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A BITTER PILL TO SWALLOW: INDIA'S SUGAR SECTOR UNDER SIEGE AT THE WTO

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A BITTER PILL TO SWALLOW: INDIA'S SUGAR SECTOR UNDER SIEGE AT THE WTO[1]

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ABSTRACT

Indian agriculture is fraught with policies that are presently facing the gavel at the WTO. Sugarcane related policies, in particular, are being alleged to constitute domestic support beyond the permissible limit and for this reason, have been challenged by Australia, Brazil and Guatemala. The ground reality, however, contrasts this narrative. With rising cane arrears and prevailing farm distress, the sugarcane sector faces an uphill battle on domestic and international fronts. The skewed provisions of the Agreement on Agriculture and the commitments under them have added to the grievance of this sensitive sector, along with the application of outdated and biased rules pertaining to external reference prices and aggregate measurement of support entitlements. Through this study, the authors have attempted to address this purported issue of excessive support, by utilizing the alternative provisions under the Agreement on Agriculture to notify domestic support to the sugarcane sector. In contrast to the counter-notification, the results clearly show that domestic support to sugarcane sector is within the permissible limit established by the WTO.

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SECTION 1: INTRODUCTION

India's agricultural policies have attracted the scrutiny of a number of WTO Members in the past year, with the US submitting the first-ever WTO counter-notification for wheat and rice in May 2018 (WTO 2018a), and for cotton in November (WTO 2018b), challenging India's market price support ("**MPS**") for these products. Subsequently, policies related to sugarcane and pulses were also contested through counter notifications by a few developed Members (WTO 2018c & 2019a).

A common pervading allegation in these counter-notifications is that India provided domestic support for the above-mentioned products to a level well above its commitments, as agreed to in the Uruguay Round negotiations. The case of India coming under attack at the WTO is not an isolated incident. China's domestic support policy on a number of agricultural products have also drawn significant flak from WTO Members, indicating a trend of hostility towards some developing countries (WTO 2019b).

Currently, India's sugar and sugarcane related domestic support policies have come under the scanner at the WTO, with Brazil, Australia and Guatemala initiating the dispute process against India (WTO 2019c). The concern these countries echo is that India provides domestic support in excess of its commitment levels, and export subsidies for which it has no scheduled entitlements. This alleged inconsistency with the AoA has to be established by the countries successfully before a panel and if appealed, the Appellate Body of the WTO. The dispute is of significant importance to the Complainants as India is an attractive market for sugar products. Access to this market would open up a potentially large export sector for these countries.

In the sugarcane dispute, India's fair and remunerative price ("**FRP**") and the state advised price ("**SAP**") are a few of the domestic support measures that are currently facing challenge, in addition to some alleged export subsidy measures. If India loses the dispute, it would have to modify all measures that have been found inconsistent with the AoA. In the absence of the present support policies the sugarcane sector, that employs over 50 million farmers and over 500,000 sugar mill workers (DFPD 2017a), may face an imminent collapse.

In this context, the study is focused on the sugarcane support policy of India, especially FRP/SAP and its compatibility *viz-a-viz*. the AoA. A modest attempt has been made to compare the domestic support to sugar and sugarcane sector under the AoA with the alleged support to sector in the counter-notification. Keeping in mind India's stand at the WTO of the eligible production of sugarcane being zero due to non-procurement by the government, the study goes a step ahead and examines the AoA to suggest the appropriate provisions under which support to sugarcane can be notified, in case India's stand is not accepted.

The study is divided into six sections. The introductory section sets the background for the study. The second and third sections analyse the legal provisions of domestic support within the AoA and detail the present sugarcane support policy in India and a few other Members respectively. The fourth section gauges the challenges made by various WTO Members to domestic support provided by India to its sugarcane sector, and discusses the viability of different methods of domestic support notifications. Given this context, the fifth section of this study suggests an alternative methodology for India's notification requirements, and the sixth section concludes the study.

SECTION 2: DOMESTIC SUPPORT PROVISIONS UNDER THE AOA

Domestic support measures are categorised as Amber, Blue, Green and the ‘developmental’ box (Art 6.2) under the AoA. Measures which meet the touchstone of Annex 2 of the AoA, fulfilling the general and measure specific criteria set therein, can be classified as ‘Green box’ measures and are exempt from reduction commitments. These measures, such as extension services and public-stockholding for food security purposes, are either not trade-distorting, or at most cause minimal trade distortion or effect on production. ‘Blue box’ measures are defined under Article 6.5 of the AoA as production-coupled direct payments made under a “production limiting programme” with payments being based on either fixed areas and yields, or 85% or less base level of production, or fixed number of livestock or heads. Available to all Members of the WTO, both Green box and Blue box measures are not subject to any prescribed limits and can be freely increased. Further, under Article 6.2 of the AoA, developing countries are provided with additional entitlements such as assistance measures to encourage agricultural and rural development, investment subsidies and agricultural input subsidies provided to low income or resource poor farmers.

Any domestic support measure which does not satisfy the conditions attached with the above-mentioned boxes is categorised under Amber box (Article 6). The Amber box is divided into two categories: (1) product specific support, such as market price support; and (2) non-product specific support. In case the product specific support or the non-product specific support is below the *de minimis* level, then it is not required to be included in the current Aggregate Measurement of Support (“**AMS**”). The *de minimis* limit is defined as the minimum trade-distorting support allowed under Amber box. This limit for product specific support is fixed at 5 and 10 percent of the value of production (“**VoP**”) for a concerned agricultural product, in developed and developing countries respectively.

During the Uruguay Round, those Members who were providing trade-distorting support above the *de minimis* level, acquired the flexibility to continue providing support to agriculture more than the applicable *de minimis* level. However, many developing Members including India provided Amber box support was below the *de minimis* level during the base period of 1986-88, and therefore, were not entitled for the AMS. Being a developing country, India could only provide product specific support and non-product specific support up to the *de minimis* level i.e. 10 percent of the VoP. In essence, the AoA was structured in such a manner that countries which were not distorting trade during the base period were penalised by having their AMS capped at zero, while other countries that were distorting agricultural trade during the base period were rewarded with AMS entitlements (Sharma 2016).

Provisions for Calculation of product specific support

Annex 3 of the AoA provides the methodology that a WTO Member may adopt to calculate its product specific support (Table 1). Other things remaining constant, domestic support for a specific agricultural product depends on how a measure is categorised under different components of product specific support and the methodology used to calculate it.

Table 1: Different methods of notifying product specific support

S.N	Programme	Methodology	AoA provision
1	Market price support	(AAP-ERP) *eligible production	Paras 8 & 9 of Annex 3
2	Non-exempt direct payment- a. based on price gap	(AAP-ERP) *eligible production or Budgetary Outlays	Paras 10 & 11 of Annex 3
	b. based on factors other than price	Budgetary Outlays	Para 12 of Annex 3
3	Other non-exempt measures like input subsidies or marketing cost reduction measures	Budgetary Outlays or; Gap between price of subsidized good or services and represented market price multiply by quantity	Para 13 of Annex 3

Source: Agreement on Agriculture (AoA 1994)

MPS is a form of government intervention in which the government announces minimum support prices for agricultural products to protect the producers from price fluctuations. MPS is calculated by multiplying the production eligible to receive the support with the difference between fixed external reference price ("**ERP**") and the applied administered price ("**AAP**") . The ERP is based on the years 1986-88, which is termed the base period, and is generally the export or import price during the base period, depending on whether a country was a net exporter or net importer. Therefore, the ERP based on 1986-88 prices is compared with current AAP to account for the support provided, without accounting for inflation. The limited flexibility under Amber box along with above-described MPS methodology has restricted the policy space for many developing countries to implement agricultural programmes without breaching their commitments **(**Sharma 2016)**.**

Non-exempt direct payment based on price gap can be notified on the basis of either the above-mentioned MPS methodology, or by way of budgetary expenditure. Price deficiency payments for agricultural commodities are notified under this category. Non-exempt direct payment based on factors other than price and non-exempt measures like reduction in marketing cost or input subsidies is notified in the form of budgetary expenditure. In cases where a MPS-type system of support exists, but would not be practicable for calculating the AMS using the methodology prescribed under Annex 3, there is a provision under Annex 4 of the AoA to notify these support values as 'equivalent measurement of support' ("**EMS**").

SECTION 3: SUGAR AND SUGARCANE POLICY IN INDIA AND OTHER COUNTRIES

3.1 POLICIES IN INDIA

In India, pricing of sugarcane is governed by the statutory provisions of the Sugarcane (Control) Order, 1966 (GoI 1966), which has been issued under Section 3 of the Essential Commodities Act, 1955. Under this Order, India's central government is authorised to fix the minimum price of sugarcane payable by sugar mills to farmers based on the factors such as: (1) the cost of production of sugarcane; (2) the return to the sugarcane farmer from alternative crops and the general trend of prices of agricultural commodities; (3) the availability of sugar to final consumers at a fair price; (4) the price at which sugar is sold by sugar mills; and (5) the recovery of sugar from sugarcane.

Until 2009, this price fixed by the government was known as the Statutory Minimum Price ("**SMP**") of sugarcane, and was ascertained in consultation with the Commission for Agricultural Costs and Prices ("**CACP**"). Based on the recommendation of the Bhargav Commission, the central government inserted a clause in the Sugarcane (Control) Order, 1966, which provided for sharing of profits in the approximate ratio of 50:50 between sugar mills. Certain Indian states such as Uttar Pradesh, Punjab, Haryana, Tamil Nadu and Uttarakhand had been implementing SAP, which was typically higher than the SMP.

For decades, the above-described sugarcane pricing policy in India suffered from many glitches. For one, the profit-sharing envisaged under the Sugarcane (Control) Order, 1966 remained effectively unimplemented, due to delays by sugar factories in announcing sale proceeds and profits. Furthermore, sugar mills burdened by mounting arrears as a result of paying high SAPs to farmers did not receive adequate assistance from the relevant state governments towards paying off the same (Lavanya and Manjunatha 2018).

On 22 October 2009, the Central Government replaced the SMP with the FRP by amending the Sugarcane (Control) Order, 1966. Under the FRP, reasonable margins to sugarcane growers on account of risk and profits was introduced, and the clause relating to sharing of profits in 50:50 proportion was deleted. Thus, FRP is now considered to be the final remunerative price for farmers, which provides sufficient profit margins to them, at the outset of the season itself.

Upon replacement of the SMP policy with the FRP system in 2009-10, the minimum prices for sugarcane showed a significant increase i.e. 51 percent (Table 2).

Table 2: Comparison between SMP and FRP

Sugar season	SMP (INR. Per quintal)	Recovery Rates (%)
2006-07	80.25	9.00
2007-08	81.18	9.00
2008-09	81.18	9.00
2009-10(FRP)	129.84	9.50
2010-11(FRP)	139.12	9.50

Source: Department of Food and Public Distribution, Government of India

3.2 Policies of other WTO members

A price support system very similar to the FRP has also been implemented by other WTO Members. In Pakistan, minimum price of sugarcane prices are announced by the Provincial governments under Sugar Factories Control Act, 1950 (GoP 2018). The objective of this policy is to protect the livelihood of poor and small farmers and avoid their exploitation by the sugar cane millers (WTO 2018d). Domestic support notification of Pakistan shows that market price support for sugarcane is zero as government does not procure any sugarcane at the administered price or intervenes financially to offset sales below the minimum price (WTO 2015).

Thailand, as well, announces a cane support price to ensure a remunerative price for sugarcane farmers. In furtherance to a consultations process with Brazil at the WTO pertaining to support of its domestic sugar sector, Thailand agreed to restructure its sugar industry by abolishing its three tiered sugar quota system for domestic sale and exports, ‘floating’ the domestic sugar prices and reducing domestic support (ISJ 2016). However, the country continues to announce administered prices for sugarcane, which sugar mills are required to comply with, though some amendments to the policy are expected (Bangkok Post 2018). The domestic support provided by Thailand to sugarcane producers is notified as budgetary support rather than as MPS under the Amber Box.

The EU also provided huge support to sugar sector through various measures like intervention prices, sugar quotas and fixed domestic prices for sugar. At its peak in 2006-07, the product specific support to sugar sector was 177.36 percent of the VoP (Table 3). EU’s sugar policy was disputed by Brazil at the WTO in 2002, and was ruled in favour of Brazil (WTO 2005). Accordingly, EU phased out its system of price interventions by 2008-09. Currently, the EU provides Blue box support to sugar beet, as per its latest notification (WTO 2018g). Ukraine also had similar market price intervention programmes, a minimum price system and a three-tiered quota system for sugar beet. Due to these policies, Ukraine breached its domestic support commitment under the AoA (WTO 2012). Owing to consolidation within the sugar industry and ineffective working of the minimum price mechanism, Ukraine phased out its minimum price policy and quota regime in 2018 (GAIN 2018 & GAIN 2019).

Table 3: Comparison of product specific support to sugar as a percentage of VoP for various countries in selected years

Country	Year	Product specific support as a % of VoP
USA	2016	64.41
Thailand	1995-96	25.71
Ukraine	2012-13	73.76
EU	2006-07	177.36

Source: Domestic Support Notifications by WTO Members

The US is supporting the sugar sector through various measures such as market price support, commodity loan interest subsidy and crop insurance premium subsidy (WTO 2018f). Due to these measures, the product specific support for sugar was 64.41 percent of VoP in 2016-17. It is to be noted that although the product specific support in the EU, Thailand and the US was significantly higher than the applicable *de minimis* limit, they were not in breach of their WTO commitments due the AMS entitlement.

SECTION 4: SUGARCANE SUPPORT UNDER NOTIFICATION AND COUNTER-NOTIFICATION

Based on its Schedule (WTO 1995a), India's entitlement to provide non-exempt trade distorting support is capped at 10 percent of VoP. During the base period 1986-88, product specific support to sugarcane was below the *de minimis* level. Product-specific support provided to sugarcane was in the form of MPS. The ERP for sugarcane in the Schedule was fixed as INR 156.16 per tonne, after being indirectly computed based on the international price of sugar, most efficient conversion cost of sugar from sugarcane and a recovery rate of sugar from sugarcane at 8.5 percent.

India has notified product specific support in the form of MPS to sugarcane only once in its history at the WTO, i.e. marketing year 1995-96 and it was below the *de minimis* level. After 1995-96, India has not notified product specific support to sugarcane in any of its domestic support (DS) notifications to the WTO. Many Members such as Australia (WTO 2014a), and the European Union (WTO 2014b) have raised questions in the Committee on Agriculture at the WTO regarding the same. India has responded to these by stating that the government does not procure any sugarcane under the SMP/FRP regime, making the eligible production for sugarcane and consequently, the product specific support for it, zero (WTO 2018e). India's stance is based on the fact that majority of sugar mills are private or cooperative in nature (Table 4). Besides this, more than 75 percent of the public sector mills have shut down over the years and the cane crushed by these public sector mills is negligible in comparison to cane crushed by private and co-operative sugar mills (CACP 2017). A similar kind of reasoning is also forwarded by Pakistan at the WTO to support its sugarcane farmers (WTO 2018d).

Table 4: Sector-wise break up of sugar mills

S.N.	**Sector**	**No. of Factories**
1.	Co-operative	327
2.	Private	362
3.	Public	43
Total		**732**

Source: Department of Food and Public Distribution, Government of India

Unconvinced by India's responses, Australia *vide* a counter-notification alleged that India provided domestic support to sugarcane above the *de minimis* level between the years 2011-12 and 2016-17 (WTO 2018c). Australia used the total production of sugarcane in India as "eligible production" for the purpose of MPS calculation, and estimated that India provided domestic support to sugarcane approximately equivalent to India's VoP of sugarcane in 2015-16 i.e. 99.8 percent (Table 5). However, this situation is nothing short of a paradox, as on one hand Australia alleges that the Indian government provided INR 747017 (in 2015-16) million as domestic support, and on the other hand, Indian sugar mills and farmers are facing a distress situation due to cane arrears and a general liquidity crunch.

Table 5: Apparent Market Price Support alleged in Australia's counter-notification

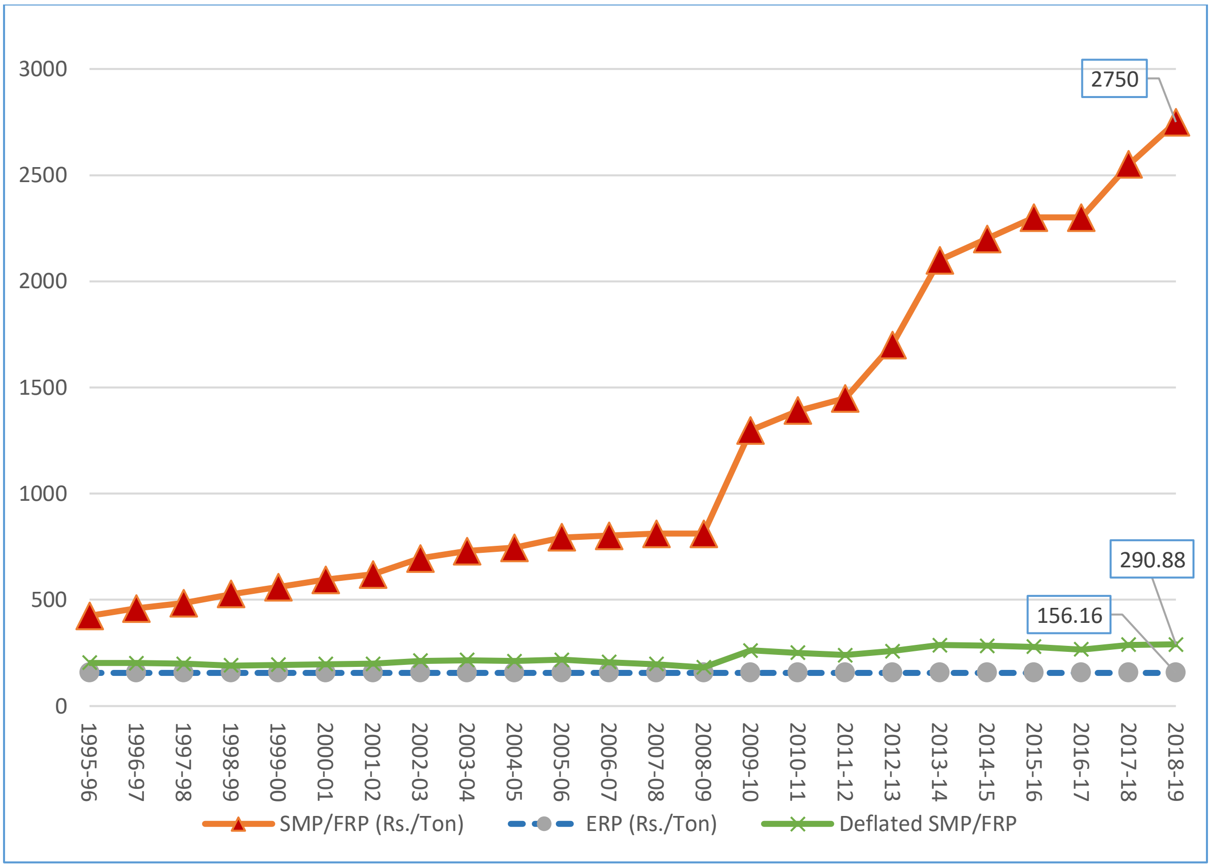
Description	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17
% of VoP	77.7%	77.1%	94.1%	94.4%	99.8%	94.4%
Millions, in INR	467,124	526,758	684,508	740,551	747,017	656,163
Millions, in USD	9,322	9,403	11,444	11,832	11,375	9,918

Source: India's Measures to Provide Market Price Support to Sugarcane - Communication from Australia, G/AG/W/189 (2018)

By citing *Korea-Beef* (WTO 2001), Australia argued that the FRP policy is open ended and all the sugarcane farmers are entitled for the FRP, and therefore total production of sugarcane is eligible production. However, India has maintained that findings of this case are specific to the facts of case under consideration and it does not necessarily apply in other situations (WTO 2019d). Even US has put forth a similar argument in the Dispute Settlement Body meeting in 2018, stating that Appellate Body and Panel reports do not carry precedence weight (DSB 2018).

The methodology adopted by Australia in the counter-notification compares the FRP of recent marketing years with an ERP based on prices prevailing in the years 1986-88. This inevitably results in a perverse and inflated effect on the apparent domestic support provided by India to its sugar sector. For example, the ERP of Sugarcane is INR 156.16 per tonne, whereas the FRP for the year 2018-19 is INR 2750 per tonne (Figure 1). It is economically fallacious to compare the fixed ERP with current FRP without considering inflation levels, and such a comparison results in an exaggerated and unrealistic MPS. Article 18.4 of the AoA states that Members shall give due consideration to the influence of excessive inflation on the domestic support commitments. However, there is ambiguity whether this flexibility is a unilateral right or depends on the discretions of other Members of the WTO during review process, which could lead to unpredictability. In Figure 1, the deflated FRP is computed by using the Consumer Price Index from World Development Indicators of the World Bank and changing its base period to 1986-88. It shows that the deflated FRP (INR 290) was much below the nominal FRP, but is still higher than the ERP in 2018-19. Due to this, the ERP itself has been criticized widely for not reflecting contemporary circumstances, and demands have been made for revision of the base period and reference price (ERP) methodology (Berthelot 2015).

Figure 1: Trend in External Reference Price (ERP) and SMP/FRP (in INR)



Sources: (1) India's Schedule WTO (1995a); (2) Various reports of CACP; (3) Deflated series based on Consumer Price Index from World Development Indicator, World Bank

Escalating the situation, Australia joined by Brazil and Guatemala initiated consultations on its sugar and sugarcane policy under WTO's Dispute Settlement Understanding ("**DSU**") with India. After an unsuccessful consultation process to resolve the challenged issues, the WTO established panel on 15th August, 2019 to examine the compatibility of the Indian sugar policies with the WTO provisions on agriculture. These three Members export almost twothirds or more of their respective sugar production, and have significant interest in India as a potential export market (Table 6). Owing to this commercial interest, India's domestic support policy such as FRP/SAP along with its export subsidies are being challenged at the WTO.

Table 6: Share of export in production and total world export

Year	Australia	Brazil	Guatemala	Australia	Brazil	Guatemala
	Export as % of Production			% Share in world export		
2013-14	74.8	69.3	68.4	5.7	45.2	3.4
2014-15	75.8	66.6	75.9	6.5	43.5	4.0
2015-16	75.5	70.3	75.8	6.9	45.1	4.2
2016-17	78.4	72.8	76.8	6.8	48.6	3.7
2017-18	79.2	72.5	67.9	5.9	44.1	3.0
2018-19	78.0	64.1	69.9	6.7	33.9	3.3

Source: United States Department of Agriculture (USDA)

SECTION 5: EVALUATING FRP/SAP AS NON-EXEMPT DIRECT PAYMENT AND ITS IMPLICATIONS

5.1 NOTIFYING AS NON-EXEMPT DIRECT PAYMENT BASED ON PRICE GAP

As discussed in Section 4 above, MPS methodology gives an inflated measurement of domestic support, all while reporting levels that are not indicative of the actual support provided. Such an approach is unfavourable for India. However, the question arises as to whether support to sugarcane farmers and sugar mills can be notified as budgetary support instead of MPS, and whether such an approach would provide India with the much-needed policy space to implement its domestic support programmes under WTO.

5.1.1 METHODOLOGY UNDER SCHEDULE VS METHODOLOGY UNDER NOTIFICATIONS

India had relied on MPS methodology for notifying support to sugarcane in its Schedule and domestic support notification for 1995-96. Without prejudice to India's stand of not providing domestic support to sugarcane producers due to no procurement by it, for the purposes of this study, the pertinent issue that arises herein is whether India would be bound to use the MPS methodology which was used for SMP under its Schedule, for its FRP policy for sugarcane.

With effect from 2009, India had scrapped the SMP policy for sugarcane, replacing it with the FRP, which is a new policy with substantial changes from the erstwhile SMP. The FRP accounts for risk and profit over and above the factors used to calculate SMP and allows for sufficient profit margins for sugarcane farmers, irrespective of whether sugar mills are generating profit or not. It is relevant to note that countries like the US and Japan have deviated from the methodology laid down under their respective Schedules for certain agricultural products when their domestic support programme underwent substantial changes. The US had relied on MPS for beef in its Schedule, but notified support to beef as non-exempt direct payments in the form of budgetary outlays for the marketing year 2016 (WTO 2016). Similarly, Japan departed from MPS as mentioned in its Schedule and notified support to sugarcane for the year 2007 as non-exempt direct payments. It can thus be inferred, that at least in practice, the methodology agreed to in the Schedule does not appear to have a binding effect if the support programme itself undergoes a change.

5.1.2 IS FRP BASED ON PRICE GAP?

To notify the FRP as a non-exempt direct payment under Para 10 of Annex 3 of AoA, the measure should be dependent on a price gap. For calculation of the 'price gap', the relevant product specific support policy should involve two prices, *viz* (a) target price (i.e. the price that is being administered by the government to support the agricultural product); and (b) other price such as market price.

In the case of sugarcane, the FRP can be taken as the target price, announced by the Indian government as a remunerative price to be paid by sugar mills to sugarcane farmers. While announcing the FRP, the price of sugar is an important consideration. However, sugarcane itself is a non-tradeable commodity in the international market, which is also acknowledged in India's Schedule, where it has notified ERP based on the international price of sugar. Given the same, the market price for sugarcane for calculating price gap should be derived from current sugar prices, the relevant conversion cost, value of by-products and recovery rate.

Following the comparison of the FRP and derived market price of sugarcane for calculating product specific support based on price gap, two scenarios emerge: one where the target price is higher than the derived market price, and another` where the derived market price is higher than the target price. In case the derived market price of sugarcane is higher than the notified FRP, it would result in sugar mills having enough liquidity and profit margins, and therefore, no government assistance would be needed to implement the FRP policy in India. However, in case the derived market price of sugarcane is lower than the notified FRP, government assistance would be needed by sugar mills in order to effectively implement the FRP policy in India. Similar to the above-mentioned mechanism, under the FRP system, financial assistance by the government is extended to sugar mills in order to reduce cane arrears, strengthen the liquidity situation of the sugar industry, and provide sugarcane farmers with remunerative price. Further, it is also noted that under the FRP policy, the payment is made *ex post facto* i.e. sugar mills are required to pay the farmers within 14 days from the date of delivery of sugarcane under Clause 3(3) of the Sugarcane (Control) Order, 1966. Despite having such provisions in place, the sugar mills are unable to make timely payment to sugarcane farmers, owing to low sugar prices.

Given the above factors, it can be established that the system of FRP functions like a 'price deficiency payment' for sugarcane farmers in India. Hence, based on the methodology provided in Paras 10 and 11 of Annex 3 of the AoA, the government assistance provided to sugar mills on account of arrears accumulated when derived market price of sugarcane is lower than the FRP, can be notified as a non-exempt direct payment based on 'price gap'.

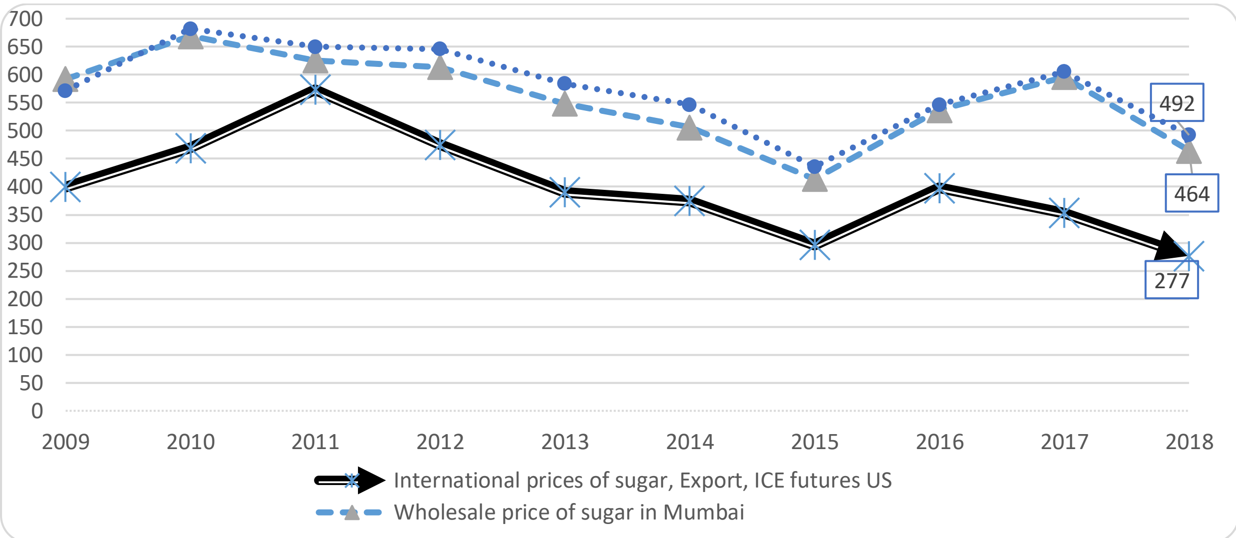
5.1.3 Is SAP based on Price Gap?

Many states in India like Uttar Pradesh, Haryana, Punjab etc. announce SAP for sugarcane as a higher incentive for farmers as opposed to the centrally announced FRP. Therefore, there exist two values exist i.e. the SAP and the FRP, and the difference between them would be the amount of support given by a particular state. Since this is based on price gap, it can be notified as budgetary support under Para 10 of Annex 3. Adopting the methodology under Para 10 would also provide a more real measurement of the support provided to the producers by the central and the state governments.

5.1.4 Domestic support measures for sugar and sugarcane

The Central and the State governments are providing financial assistance to sugar mills through supplementary programmes for effective implementation of FRP/SAP and to support the sector. Over the years, sugar mills have been plagued by low international price of sugar, and rising input cost, along with various other factors which have severely impacted their liquidity, leading to huge cane arrears and inability to effectively implement FRP/SAP. The export market for sugar is also not lucrative due to significantly lower international prices of sugar as compared to domestic sugar prices (Figure 2).

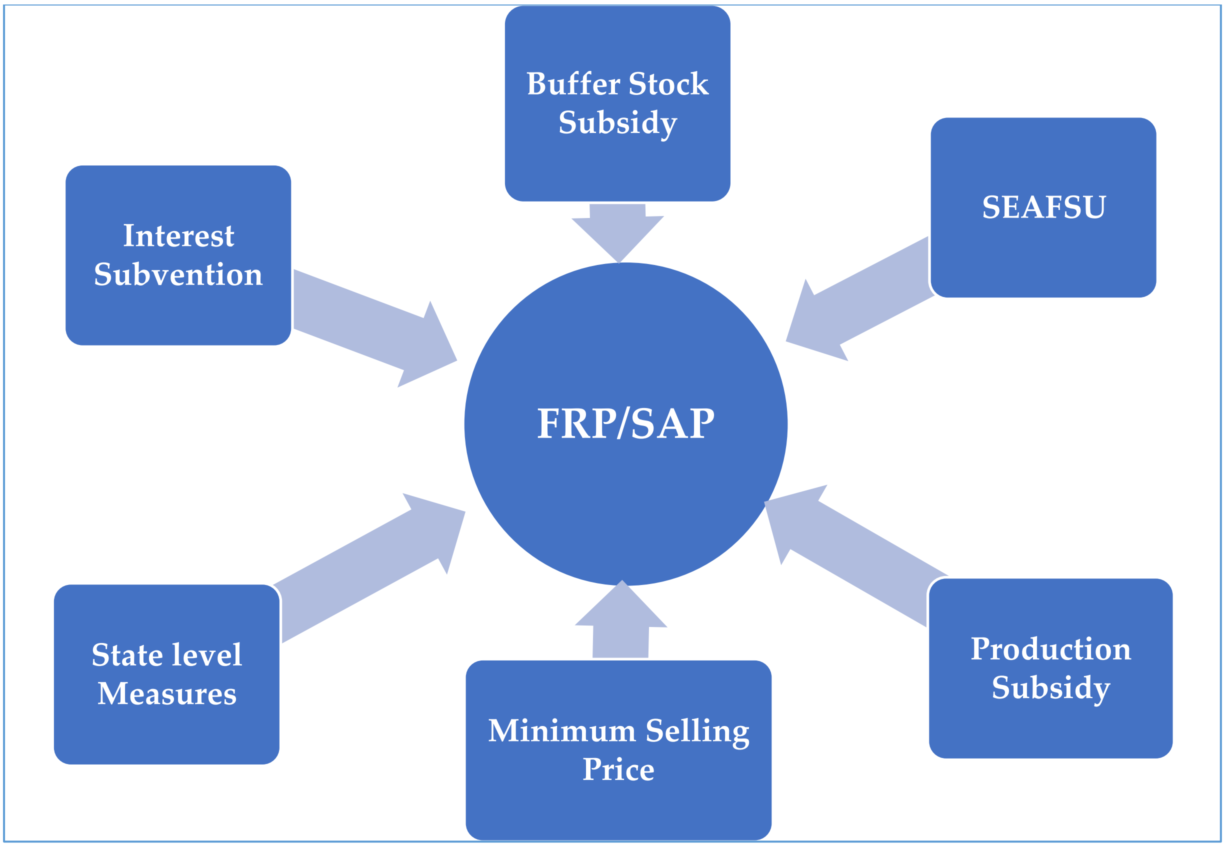
Figure 2: Trend in international and domestic price in India of sugar (in US Dollar)



Source: FAO GIEWS FMPA tool: monitoring and analysis of food prices (accessed on 18 may, 2019)

Given this scenario, the Indian government is assisting the sugar sector through various schemes that conjointly set a background for effectively implementing the FRP/SAP (Chart 1), all of which have also been identified and challenged at the WTO by complainant members.

Chart 1: Sugar and sugarcane schemes for implementation of FRP/SAP



Source: Various notifications by MCF&PD and PIB releases

With a view of improve the liquidity position of the sugar mills and enabling them to clear cane price arrears of previous sugar seasons, the Central Government launched the 'Scheme for extending financial assistance to sugar undertaking ("SEFASU") in 2014. The interest-free loan under the scheme were earmarked for clearance of arrears related to FRP by the sugar mills (DFPD 2014).

In June 2015, in order to facilitate the payment of the cane due to the farmers, the Government of India initiated a scheme for extending soft loans for sugar mills for sugar season 2014-15 (PIB 2015). For expeditious payment of cane arrears, the Government mandated the banks to pay directly to the farmers on the behalf of sugar mills. A similar soft loan scheme was also rolled out for the sugar season 2018-19 (PIB 2019).

Table 7: Budgetary expenditure under various schemes for sugar/sugarcane (crore INR)

Year	Production subsidy	Interest Subvention including SEFASU	Buffer stock	Minimum selling price	Total
2013-14		2750			2750
2014-15		600			600
2015-16	520	425			945
2016-17	950				950
2017-18	1540		1175		1540
2018-19	4163	804		0	4967

Note: For 2018-19, interest subvention was expected to be between INR 553 crore to 1054 crore. The average of these amount is used (PIB, Feb 2019).

Sources: (1) Various notifications by MCF&PD and PIB releases; (2) Request for consultations by Brazil, WT/DS579/1; (3) Australia counter notification (G/AG/W/189)

Besides soft loans, the government also statred a scheme for extending production subsidy to sugar mills in December 2015. The objective of the scheme was to help in payment of cane arrears accrued during sugar season 2015-16. Under the scheme, a subsidy of INR 45/ton was provided to sugar mills to offset the cost of sugarcane purchased by sugar mills (DFPD 2015). The subsidy was payable directly to the farmers on behalf of the mills to offset cane arrears. The government of India also announced scheme in the form of production-based assistance to offset cane price arrears during 2016-17 to 2018-19 (Table 7) (DFPD 2017b & DFPD 2018). Further in 2018, the government initiated a 'Scheme for Creation and Maintenance of Buffer Stock' for sugar to assist the mills in clearing the cane arrears for sugar season 2017-18. The government will reimburse the carrying cost of INR 1175 crore to sugar mills for maintaining the stocks (PIB 2018a).

Additionally, to clear cane dues of farmers owing to FRP/SAP, the Government sets the minimum selling price of sugar for sale in domestic market. The minimum selling price for sugar was INR 29/kg and INR 31/kg for year 2018-19 and 2019-20 respectively. The minimum selling price also works based on a price gap between the minimum selling price and market price of sugar in a relevant year. Therefore, support though this measure can be notified as budgetary expenditure incurred by the Government. However, there is no budget allocation for this programme.

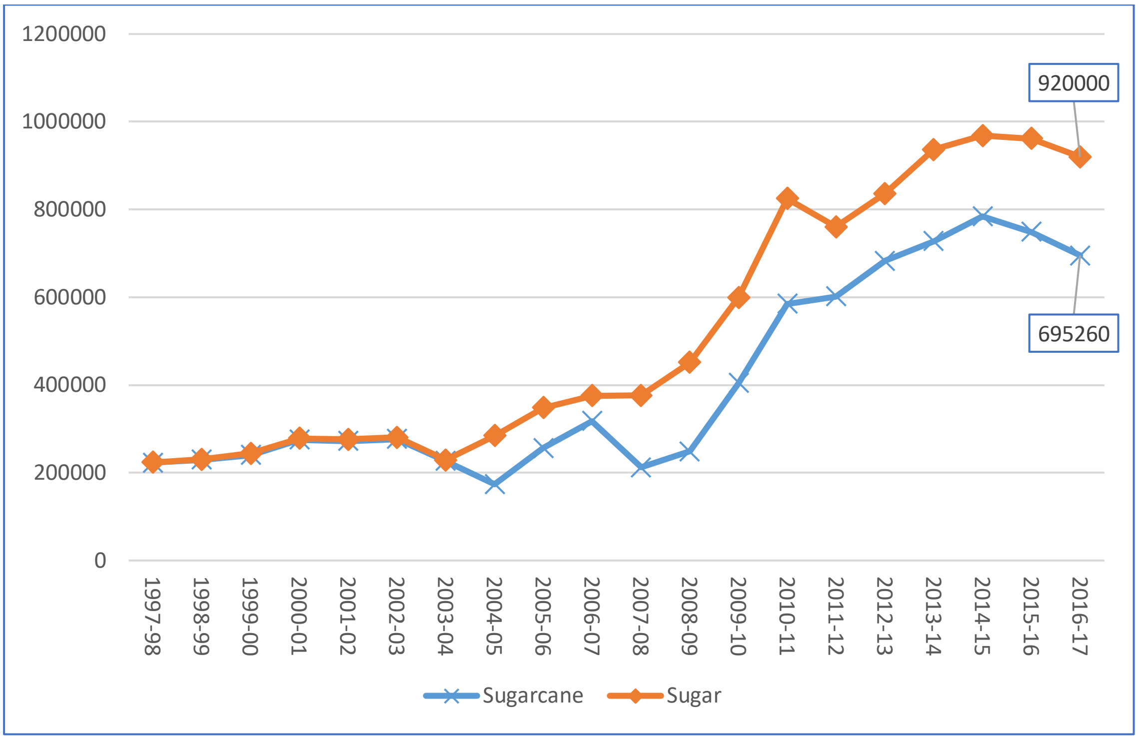
Besides the above-mentioned schemes, many state governments are also supporting the sugar mills by providing cash grants, production-based cash grants, interest waivers, etc. for effecting payments under FRP/SAP. It becomes important herein to mention that the FRP/SAP is announced by the Central/State governments to ensure remunerative prices for sugarcane. However, there is no specific and dedicated budget allocation for the programme, but support is provided through various schemes discussed above, which are announced from time to time by the government. Since FRP/SAP is based on price gap, majority of these schemes related to FRP/SAP can be notified as budgetary outlay under non-exempt direct payment of Annex 3.

5.1.5 MARKET PRICE SUPPORT VS BUDGETARY SUPPORT: BETTER ALTERNATIVE?

Under the AoA, the *de minimis* limit is defined as fixed percentage of VoP, making it a critical factor in determining whether a Member breaches its commitment levels or not. The obvious corollary is that a higher VoP would result in higher *de minimis* level in absolute terms and therefore, more policy space and flexibility under Amber box. As discussed above, the government provides financial assistance to support both sugar mills and sugarcane farmers in India. Here, the pertinent question that arises is whether notification of domestic support to the WTO should be in relation to sugar or sugarcane.

It is suggested that India should notify product-specific support for sugar rather than sugarcane, as the former has a higher VoP and hence, a higher *de minimis* limit. For example, the VoP for sugar was INR 920000 million whereas that of sugarcane was INR 695260 million during 2016-17. Many Members notify product specific support for the processed products like Rice rather than basic agricultural product (Article 1 & Annex 3) like paddy. Relevant to this context is the fact that EU has notified product specific support for white sugar rather than sugarcane (WTO 1995b).

Figure 3: Trend of *de minimis* of sugar and sugarcane (Million INR)



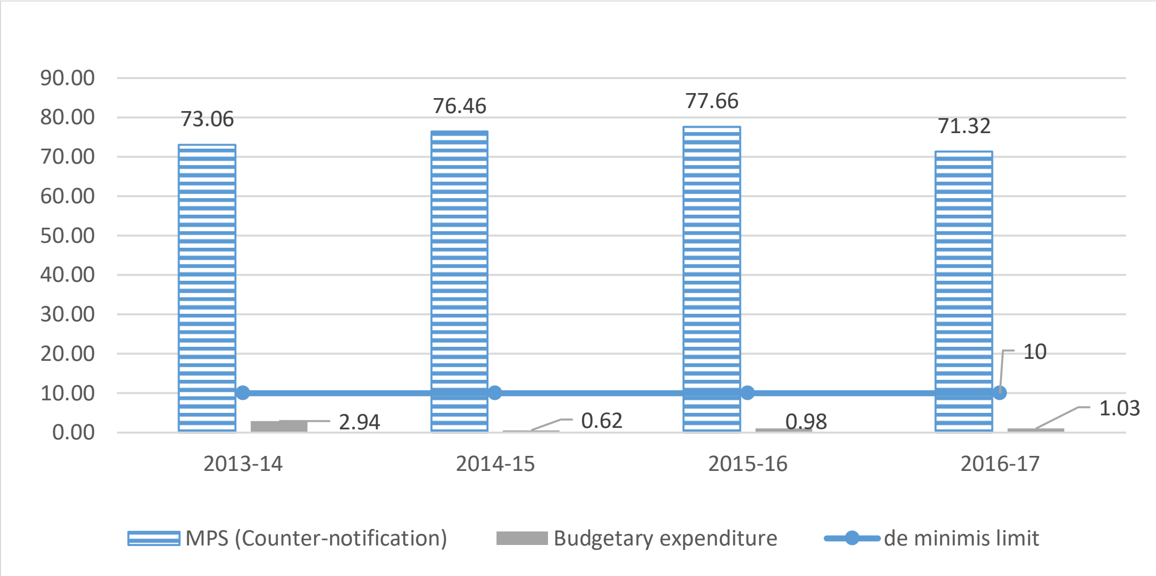
Source: Various issues of National Account Statistics (NAS)

Table 8: Comparison of MPS and budgetary support based on counter-notification with *de minimis* limit of sugar (million INR)

Year	VoP	*de minimis* limit	MPS (counter-notification)	Budgetary expenditure
2013-14	936850	93685	684508	27500
2014-15	968610	96861	740551	6000
2015-16	961880	96188	747017	9450
2016-17	920000	92000	656163	9500

Sources: (1) Various notifications by MCF&PD and PIB releases; (2) Request for consultations by Brazil, WT/DS579/1; (3) Counter-notification by Australia (G/AG/W/189); (4) National Account Statistics (NAS)

Figure 4: Comparison of actual and permissible level vs estimated level of support in counter-notification (as a percentage of VoP of sugar)



Sources: (1) NAS; (2) Counter-notification by Australia (G/AG/W/189); (3) Expenditure from Table 8

Note: 1. Support provided to the sugar and sugarcane by the state governments is not included in this calculation

2. In contrast to Table 5, the calculation is based on the VoP of sugar

As per the counter-notification by Australia as well as the consultation documents, the total support to sugar and the sugarcane sector included both the MPS owing to FRP/SAP as well as the budgetary support given by the government under various schemes. The calculation in counter-notification estimates that India provided more than 94 percent MPS through FRP during 2013-14 to 2016-17 based on VoP of sugarcane only (Table 5).

In reality, the Government does not allocate any specific fund for FRP/SAP, rather support for these programme is provided though budgetary outlays under various schemes. As discussed in Section 5.1.4, the support though FRP/SAP can be notified as budgetary support under para 10 of Annex 3. In contrast to the support under counter-notification, the total product specific support to sugarcane/sugar sector was much below the de minimis level during 2013-14 to 2016-17 (Figure 4). The actual product specific support ranged between 0.62 to 2.92 percent during the same period.

SECTION 6: CONCLUSION

Counter-notification and dispute on Sugar related policy brings to fore the commercial interest of Australia, Brazil and Guatemala as well as the constraining effect of the provisions of AoA. By challenging the domestic support policies of sugarcane, the complainant Members seek to get market access for their exports in India. Taking into account total production of sugarcane as 'eligible production' and comparing the current FRP with the ERP based on 1986-88 prices, Australia claimed that India's support reached 99.8 percent of the VoP of sugarcane in 2015-16. However, the ground reality for sugarcane farmers is very different from the global picture of excessive support painted by these Member states. Indian sugarcane farmers struggle to make ends meet due to rising cane arears, increasing input costs and small landholding sizes.

Refuting Australia's stance, India stated that government agencies do not procure sugarcane from farmers in India, and almost all sugar mills are either cooperative or privately owned. However, Australia, Brazil and Guatemala rejected this argument and initiated consultations under the DSU in 2019. This study shows that FRP is actually functioning based on price gap and therefore, expenditure on account of FRP can be notified as government budgetary outlay as a non-exempt direct payment. This line of reasoning will provide huge policy space to support sugarcane farmers as the budgetary expenditure on account of FRP/SAP by government is less than *de minimis* level.

The asymmetrical and unjust provisions of AoA are evident in the fact that a Members like the EU and the US have given 177 and 64 percent of VoP respectively, as product specific support for sugar sector without breaching their commitments due to their AMS entitlement. On the other hand, most of developing Members including India cannot give product specific support more than 10 percent of VoP due to lack of AMS entitlement. There is an imminent need for reform in order to bring the outdated provisions of AoA in line with the present socio-economic conditions of the developing world.

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