



INDIA – EXPORT RELATED MEASURES

REQUEST FOR THE ESTABLISHMENT OF A PANEL BY THE UNITED STATES

The following communication, dated 17 May 2018, from the delegation of the United States to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On 14 March 2018, the United States requested consultations with the Government of India ("India") pursuant to Articles 1 and 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* and Articles 4 and 30 of the *Agreement on Subsidies and Countervailing Measures* ("SCM Agreement") with regard to certain measures of India. The United States held consultations with India on 11 April 2018. Those consultations unfortunately did not resolve the dispute.

It appears that India provides export subsidies through: (1) the Export Oriented Units Scheme and sector specific schemes, including Electronics Hardware Technology Parks Scheme and Bio-Technology Parks Scheme,¹ (2) the Merchandise Exports from India Scheme, (3) the Export Promotion Capital Goods Scheme, (4) Special Economic Zones, and (5) a duty-free imports for exporters program.

The export subsidies provided through these programs are reflected in legal instruments that include the following, operating separately or collectively, as well as any amendments, or successor, replacement, or implementing measures:

Export Oriented Units Scheme and sector specific schemes, including Electronics Hardware Technology Parks Scheme and Bio-Technology Parks Scheme:

1. *Foreign Trade Policy [1st April 2015 – 31st March 2020]* (Ministry of Commerce and Industry, Notification 01/2015-2020, April 1, 2015), as modified by *Foreign Trade Policy [1st April, 2015-31st March, 2020] Mid-Term Review, Updated As On 5th December, 2017* (Ministry of Commerce and Industry, Notification 41/2015-2020, December 5, 2017).
2. (*Appendices and Aayat Niryat Forms*) of *FTP 2015-2020, 1st April, 2015-31st March, 2020* (Ministry of Commerce and Industry, undated).
3. *Handbook of Procedures [1st April 2015 – 31st March 2020]* (Ministry of Commerce and Industry, Public Notice No. 01/2015-2020, April 1, 2015), as modified by *Handbook of Procedures [1st April, 2015 – 31st March, 2020], Updated up to 05.12.2017* (Ministry of Commerce and Industry, Public Notice No. 43/2015-2020, December 5, 2017).
4. *Public Notice 31/2015-20, Amendments in paragraph (7) of Appendix-6B of Appendices and Aayat Niryat Forms of FTP 2015-2020* (Ministry of Commerce and Industry, August 26, 2015).

¹ See Chapter 6, *Foreign Trade Policy [1st April, 2015-31st March, 2020] Mid-Term Review, Updated As On 5th December, 2017* (Ministry of Commerce and Industry, Notification 41/2015-2020, dated December 5, 2017).

5. *Public Notice No. 25/2015-2020, Removal of mandatory warehousing requirements for EOUs, STPIs, EHTPs etc. - Amendment in (i) paras 6.06, 6.20 and 6.40 of Hand Book of Procedures(HBP) 2015-2020; and (ii) Appendix 6E, 6G,6H, 6M,5C and ANF 6A, ANF 6B of Appendices and Aayat Niryat Forms of FTP 2015-2020- reg. (Ministry of Commerce and Industry, August 13, 2016).*

Merchandise Exports from India Scheme:

6. Instruments 1 through 5.
7. *Public Notice 2/2015-2020, Subject: Merchandise Exports from India Scheme (MEIS) – Schedule of country group, ITC (HS) code wise list of products with reward rates under Appendix 3B notified (Ministry of Commerce and Industry, April 1, 2015).*
8. *Public Notice 27/2015-2020, Subject: Merchandise Exports from India Scheme (MEIS) – Additions/amendments in Table 1 (containing list of country groups) and Table 2 [containing ITC (HS) code wise list of products with reward rates] of Appendix 3B (Ministry of Commerce and Industry, July 14, 2015).*
9. *Harmonised and Consolidated Table 2 of Appendix 3B as per Public Notice No. 61/2015-20 (Ministry of Commerce and Industry, March 7, 2017).*
10. *Public Notice 1/2015-2020 Subject: Amendments in Product Description in MEIS Schedule Table 2 of Appendix 3B (Ministry of Commerce and Industry, April 13, 2017).*
11. *Public Notice 17/2015-2020 Subject: Harmonizing MEIS Schedule in the Appendix 3B (Table 2) with ITC (HS), 2017 (Ministry of Commerce and Industry, August 22, 2017).*
12. *Public Notice 22/2015-2020 Subject: Corrections/Amendments in Table 2 of Appendix 3B Foreign Trade Policy 2015-20 (Ministry of Commerce and Industry, August 31, 2017).*
13. *Public Notice 42/2015-2020 Subject: Amendment in Appendix 3B of the Foreign Trade Policy 2015-20 (Ministry of Commerce and Industry, November 24, 2017).*
14. *Public Notice 44/2015-2020 Subject: Amendments to Appendix 3B Foreign Trade Policy 2015-20 (Ministry of Commerce and Industry, December 5, 2017).*
15. *Public Notice 60/2015-2020 Subject: Amendments/Corrections in Table 2 of Appendix 3B Foreign Trade Policy 2015-20 (Ministry of Commerce and Industry, February 15, 2018).*

Export Promotion Capital Goods Scheme:

16. Instruments 1 through 5.
17. *Public Notice No. 04/2015-2020 Subject: Notification of new Appendix 5D containing the list of services for which payment is received in Rupee terms which could be counted towards discharge of Export Obligation under the Export Promotion Capital Goods (EPCG) Scheme (Ministry of Commerce and Industry, May 3, 2016).*
18. *Public Notice No. 08/2015-2020, Amendment in ANF-5A [Application for issue of EPCG Authorisation]; ANF 5B [Application for redemption of EPCG Authorisation]; ANF 5C [Application for Clubbing of EPCG Authorisations] and Appendix 5C [Format of Certificate of CA/ Cost Accountant / CS for redemption of EPCG Authorisation] as contained in the Appendices & Aayat Niryat Forms of FTP 2015-20 – reg. (Ministry of Commerce and Industry, May 6, 2016).*

19. *Policy Circular No. 03/2015-20 Subject: Relief in Average Export Obligation in terms of Para 5.19 of Hand Book of Procedures of FTP 2015-20* (Ministry of Commerce and Industry, November 21, 2017).
20. *Public Notice 47/2015-2010 Amended Appendix 5E and 5F* (Ministry of Commerce and Industry, December 6, 2017).

Special Economic Zones:

21. *The Special Economic Zones Act, 2005 No. 28 of 2005, issued June 23, 2005, Gazette of India, Extraordinary Part II Section I* (Ministry of Law and Justice).
22. *The Special Economic Zones Rules incorporating amendments up to July, 2010* (Ministry of Commerce and Industry, February 10, 2006).
23. *Special Economic Zones (Amendment) Rules, 2010, G.S.R. 501(E)* (Ministry of Commerce and Industry, June 14, 2010).
24. *Special Economic Zones (Amendment) Rules, 2017, G.S.R. 585(E)* (Ministry of Commerce and Industry, June 12, 2017).
25. *Notification 15/2017-Integrated Tax (Rate)* (Ministry of Finance, Department of Revenue, June 30, 2017).
26. *Income Tax Act, 1961, as amended.*

Duty-free imports for exporters program:

27. *Notification No. 50/2017-Customs* (Ministry of Finance, Department of Revenue, June 30, 2017), including Conditions 10, 21, 28, 32, 33, 36, 60, 61, 101.

Consistent with Annex VII of the SCM Agreement, India is subject to the obligations of Article 3.1(a) of the SCM Agreement because India's gross national product per capita has reached \$1,000 per annum. Through each program, as reflected in the instruments listed above, India provides subsidies contingent upon export performance. The measures appear to be inconsistent with Article 3.1(a) of the SCM Agreement, and India appears to have acted inconsistently with Article 3.2 of the SCM Agreement.

Therefore, the United States respectfully requests, pursuant to Article 6 of the DSU and Article 4.4 of the SCM Agreement, that the Dispute Settlement Body ("DSB") establish a panel to examine this matter, with standard terms of reference as set out in Article 7.1 of the DSU. Pursuant to Article 4.4 of the SCM Agreement, the panel shall be established immediately, unless the DSB decides by consensus not to establish a panel.
