S.R. 142(E) of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 17 February 2017, fixing the fair and remunerative price for the 2015/16 season;
- Notification G.S.R. 1204(E) of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 27 September 2017, fixing the fair and remunerative price for the 2015/16 season;
- Notification G.S.R. 1205(E) of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 27 September 2017, fixing the fair and remunerative price for the 2016/17 season; and,
- All other Notifications and other instruments, including successor instruments, and any amendments thereto, that fix a mill-specific Fair and Remunerative Price to be paid for sugarcane for the 2014/15, 2015/16, 2016/17, 2017/18, 2018/19 seasons and subsequent seasons.

8. State-level domestic support for sugarcane in the form of a mandatory minimum "State Advised Price" that sugar mills located in the respective Indian State are required to pay sugarcane producers in that State for any production delivered to the mill. For each of the identified States, this domestic support is provided under, including but not limited to, the following legal instruments:

a. Andhra Pradesh:

- Any and all State-level legal instruments in the State of Andhra Pradesh that provide for a mandatory minimum price for sugarcane that is higher than the "Fair and Remunerative Price" during the 2014/15, 2015/16, 2016/17, 2017/18, 2018/19 seasons and subsequent seasons;

b. Bihar:

- The Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981, as amended;
- The State Advised Price in Bihar for the 2014/15 season;<sup>4</sup>

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<sup>4</sup> "Price Policy for Sugarcane (2018-19 Sugar Season)", Commission for Agricultural Costs and Prices, Department of Agriculture, Cooperation and Farmers Welfare, Ministry of Agriculture and Farmers Welfare, Government of India, p. 57, available at <http://cacp.dacnet.nic.in/ViewQuestionnaire.aspx?Input=2&DocId=1&PageId=41&KeyId=622> (last visited 25 February 2019).

- The State Advised Price in Bihar for the 2015/16 season;<sup>5</sup>
  - The State Advised Price in Bihar for the 2016/17 season;<sup>6</sup>
  - The State Advised Price in Bihar for the 2017/18 season;<sup>7</sup>
  - All other State-level legal instruments, including successor instruments, and any amendments thereto that provide for a mandatory minimum price for sugarcane that is higher than the "Fair and Remunerative Price" in the State of Bihar during the 2014/15, 2015/16, 2016/17, 2017/18, 2018/19 seasons and subsequent seasons;
- c. Gujarat:
- Any and all State-level legal instruments in the State of Gujarat that provide for a mandatory minimum price for sugarcane that is higher than the "Fair and Remunerative Price" during the 2014/15, 2015/16, 2016/17, 2017/18, 2018/19 seasons and subsequent seasons;
- d. Haryana:
- The Punjab Sugarcane (Regulation of Purchase and Supply) Act, 1953, as amended, as it applies to the State of Haryana;
  - The Haryana Sugarcane (Regulation of Supply and Purchase) Rules, 1992, as amended;
  - The State Advised Price in Haryana for the 2014/15 season;<sup>8</sup>
  - The State Advised Price in Haryana for the 2015/16 season;<sup>9</sup>
  - The State Advised Price in Haryana for the 2016/17 season;<sup>10</sup>

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<sup>5</sup> "Price Policy for Sugarcane (2018-19 Sugar Season)", Commission for Agricultural Costs and Prices, Department of Agriculture, Cooperation and Farmers Welfare, Ministry of Agriculture and Farmers Welfare, Government of India, p. 57, available at <http://cacp.dacnet.nic.in/ViewQuestionare.aspx?Input=2&DocId=1&PageId=41&KeyId=622> (last visited 25 February 2019).

<sup>6</sup> "Price Policy for Sugarcane (2018-19 Sugar Season)", Commission for Agricultural Costs and Prices, Department of Agriculture, Cooperation and Farmers Welfare, Ministry of Agriculture and Farmers Welfare, Government of India, p. 57, available at <http://cacp.dacnet.nic.in/ViewQuestionare.aspx?Input=2&DocId=1&PageId=41&KeyId=622> (last visited 25 February 2019).

<sup>7</sup> See "Mills to buy sugar cane at higher prices this season", Times of India, 14 November 2018, available at <https://timesofindia.indiatimes.com/city/patna/mills-to-buy-sugar-cane-at-higher-prices-this-season/articleshow/61632790.cms> (last visited 25 February 2019).

<sup>8</sup> "Price Policy for Sugarcane (2018-19 Sugar Season)", Commission for Agricultural Costs and Prices, Department of Agriculture, Cooperation and Farmers Welfare, Ministry of Agriculture and Farmers Welfare, Government of India, p. 57, available at <http://cacp.dacnet.nic.in/ViewQuestionare.aspx?Input=2&DocId=1&PageId=41&KeyId=622> (last visited 25 February 2019).

<sup>9</sup> "Price Policy for Sugarcane (2018-19 Sugar Season)", Commission for Agricultural Costs and Prices, Department of Agriculture, Cooperation and Farmers Welfare, Ministry of Agriculture and Farmers Welfare, Government of India, p. 57, available at <http://cacp.dacnet.nic.in/ViewQuestionare.aspx?Input=2&DocId=1&PageId=41&KeyId=622> (last visited 25 February 2019).

<sup>10</sup> "Price Policy for Sugarcane (2018-19 Sugar Season)", Commission for Agricultural Costs and Prices, Department of Agriculture, Cooperation and Farmers Welfare, Ministry of Agriculture and Farmers Welfare, Government of India, p. 57, available at <http://cacp.dacnet.nic.in/ViewQuestionare.aspx?Input=2&DocId=1&PageId=41&KeyId=622> (last visited 25 February 2019).

- The State Advised Price in Haryana for the 2017/18 season;<sup>11</sup>
  - The State Advised Price in Haryana for the 2018/19 season;<sup>12</sup>
  - All other State-level legal instruments, including successor instruments, and any amendments thereto that provide for a mandatory minimum price for sugarcane that is higher than the "Fair and Remunerative Price" in the State of Haryana during the 2014/15, 2015/16, 2016/17, 2017/18, 2018/19 seasons and subsequent seasons;
- e. Karnataka:
- The Karnataka Sugarcane (Regulation of Purchase and Supply) Act, 2013, as amended;
  - All other State-level legal instruments, including successor instruments, and any amendments thereto that provide for a mandatory minimum price for sugarcane that is higher than the "Fair and Remunerative Price" in the State of Karnataka during the 2014/15, 2015/16, 2016/17, 2017/18, 2018/19 seasons and subsequent seasons;
- f. Madhya Pradesh:
- Any and all State-level legal instruments in the State of Madhya Pradesh that provide for a mandatory minimum price for sugarcane that is higher than the "Fair and Remunerative Price" during the 2014/15, 2015/16, 2016/17, 2017/18, 2018/19 seasons and subsequent seasons;
- g. Maharashtra:
- The Essential Commodities (Maharashtra Amendment) Act, 1975, as amended;
  - The Maharashtra Regulation of Sugarcane Price (Supplied to Factories) Act, 2013, as amended;
  - All other State-level legal instruments, including successor instruments, and any amendments thereto that provide for a mandatory minimum price for sugarcane that is higher than the "Fair and Remunerative Price" in the State of Maharashtra during the 2014/15, 2015/16, 2016/17, 2017/18, 2018/19 seasons and subsequent seasons;<sup>13</sup>
- h. Punjab:
- The Punjab Sugarcane (Regulation of Purchase and Supply) Act, 1953, as amended;
  - The Punjab Sugarcane (Regulation of Purchase and Supply) Rules, 1958, as amended;

<sup>11</sup> See "Sugar mills start crushing sugarcane", Haryanaabtak 3 November 2017, *available at* <http://haryanaabtak.com/featured/palwal-haryana-03-november-report/> (last visited 25 February 2019).

<sup>12</sup> See "Haryana Government raises the price by ten rupees per quintal on all varieties of sugarcane", Patrika, 28 December 2018, *available at* <https://www.patrika.com/bhiwani-news/raised-the-price-per-quintal-on-all-varieties-of-sugarcane-in-haryana-3896824/> (last visited 25 February 2019).

<sup>13</sup> Brazil notes that the Maharashtra Sugarcane Price Control Board is mandated to "decide Sugarcane price payable to the farmers, which shall be in addition to the Fair and Remunerative Price". See <http://mahasugar.co.in/index.html> (last visited 25 February 2019).

- The State Advised Price in Punjab for the 2014/15 season;<sup>14</sup>
  - The State Advised Price in Punjab for the 2015/16 season;<sup>15</sup>
  - The State Advised Price in Punjab for the 2016/17 season;<sup>16</sup>
  - All other State-level legal instruments, including successor instruments, and any amendments thereto that provide for a mandatory minimum price for sugarcane that is higher than the "Fair and Remunerative Price" in the State of Punjab during the 2014/15, 2015/16, 2016/17, 2017/18, 2018/19 seasons and subsequent seasons;
- i. Tamil Nadu:
- The Tamil Nadu Sugarcane (Regulation of Purchase Price) Act, 2018;
  - Order G.O.(Ms).No.15 of the Agriculture (S1) Department of the Government of Tamil Nadu of 14 January 2015 that announces the State Advised Price for sugarcane to be paid by sugar mills in Tamil Nadu for the 2014/15 season;
  - Order G.O.(Ms).No.20 of the Agriculture (S1) Department of the Government of Tamil Nadu of 11 January 2016 that announces the State Advised Price for sugarcane to be paid by sugar mills in Tamil Nadu for the 2015/16 season;
  - Order G.O.(Ms).No.5 of the Agriculture (S1) Department of the Government of Tamil Nadu of 5 January 2017 that announces the State Advised Price for sugarcane to be paid by sugar mills in Tamil Nadu for the 2016/17 season;
  - All other State-level legal instruments, including successor instruments, and any amendments thereto that provide for a mandatory minimum price for sugarcane that is higher than the "Fair and Remunerative Price" in the State of Tamil Nadu during the 2014/15, 2015/16, 2016/17, 2017/18, 2018/19 seasons and subsequent seasons;
- j. Telangana:
- Any and all State-level legal instruments in the State of Telangana that provide for a mandatory minimum price for sugarcane that is higher than the "Fair and Remunerative Price" during the 2014/15, 2015/16, 2016/17, 2017/18, 2018/19 seasons and subsequent seasons;

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<sup>14</sup> "Price Policy for Sugarcane (2018-19 Sugar Season)", Commission for Agricultural Costs and Prices, Department of Agriculture, Cooperation and Farmers Welfare, Ministry of Agriculture and Farmers Welfare, Government of India, p. 57, available at <http://cacp.dacnet.nic.in/ViewQuestionare.aspx?Input=2&DocId=1&PageId=41&KeyId=622> (last visited 25 February 2019).

<sup>15</sup> "Price Policy for Sugarcane (2018-19 Sugar Season)", Commission for Agricultural Costs and Prices, Department of Agriculture, Cooperation and Farmers Welfare, Ministry of Agriculture and Farmers Welfare, Government of India, p. 57, available at <http://cacp.dacnet.nic.in/ViewQuestionare.aspx?Input=2&DocId=1&PageId=41&KeyId=622> (last visited 25 February 2019).

<sup>16</sup> "Price Policy for Sugarcane (2018-19 Sugar Season)", Commission for Agricultural Costs and Prices, Department of Agriculture, Cooperation and Farmers Welfare, Ministry of Agriculture and Farmers Welfare, Government of India, p. 57, available at <http://cacp.dacnet.nic.in/ViewQuestionare.aspx?Input=2&DocId=1&PageId=41&KeyId=622> (last visited 25 February 2019).

## k. Uttarakhand:

- The State Advised Price in Uttarakhand for the 2014/15 season;<sup>17</sup>
- The State Advised Price in Uttarakhand for the 2015/16 season;<sup>18</sup>
- The State Advised Price in Uttarakhand for the 2016/17 season;<sup>19</sup>
- The State Advised Price in Uttarakhand for the 2017/18 season;<sup>20</sup>
- The State Advised Price in Uttarakhand for the 2018/19 season;<sup>21</sup>
- All other State-level legal instruments, including successor instruments, and any amendments thereto that provide for a mandatory minimum price for sugarcane that is higher than the "Fair and Remunerative Price" in the State of Uttarakhand during the 2014/15, 2015/16, 2016/17, 2017/18, 2018/19 seasons and subsequent seasons;

## l. Uttar Pradesh:

- The Uttar Pradesh Sugarcane (Regulation of Supply & Purchase) Act, 1953, as amended;
- The State Advised Price in Uttar Pradesh for the 2014/15 season;<sup>22</sup>
- The State Advised Price in Uttar Pradesh for the 2015/16 season;<sup>23</sup>
- The State Advised Price in Uttar Pradesh for the 2016/17 season;<sup>24</sup>

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<sup>17</sup> "Price Policy for Sugarcane (2018-19 Sugar Season)", Commission for Agricultural Costs and Prices, Department of Agriculture, Cooperation and Farmers Welfare, Ministry of Agriculture and Farmers Welfare, Government of India, p. 58, *available at* <http://cacp.dacnet.nic.in/ViewQuestionare.aspx?Input=2&DocId=1&PageId=41&KeyId=622> (last visited 25 February 2019).

<sup>18</sup> "Price Policy for Sugarcane (2018-19 Sugar Season)", Commission for Agricultural Costs and Prices, Department of Agriculture, Cooperation and Farmers Welfare, Ministry of Agriculture and Farmers Welfare, Government of India, p. 58, *available at* <http://cacp.dacnet.nic.in/ViewQuestionare.aspx?Input=2&DocId=1&PageId=41&KeyId=622> (last visited 25 February 2019).

<sup>19</sup> "Price Policy for Sugarcane (2018-19 Sugar Season)", Commission for Agricultural Costs and Prices, Department of Agriculture, Cooperation and Farmers Welfare, Ministry of Agriculture and Farmers Welfare, Government of India, p. 58, *available at* <http://cacp.dacnet.nic.in/ViewQuestionare.aspx?Input=2&DocId=1&PageId=41&KeyId=622> (last visited 25 February 2019).

<sup>20</sup> See "Good news for farmers, sugarcane can be sold at Rs 327 per quintal in 2018-19", Amarujala, 21 December 2018, *available at* <https://www.amarujala.com/dehradun/sugarcane-purchase-price-increased-in-uttarakhand-for-farmers> (last visited 25 February 2019).

<sup>21</sup> See "Good news for farmers, sugarcane can be sold at Rs 327 per quintal in 2018-19", Amarujala, 21 December 2018, *available at* <https://www.amarujala.com/dehradun/sugarcane-purchase-price-increased-in-uttarakhand-for-farmers> (last visited 25 February 2019).

<sup>22</sup> "Price Policy for Sugarcane (2018-19 Sugar Season)", Commission for Agricultural Costs and Prices, Department of Agriculture, Cooperation and Farmers Welfare, Ministry of Agriculture and Farmers Welfare, Government of India, p. 58, *available at* <http://cacp.dacnet.nic.in/ViewQuestionare.aspx?Input=2&DocId=1&PageId=41&KeyId=622> (last visited 25 February 2019).

<sup>23</sup> "Price Policy for Sugarcane (2018-19 Sugar Season)", Commission for Agricultural Costs and Prices, Department of Agriculture, Cooperation and Farmers Welfare, Ministry of Agriculture and Farmers Welfare, Government of India, p. 58, *available at* <http://cacp.dacnet.nic.in/ViewQuestionare.aspx?Input=2&DocId=1&PageId=41&KeyId=622> (last visited 25 February 2019).

<sup>24</sup> "Price Policy for Sugarcane (2018-19 Sugar Season)", Commission for Agricultural Costs and Prices, Department of Agriculture, Cooperation and Farmers Welfare, Ministry of Agriculture and Farmers Welfare, Government of India, p. 58, *available at*



- Notification No. 2489/46-3-17-3(48)/98-99 issued by the Sugar Industry Section-3, Government of Uttar Pradesh, dated 26 October 2017, that establishes a State Advised Price for the 2017/18 season;
  - The State Advised Price in Uttar Pradesh for the 2018/19 season;<sup>25</sup>
  - All other State-level legal instruments, including successor instruments, and any amendments thereto that provide for a mandatory minimum price for sugarcane that is higher than the "Fair and Remunerative Price" in the State of Uttar Pradesh during the 2014/15, 2015/16, 2016/17, 2017/18, 2018/19 seasons and subsequent seasons; and,
- m. All other State-level acts, orders, or other legal instruments that regulate the purchase price for sugarcane, including mandatory minimum "State Advised Prices" that sugar mills located in the respective Indian State are required to pay sugarcane producers, in any of the above-mentioned States during the 2014/15, 2015/16, 2016/17, 2017/18, 2018/19 seasons and subsequent seasons.

9. Federal-level domestic support for sugarcane and sugar further includes the mandatory minimum price for sugar that Indian sugar mills are required to charge for sugar sold into the domestic Indian market under, including but not limited to, the following legal instruments:

- a. Section 3 of the Essential Commodities Act, 1955, as amended;
- b. Section 3 of the Sugar Price (Control) Order, 2018, as amended;
- c. All notifications that fix a minimum price for domestic sugar sales, including, but not limited to:
  - Order S.O.2346(E) of 7 June 2018 of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution, fixing a minimum sales price for sugar;
  - Order S.O.874(E) of 14 February 2019 of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution, fixing a minimum sales price for sugar;
- d. All other instruments, successor instruments, and any amendments thereto that provide for a minimum price for sugar for the 2014/15, 2015/16, 2016/17, 2017/18, 2018/19 seasons and subsequent seasons.

10. Federal-level and State-level domestic support for sugarcane in the form of various measures by the Federal and State governments in India to support the production of sugarcane and sugar under, including but not limited to, the following legal instruments:

- a. Federal-level subsidies paid for the production of sugarcane or sugar including, but not limited to:
  - Production Subsidy Scheme for the sugar season 2014/15 providing cash grants to pay farmers paid directly to farmers on behalf of mills.
  - Notification No. 20(43)/2015-S.P.-I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of

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<http://cacp.dacnet.nic.in/ViewQuestionare.aspx?Input=2&DocId=1&PageId=41&KeyId=622> (last visited 25 February 2019).

<sup>25</sup> See "UP govt decides not to raise cane price; SAP stays at Rs 315 a quintal", Business Standard, 30 November 2018, available at [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](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) (last visited 25 February 2019).



- 2 December 2015, providing for a "Scheme for Extending Production Subsidy" for the 2015/16 season;
- A production subsidy for sugarcane for the 2016/17 season;<sup>26</sup>
  - 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, providing for a "Scheme for Assistance to Sugar Mills" for the 2017/18 season, as amended;
  - 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, providing for a "Scheme for Assistance to Sugar Mills" for the 2018/19 season;
- b. Federal-level subsidized loans for the production of sugarcane or sugar including, but not limited to:
- 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, providing for a "Scheme for Extending Soft Loan" for the payment of cane arrears for the 2014/15 season, as amended;
  - Notification No. 20-90/2013-SP.-II of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 3 January 2014, providing for a "Scheme for Extending Financial Assistance to Sugar Undertakings, 2014";
  - Any loans granted at subsidised interest rates under Sections 4 and 5 of the Sugar Development Fund Act, 1982, as amended, and the Sugar Development Fund Rules, 1983, as amended;
- c. Federal-level support for the maintenance of stocks for sugar including, but not limited to:
- Sugar (Control) Order 1966, clause 5, directing quantities that may be held by dealers of sugar;
  - Order G.S.R. 471(E) of Ministry of Consumer Affairs, Food & Public Distribution of 29 April 2016;
  - Order G.S.R.871(E) of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 8 September 2016, specifying quantities of sugar to be held by sugar mills;
  - Order S.O.3348(E) of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 28 October 2016, specifying quantities of sugar to be held by sugar mills;

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<sup>26</sup> Reflected in Ministry of Consumer Affairs, Food & Public Distribution, Budget allocation to 31 March 2016, "Production Subsidy to Sugar Mills to offset cost of cane and facilitate timely payment of cane price dues of farmers. (Subsidy) (New Scheme) Financial Year 2016-17: Budget Estimates [INR] 950.01 [in crores]"; Ministry of Consumer Affairs, Food & Public Distribution, Notes on Demands for Grants 2016-17, Demand No. 17, Budget 2016-17, "Production Subsidy to Sugar Mills to offset cost of cane and facilitate timely payment of cane price dues of farmers, Plan: 950.01 [in crores of Rupees]", under Major Head 2408; and Outcome Budget 2016-17, Department of Food & Public Distribution, 6.10 "Production Subsidy to Sugar Mills to offset cost of cane and facilitate timely payment of cane price dues of farmers, [INR] 950.01 [crore], "The production subsidy @ [INR] 4.5 per quintal of cane crushed will be provided for estimated 255 million MT of cane. This will help sugar mills to reduce the financial burden and help farmers to clear the cane dues in time", pp. 21, 110.

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- Order G.S.R.1069(E) of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 28 August 2017, specifying quantities of sugar to be held by sugar mills;
  - Order G.S.R. 149(E) of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 8 February 2018, specifying minimum quantities of sugar to be held by sugar mills;
  - Order S.O.2347(E) of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 7 June 2018 enabling the central government to specify quantities of sugar to be held in stock by sugar mills;
  - 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, providing for a "Scheme for Creation and Maintenance of Buffer Stock";
  - Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution Order of 29 June 2018, allocating 30 Lakh MT for the creation and maintenance of buffer stock;
  - Order F. No. 5-1/2018-Sugar Control of Ministry of Consumer Affairs, Food & Public Distribution of 30 July 2018;
  - Order No. 5-1/2018 of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 31 August 2018;
  - Order F. No. 5-1/2018-Sugar Control of Ministry of Consumer Affairs, Food & Public Distribution of 28 September 2018;
  - Order F. No. 5-1/2018-Sugar Control of Ministry of Consumer Affairs, Food & Public Distribution of 31 October 2018;
  - Order No. 5-1/2018 of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 30 November 2018, specifying quantities of sugar to be held in stock by sugar mills;
  - Order No. 5-1/2018 of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 28 December 2018, specifying quantities of sugar to be held in stock by sugar mills;
  - 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, providing for a change to the "Scheme for Creation and Maintenance of Buffer Stock";
  - Order F. No. 5-1/2018-Sugar Control of Ministry of Consumer Affairs, Food & Public Distribution of 31 January 2019;
- d. State-level domestic support in the form of assistance subsidies, subsidised loans, and other subsidies for the production of sugarcane and sugar including, but not limited to:
- Notification dated 2 August 2017 issued by Department of Industrial Unit, Government of Bihar, reducing the rate of commission to be paid by sugar mills on the purchase of sugarcane for the 2016/17 season;
  - Notification dated 17 May 2018 issued by Department of Industrial Unit, Government of Bihar, reducing the rate of commission to be paid by sugar mills on the purchase of sugarcane for the 2017/18 season;

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- Notification dated 17 May 2018 issued by Department of Industrial Unit, Government of Bihar, exempting sugar mills from payments of certain taxes for the 2017/18 season;
  - The Chief Ministers Sugarcane Development Scheme in the State of Bihar, providing for subsidies for the purchase and transportation of registered seed of sugarcane for the 2017/18 season;
  - Haryana financial assistance (subsidy and soft loans) of INR 16/qtl;<sup>27</sup>
  - Scheme-1-180618 of the Sugar Regulatory Authority, Government of Gujarat, providing for liquidity support to sugar cooperatives for the season 2018/19;
  - Scheme-3-180618 of the Sugar Regulatory Authority, Government of Gujarat, providing funds to sugar mills for the season 2018/19;
  - Scheme-4-180618 of the Sugar Regulatory Authority, Government of Gujarat, providing for a liquidity support loan to sugar mills for the season 2018/19;
  - Notification No. SCPT-1117/CR-03/Taxation-3 of the Finance Department, Government of Maharashtra of 19 April 2017, exempting sugar factories from payments of certain taxes for the season 2016/17;
  - Funds provided by the State of Maharashtra in connection with drip and micro irrigation of sugarcane, including but not limited to:
    - Notification dated 06.10.2016 issued by the Department of Agriculture, Government of Maharashtra;
    - Notification dated 24.07.2017 issued by the Department of Agriculture, Government of Maharashtra;
    - Notification dated 12.09.2018 issued by the Department of Agriculture, Government of Maharashtra;
    - Notification dated 31.07.2018 issued by the Department of Agriculture, Government of Maharashtra;
  - Notification dated 16.11.2016 issued by the Department of Agriculture, Government of Maharashtra providing for a soft loan scheme for sugarcane farmers in the State of Maharashtra;
  - Order G.O.(Ms).No.191 of the Agriculture (S1) Department of the Government of Tamil Nadu of 24 July 2018, providing for payments to sugarcane farmers in addition to the Federal Fair and Remunerative Price for the 2017/18 season;
  - Order G.O.(Ms).No.230 of the Agriculture (S1) Department of the Government of Tamil Nadu of 17 September 2018, providing for payments to sugarcane farmers in addition to the Federal Fair and Remunerative Price for the 2017/18 season;

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<sup>27</sup> "State subsidies for farmers to improve mills' liquidity, clear cane dues", Business Standard, 19 October 2018, available at [https://www.business-standard.com/article/economy-policy/state-subsidies-to-improve-mills-liquidity-clear-cane-dues-118101900698\\_1.html](https://www.business-standard.com/article/economy-policy/state-subsidies-to-improve-mills-liquidity-clear-cane-dues-118101900698_1.html) (last visited 25 February 2019), and "State subsidies to improve mills' liquidity & clear cane dues: Report", Daily Pioneer, 20 October 2018, available at <https://www.dailypioneer.com/2018/business/state-subsidies-to-improve-mills---liquidity---clear-cane-dues-report.html> (last visited 25 February 2019).

- Notification dated 24 September 2015 issued by Sugar Industrial Unit, Government of Uttar Pradesh, providing for a scheme for easing dues on sugarcane farmers for the 2014/15 season;
  - Below-market loans to farmers in Uttar Pradesh, announced 26 September 2018;<sup>28</sup>
  - Production subsidy for sugar mills in Uttar Pradesh of INR 4.5 per quintal;<sup>29</sup>
  - Notification dated 21 March 2018 issued by Sugar Industrial Unit, Government of Uttar Pradesh, providing for funds for drip irrigation during the season 2016/17;
  - Notification dated 15 November 2017 issued by Cane Development & Sugar Industry, Government of Uttar Pradesh, waiving the guarantee fee payable by certain sugar mills on government guarantees;
  - Assistance subsidies, subsidised loans, and other subsidies specifically provided to producers of sugarcane and sugar by the Indian States of Andhra Pradesh, Bihar, Gujarat, Haryana, Karnataka, Maharashtra, Punjab, Tamil Nadu, Telangana, Uttarakhand, Madhya Pradesh, and Uttar Pradesh;<sup>30</sup>
- e. Any funds provided by Indian States and the Federal Government in relation to sugarcane under the Krishonnati Yojana Scheme;<sup>31</sup> and,
- f. All other Federal-level or State-level instruments, including all successor instruments, and any amendments thereto, providing product-specific domestic support for sugarcane through non-exempt direct payments or any other subsidy not exempted from reduction commitments whether provided by the Federal government or any of the individual States during the 2014/15, 2015/16, 2016/17, 2017/18, 2018/19 seasons and subsequent seasons.

11. In addition to the measures identified in paragraphs 7 to 10, the measures covered by this request for consultations include any amendments to any of the measures listed in paragraphs 7 to 10, above, or related, successor, replacement, or implementing measures thereto.

<sup>28</sup> See "Sweet & Sour: UP offers Rs 4000 crore loan, subsidy to clear cane dues", Financial Express, 26 September 2018, available at <https://www.financialexpress.com/industry/sweet-sour-up-offers-rs-4000-crore-loan-subsidy-to-clear-cane-dues/1326772/> (last visited 25 February 2019).

<sup>29</sup> See "Sweet & Sour: UP offers Rs 4000 crore loan, subsidy to clear cane dues", Financial Express, 26 September 2018, available at <https://www.financialexpress.com/industry/sweet-sour-up-offers-rs-4000-crore-loan-subsidy-to-clear-cane-dues/1326772/> (last visited 25 February 2019).

<sup>30</sup> Including such support as mentioned in: "UP govt announces sops for sugar mills to clear farmers' dues by Nov 30", United News of India, 25 September 2018, available at <http://www.uniindia.com/~up-govt-announces-sops-for-sugar-mills-to-clear-farmers-dues-by-nov-30/States/news/1360778.html> (last visited 25 February 2019); "Supplementary budget tabled by Yogi govt", The Pioneer, 28 August 2018, available at <https://www.dailypioneer.com/2018/state-editions/supplementary-budget-tabled-by-yogi-govt.html> (last visited 25 February 2019); Punjab govt. to pay sugarcane farmers, The Hindu, 5 December 2018, available at <https://www.thehindu.com/news/national/other-states/punjab-govt-to-pay-sugarcane-farmers/article25674269.ece> (last visited 25 February 2019); sugar- and sugarcane-related expenditures mentioned in the Karnataka Monthly Programme Implementation Calendar (MPIC) for the month of December 2017 by the Commissioner for Cane Development & Director of Sugar, Government of Karnataka; sugar- and sugarcane-related expenditures mentioned in the Annual Scheme 2018-2019 (Departmentwise) of the Finance Department of the Government of Maharashtra; sugar- and sugarcane-related expenditures mentioned in the Report of the Comptroller and Auditor General of India on State Finances, Government of Uttar Pradesh, Report No. 1 of the year 2018.

<sup>31</sup> Including, but not limited to, the following: Notifications issued by the Department of Agriculture, Government of Maharashtra dated 17.03.2016, 16.07.2016, 14.10.2016, 03.02.2017, 17.02.2017, 16.03.2017, 30.03.2017, 06.05.2017, 26.09.2017, 26.10.2017, 27.10.2017, 09.11.2017, 15.11.2017, 12.02.2018, 20.02.2018, 12.03.2018, 15.03.2018, 28.03.2018, 26.06.2018, 24.01.2018; Order dated 24.08.2016 by the Department of Agriculture, Government of Tamil Nadu.

### III. Export Subsidies pertaining to Sugar and Sugarcane

12. The export subsidy measures and programs pertaining to sugar and sugarcane include, but are not limited to, the following:

13. Federal-level export subsidies pertaining to sugar or sugarcane which make the provision of financial support contingent upon export performance under, including but not limited to, the following legal instruments:

- a. "Raw Sugar Export Incentive Scheme" of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution, providing for export subsidies for raw sugar;<sup>32</sup>
- b. Subsidies for the production of sugarcane and sugar that are contingent upon export performance including, but not limited to:
  - 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, providing for a "Scheme for Extending Production Subsidy" for the 2015/16 season;
  - 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, providing for a "Scheme for Assistance to Sugar Mills" for the 2017/18 season, as amended;
  - 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, providing for a "Scheme for Assistance to Sugar Mills" for the 2018/19 season;
- c. Subsidies for the maintenance of stocks for sugar that are contingent upon export performance including, but not limited to:
  - 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, providing for a "Scheme for Creation and Maintenance of Buffer Stock";
  - Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution Order of 29 June 2018, allocating 30 Lakh MT of buffer stock;
  - 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, providing for a change to the Scheme for Creation and Maintenance of Buffer Stock;
- d. Federal- and State-level export subsidies related to the transportation of sugar including, but not limited to:
  - Notification No. 1(14)/2018-S.P.-I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of

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<sup>32</sup> "Sugar and Sugarcane Policy", Ministry of Consumer Affairs, Food and Public Distribution, Department of Food and Public Distribution, *available at* <https://dfpd.gov.in/sugar-sugarcane-policy.htm> (last accessed 25 February 2019). See also "Direct subsidy to sugarcane growers" Cabinet Committee on Economic Affairs Press Release, 18 November 2015, *available at* <http://piib.nic.in/newsite/pmreleases.aspx?mincode=63> (last accessed 25 February 2019).

- 5 October 2018, providing for a transport subsidy for exports of sugar, as amended;
- Circular No. TM/A/15-22/33 of the Mumbai Port Trust of 18 December 2018, providing for concessional rates for demurrage on exports of sugar;
- e. Duty-free Import Authorisation for raw sugar imported in the 2019/20 and 2020/21 seasons, for mills that have exported white/refined sugar during the 2017/18 season;<sup>33</sup>
- f. Minimum Indicative Export Quotas ("MIEQ") that operate in conjunction with the other measures identified in this paragraph 13 to require mills to export certain quantities of sugar including, but not limited to:
- Notification No. 1(10)/2015-SP-I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 18 September 2015, allocating minimum indicative export quotas by factory for the 2015/16 season;
  - Notification No. 1(4)/2018-SP-I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 28 March 2018, allocating minimum indicative export quotas by factory for the 2017/18 season;
  - Notification No. 1(4)/2018-SP-I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 9 May 2018, revising the allocation of minimum indicative export quotas for the 2017/18 season;
  - Notification No. 1(4)/2018-SP-I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 23 August 2018, amending Notification No. 1(4)/2018-SP-I of 9 May 2018;
  - Notification No. 1(4)/2018-SP-I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 23 September 2018 concerning the allocation of minimum indicative export quotas for the season 2018-19;
  - Notification No. 1(4)/2018-SP-I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 28 September 2018, allocating minimum indicative export quotas by factory for the 2018/19 season;
  - Notification No. 1(4)/2018-SP-I of the Ministry of Consumer Affairs, Food and Public Distribution, Department of Food and Public Distribution, communication to sugar mills of 12 October 2018;
  - Notification No. 1(4)/2018-SP-I of the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution of 24 December 2018; and,
- g. All other Federal-level instruments, including all successor instruments, and any amendments thereto, providing Federal-level subsidies contingent on export

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<sup>33</sup> Ministry of Commerce and Industry, Department of Commerce, Directorate General of Foreign Trade Notification No. 57/2015-2020 of 28 March 2018, referring to SION SI.No-E52, available at <http://dgft.gov.in/sites/default/files/Notification%20No.57.pdf> and [http://dgft.gov.in/sites/default/files/CHAP04\\_1.pdf](http://dgft.gov.in/sites/default/files/CHAP04_1.pdf), respectively (last accessed 25 February 2019).

performance during the 2014/15, 2015/16, 2016/17, 2017/18, 2018/19 seasons and subsequent seasons.<sup>34</sup>

14. State-level export subsidies pertaining to sugar and sugarcane which make the provision of financial support contingent upon export performance under, including but not limited to, the following legal instruments:

- a. Any subsidies contingent on export provided to producers of sugarcane and sugar by the Indian States of Andhra Pradesh, Bihar, Gujarat, Haryana, Karnataka, Madhya Pradesh, Maharashtra, Punjab, Tamil Nadu, Telangana, Uttarakhand, and Uttar Pradesh;<sup>35,36</sup> and,
- b. All other State-level instruments, including all successor instruments, and any amendments thereto, providing State-level subsidies contingent on export performance during the 2014/15, 2015/16, 2016/17, 2017/18, 2018/19 seasons and subsequent seasons.

15. In addition to the measures identified in paragraphs 13 to 14, the measures covered by this request for consultations include any amendments to any of the measures listed in paragraphs 13 to 14, above, or related, successor, replacement or implementing measures thereto.

#### **IV. Claims of Inconsistency Against the Domestic Support Measures**

16. Brazil recalls that India did not schedule a domestic support reduction commitment level in Section I of Part IV of its Schedule XII. Accordingly, under Article 6.4 of the *Agreement on Agriculture*, India's product-specific domestic support for sugarcane is limited to a *de minimis* level at or below 10 percent of the value of production. Brazil considers that the measures listed in Part II (paragraphs 7 to 11, above) are inconsistent with India's obligations under Articles 3.2, 6.3 and 7.2(b) of the *Agreement on Agriculture* because they provide domestic support for sugarcane in excess of India's *de minimis* entitlement of 10 percent of the value of production.

#### **V. Claims of Inconsistency Against the Export Subsidy Measures**

17. Brazil further recalls that India has not scheduled export subsidy reduction commitments under Section II of Part IV of its Schedule XII pertaining to sugar or sugarcane that would permit it to use export subsidies. Accordingly, India may not provide export subsidies pertaining to sugar or sugarcane. Brazil considers that the measures listed in Part III of this request for consultations (paragraphs 13 to 15, above) provide export subsidies pertaining to sugar or sugarcane. Accordingly, these measures are inconsistent with India's export subsidy obligations under Articles 3.3, 8, 9.1 and 10.1 of the *Agreement on Agriculture*.

#### **VI. Concluding Remarks**

18. Brazil reserves the right to raise additional claims and measures and to address additional legal and factual issues under other provisions of the covered agreements during the course of the consultations.

19. My authorities look forward to receiving the reply of India to the present request and to agreeing upon a mutually convenient date to hold consultations, with a view toward resolving this dispute.

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<sup>34</sup> This includes any Federal-level measures listed in paragraph 10, above, that are contingent upon export performance.

<sup>35</sup> Including such subsidies as mentioned in "Maharashtra government plans subsidy for mills to export sugar", The Indian Express, 20 April 2018, available at <https://indianexpress.com/article/india/maharashtra-government-plans-subsidy-for-mills-to-export-sugar-5144453/> (last accessed 25 February 2019).

<sup>36</sup> This includes any State-level measures listed in paragraph 10, above, that are contingent upon export performance.