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INDIA – MEASURES CONCERNING SUGAR AND SUGARCANE

COMMUNICATION FROM AUSTRALIA

The following communication, dated 11 January 2022, was received from the delegation of Australia with the request that it be circulated to the Dispute Settlement Body (DSB).

Australia takes note that, on 24 December 2021, India notified the WTO Secretariat and co-complainants of its decision to appeal the report of the panel in *India – Measures Concerning Sugar and Sugarcane* (WT/DS579/R, WT/DS579/R/ADD.1, WT/DS579/R/SUPPL.1; WT/DS580/R, WT/DS580/R/ADD.1, WT/DS580/R/SUPPL.1, and WT/DS581/R, WT/DS581/R/ADD.1, WT/DS581/R/SUPPL.1) by filing electronic copies of a Notice of Appeal and an Appellant Submission.

Given the Appellate Body remains non-operational, Australia considers that all subsequent procedural deadlines set out in the Appellate Body's Working Procedures are properly considered suspended. When the Appellate Body resumes its functions, it should set the schedule for this appeal.

Australia intends to file a written submission in this appeal within the deadline to be determined by the Appellate Body, once it resumes its functions. Australia also intends to participate and make oral statements at the hearing to be convened by the Appellate Body.

Australia wishes to note that it disagrees with all of India's allegations of errors of law and legal interpretation in the Panel's Report as set out in its Notice of Appeal and Appellant Submission.

Australia intends to oppose the appeal by India as it considers the Panel to have been correct in its conclusions, including with respect to:

- Interpretation and application of Article 6.2 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU") and finding that 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" for the 2019-2020 sugar season ("MAEQ Scheme") was within the Panel's terms of reference;
- Interpretation of "market price support" under Annex 3 of the Agreement on Agriculture, and finding that India's "Fair and Remunerative Price" and "State Advised Prices" constitute "market price support";
- Interpretation of Article 27.2(b) of the Agreement on Subsidies and Countervailing Measures ("SCM Agreement") and finding that developing countries were not required to comply with the prohibition on export subsidies between 1 January 1995 and 1 January 2003;
- Interpretation of Articles 3.3 and 8 of Agreement on Agriculture and Articles 3.1(a) and 3.2 of the SCM Agreement and finding that the Duty-Free Import Authorisation (DFIA) Scheme provided subsidies contingent on export performance; and
- Recommendations in accordance with Article 4.7 of the SCM Agreement, that India withdraw its prohibited subsidies under the Production Assistance, the Buffer Stock, and the Marketing and Transportation Schemes within 120 days from the adoption of the Panel Report.

Australia considers that the arguments put forward by India to support its interpretation of the WTO covered agreements are not supported by the text, object, purpose or context of those agreements. Rather, India takes a selective and exclusive view of a limited number of provisions of those agreements.

Australia considers that India is attempting to establish errors of interpretation in a manner that contorts and misrepresents the Panel's reasoning as set out in the Panel Report.

Further, Australia considers the Panel correctly applied the law to the facts before it. The Panel addressed all "the relevant provisions in any covered agreement or agreements cited by the parties to the dispute" pursuant to Article 7.2 of the DSU.

- The Panel considered India's arguments in detail and objectively assessed "the facts and the applicability of and conformity with the relevant covered agreements" pursuant to Article 11 of the DSU.
- The Panel Report set out in detail the Panel's rationale for its findings and recommendations consistent with Article 12.7 of the DSU.

As noted above, Australia will submit an Appellee Submission in response to India's Notice of Appeal and Appellant Submission when the Appellate Body resumes operation and sets the schedule for this appeal.

Australia is providing a copy of this communication directly to India, Brazil, Guatemala and the third-party participants to this dispute.
